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Friday
November 26, 1993

Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

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

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

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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.

FEDERAL ELECTION COMMISSION

11 CFR Part 112

[Notice 1993–31]

Federal Elections

AGENCY: Federal Election Commission.

ACTION: Revision to advisory opinion comment procedure.

SUMMARY: The Commission will provide a limited public comment opportunity on draft advisory opinions proposed by the Office of General Counsel and scheduled for a Commission agenda. Further information on this procedural revision is provided in the supplementary information which follows.

DATES: The revised comment procedure became effective on October 21, 1993, for a trial period that expires on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 21, 1993, the Commission approved a temporary revision to its procedures for accepting comments from any interested person on advisory opinion requests that are submitted pursuant to 11 CFR 112.1 and made public under 11 CFR 112.2. Commission regulations authorize the Commission to extend the public comment opportunity on an advisory opinion request. 11 CFR 112.3(b). The Commission has now decided to allow additional time for public comments on advisory opinion requests currently pending and those submitted before June 1, 1994. Furthermore, the additional time to submit comments will coincide with the public release of advisory opinion drafts proposed by the Office of General Counsel ("OGC") and scheduled for Commission consideration at an open meeting held approximately one week after the release date.

The procedures for public comments on OGC draft opinions are summarized:

(1) OGC advisory opinion drafts ("OGC drafts") that are proposed for Commission consideration at a scheduled public meeting, announced pursuant to the Sunshine Act, will be made public for comment by any person as soon as they are circulated to the Commission. In most cases, the release date to the public will be not later than close of business on the Thursday next preceding the Commission meeting date for which the opinion has been "sunshined." (When an opinion is scheduled for a meeting date other than a Thursday, the OGC draft will be made public as soon as possible, generally one week, before the scheduled meeting date.)

(2) OGC drafts will be made available for public comment at the Public Records office of the Commission's Public Disclosure Division. This is the same office where advisory opinion requests are made public as provided in 11 CFR 112.2(b).

(3) The public comment period on the OGC draft will close at 12 noon (EST/EDT) on the Wednesday preceding the Thursday meeting date when the draft is scheduled for the Commission agenda. (For meeting dates other than Thursday, the comment period closes at noon on the next preceding regular workday before the meeting date.) The closing date and time for public comments on the OGC draft will be stated in a cover memorandum prepared by OGC and attached to the OGC draft.

(4) No comments will be accepted or considered or circulated if received after the deadline set forth in paragraph 3; they will be returned to the commenter. Extensions of this deadline will be considered by the Commission on a case by case basis only in the following circumstances: If the scheduled meeting date for the draft opinion is canceled or postponed, or if the OGC draft is withdrawn from the agenda by the General Counsel or is carried over to a future agenda by consensus of at least four Commissioners. Any extension of a public comment deadline will be stated in a written memorandum from OGC to the Commission and placed on the public record in the Public Disclosure Division.

(5) Written comments on the OGC draft shall be submitted by the commenter to the Secretary of the Commission with a full duplicate copy to OGC. Comments may be submitted by fax transmission to both offices. Comments will be distributed to each Commissioner's office, the Staff Director, the General Counsel, and to other designated offices within the Commission. They will also be available to the public.

(6) Any written public comments submitted by a commenter to any Commissioner or to the directly supervised staff of a Commissioner, which are not concurrently submitted in accordance with paragraph 5, shall be forwarded within two hours of receipt to the Secretary of the Commission for further distribution. Such comments, if forwarded within two hours of receipt, will not be considered ex parte communications for purposes of 11 CFR part 201.

(7) The Commission and OGC will consider all public comments that are timely submitted under the foregoing paragraphs before the draft opinion is voted on by the Commission.

(8) All the requirements of 2 U.S.C. 437f and 11 CFR part 112 remain applicable to advisory opinion requests and to comments submitted on OGC drafts, including the mandate to issue an opinion within 60 days and 11 CFR 112.6 that provides for Commission reconsideration of an issued advisory opinion.

(9) The foregoing procedures will not apply to any advisory opinion request or OGC draft opinion that qualifies for the expedited 20 day opinion process set forth in 11 CFR 112.4(b), except that OGC drafts will be released to the public as provided in paragraph 1.

(10) The foregoing procedures became effective on October 21, 1993, and will continue in effect for a trial period which expires as to any advisory opinion request received after May 31, 1994. After expiration of the trial period, the OGC draft public comment procedure will be reviewed and evaluated by the Commission and OGC to determine if it should be implemented on a permanent basis.

Additional information regarding the revised advisory opinion comment procedures may be found in Agenda Document #93–85, dated October 18, 1993.

Dated: November 22, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93-29003 Filed 11-24-93; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8482]

RIN 1545-AQ90

Method Changes for Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of the location of a public hearing for a revenue procedure.

SUMMARY: This document provides notice of change of location for the public hearing on a revenue procedure relating to required method changes for capitalization and inclusion in inventory of certain costs. Taxpayers were invited to comment regarding the approach for implementing required method changes in Treasury Decision 8482.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a revenue procedure under section 263A of the Internal Revenue Code. The notice of public hearing on this revenue procedure was published in the **Federal Register** for Friday, October 29, 1993 (58 FR 58101), and a rescheduling of this public hearing; change of date to submit requests to speak and outlines of oral comments was published in the **Federal Register** for Wednesday, November 10, 1993 (58 FR 59657). The notice of public hearing and rescheduling of the public hearing for the related proposed regulations (IA-64-91) were published simultaneously at 58 FR 58145 and 58 FR 59698, respectively. The requests for comments regarding the approach for implementing required method changes (TD 8482) and the proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA-64-91) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See change of the location of the public hearing for IA-64-91 elsewhere in this issue of the **Federal Register**.

There is a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

All other details with respect to the previously published documents remain the same.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-28924 Filed 11-24-93; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1814-93]

Office of Investigative Agency Policies

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the Office of Investigative Agency Policies at the Department of Justice. This new Office has been created to increase efficiency within the Department by coordinating specified activities of the Department's criminal investigative components and by advising the Attorney General and the Deputy Attorney General on all criminal investigative policies, procedures and activities that warrant uniform treatment or coordination. This order will provide the public with a list of the duties of the Director of Investigative Agency Policies. It is being included in the Code of Federal Regulations in order to reflect accurately the Department's internal management structure.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Carl Stern, Director, Office of Public Affairs, U.S. Department of Justice, Washington, DC 20530, Telephone: (202) 616-2777.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a significant regulatory action within the meaning of or subject to Executive Order No. 12866.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0, subpart C of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZAITON OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Part 0, subpart C is amended by adding a new section 0.17 to read as follows:

Subpart C—Office of the Deputy Attorney General

§ 0.17 Office of Investigative Agency Policies.

(a) *Organization.* The Office of Investigative Agency Policies is headed by a Director appointed by the Attorney General. The Director shall be responsible to, and report directly to, the Deputy Attorney General, and shall serve at the pleasure of the Attorney General. The Director shall be chosen from among the heads of the criminal investigative agencies of the Department, i.e., the Federal Bureau of Investigation, Drug Enforcement Administration, United States Marshals Service and Immigration and Naturalization Service. The Director shall serve concurrently as the Director of Investigative Agency Policies and as head of the agency for which he or she was nominated and confirmed. The Director shall be supported by a staff consisting of personnel detailed from the criminal investigative agencies of the Department, and from the Criminal Division. The staff shall be nominated by these various agencies, subject to the approval of the Director.

(b) *Functions.* Subject to the general supervision and direction of the Attorney General and Deputy Attorney General, the Director shall in the areas of overlapping jurisdiction of the criminal investigative agencies:

(1) Take all steps necessary to improve coordination among the criminal investigative agencies of the Department, both within the United States and abroad;

(2) Assure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department;

(3) Establish procedures, structures and mechanisms for coordinating the collection and dissemination of intelligence relating to the Department's law enforcement responsibilities;

(4) Establish procedures and policies relating to procurement for the criminal investigative agencies of the Department, including but not limited to procurement of communications and computer systems;

(5) Determine and establish procedures for the coordination of all automation systems;

(6) Determine and establish plans to ensure the effective deployment of criminal investigative agency task forces;

(7) Establish procedures for coordinating the apprehension of fugitives;

(8) Establish programs to coordinate training among the criminal investigative agencies of the Department;

(9) Provide advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination among the criminal investigative agencies of the Department;

(10) Provide advice to the Attorney General and the Deputy Attorney General on the budgetary and resource requests of the criminal investigative agencies of the Department;

(11) Perform such other functions as may be necessary for the effective policy-level coordination of criminal investigations by the criminal investigative agencies of the Department, particularly with respect to drug trafficking, fugitive apprehension, violence, and related areas, and for the elimination of waste and duplication in these functions.

(12) Perform such special duties as may be assigned by the Attorney General or the Deputy Attorney General from time to time.

(c) *Cooperation.* Officials of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Immigration and Naturalization Service and all other components of the Department that may be requested by the Director of Investigative Agency Policies shall provide such information as the Director may request.

(d) *Review.* Prior to making any decision having a significant impact on any criminal investigative agency of the Department, the Director shall consult with the head of such agency, or the designee of the head of such agency. Any head of a criminal investigative agency shall have an opportunity to seek review of any decision of the Director by the Deputy Attorney General or the Attorney General.

(e) *Scope.* Nothing in this section shall be interpreted to alter or diminish the responsibilities of the Department's criminal investigative agencies, or of other components of the Department, including the Criminal Division and the United States Attorneys, in the investigation and prosecution of violations of federal criminal law.

(f) *Reservation.* This policy is set forth solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any matter, civil or criminal, nor does it place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

Dated: November 18, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93-28947 Filed 11-24-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 93-054]

RIN 2115-AE55

Oil Pollution Placard Language

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the placard language required to be posted on ships of 26 feet in length or greater stating the Federal Water Pollution Control Act's (FWPCA) oil discharge prohibition and the penalty for violation of that prohibition. Because the Oil Pollution Act of 1990 amended the penalty provisions of FWPCA, the required placard language is outdated. This rule revises the required placard language to reflect current FWPCA authority.

EFFECTIVE DATE: November 26, 1993.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA, 3406), U.S. Coast Guard Headquarters, room 3406, 2100 Second Street, SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection (G-MEP-1), (202) 267-6714.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this rule are Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Section 311 of the Federal Water Pollution Control Act (FWPCA) prohibits the discharge of oil into the navigable waters of the United States or the waters of the contiguous zone and specifies penalties for violation of that prohibition (33 U.S.C. 1321(b)). Section 155.450 of title 33 of the Code of Federal Regulations requires ships of 26 feet in length or greater to post a placard that states FWPCA's oil discharge prohibition and the penalty for violation of that prohibition. However, the Oil Pollution Act of 1990 (OPA 90) amended FWPCA by increasing the maximum amount of criminal and civil penalties that may be assessed under FWPCA (Pub. L. 101-380). Consequently, the placard language required by § 155.450 stating that violators are subject to a penalty of $5,000 has become outdated. The OPA 90 amendments to FWPCA provide for fines, or imprisonment, or both. The amendments also provide for Class I administratively assessed penalties of up to $10,000 per violation, not to exceed $25,000, class II administratively assessed penalties of up to $10,000 per day for each day during which the violation continues, not to exceed $125,000, and judicially assessed civil penalties of up to $25,000 per day of violation or up to $1,000 per barrel of oil discharged.

Discussion of Amendments

This rule would revise the required placard language to accurately reflect the penalty provisions of FWCPA. In consideration of space limitations on

placards and in order to ensure that the placard language requirement remains current with FWCPA authority, this rule requires placard language stating that violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment. Owners and operators will continue to be allowed to use placards meeting existing Coast Guard requirements for the lifetime of the placards.

Because this action would merely conform the language required to be displayed on ship's placards with revised statutory authority, this action is considered to be administrative and procedural in nature. Accordingly, under 5 U.S.C. 553(b)(3)(B) notice and opportunity for public comment are unnecessary and, in accordance with 5 U.S.C. 553(d)(3), good cause exists to publish this action as a final rule effective upon publication in the **Federal Register.**

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Because existing placards may be used for the lifetime of the placards, there would be no economic impact on the industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This rule merely revises the language required to be posted on placards aboard certain ships to conform with revised statutory authority. Existing placards may be used for the lifetime of the placard. This rule has no economic impact on industry. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons in the removal of oil (33 U.S.C. 1321(o)). The State's authority to regulate in this area is preserved as long as State law is not in direct conflict with Federal law.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is editorial and administrative in nature and clearly has no impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 155

Hazardous substances; Oil pollution; Reporting and recordkeeping requirements.

For the reasons set out in the preamble; the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); E.O. 12777, 56 FR 54757, 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

2. In § 155.450, paragraph (a) is revised to read as follows:

§ 155.450 Placard.

(a) A ship, except a ship of less than 26 feet in length, must have a placard of at least 5 by 8 inches, made of durable material fixed in a conspicuous place in each machinery space, or at the bilge and ballast pump control station, stating the following:

Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

* * * * *

Dated: October 7, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-29038 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-4804-7]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations to provide guidance, relating to approval of State programs, that the EPA is required to publish under section 112(l) of the Clean Air Act as amended in 1990 (Act). Section 112(l)(2) of the Act requires the EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. This final rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of rules or programs by the States under this subpart is entirely voluntary. States seeking to implement and enforce some provisions of their own programs in lieu of federally promulgated hazardous air pollutant standards under section 112 need to obtain approval under this final rule. Once granted approval, State rules and applicable part 70 operating permit conditions resulting from approved

State programs would be federally enforceable and would substitute for the otherwise applicable Federal requirements within a State or local jurisdiction.

EFFECTIVE DATE: The guidance announced herein takes effect on December 27, 1993.

ADDRESSES: *Docket.* Supporting information used in developing the proposed and final rules is contained in Docket No. A-92-46. The docket is available for public inspection and copying from 8:30 a.m.-12 p.m. and 1:30 p.m.-3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on today's final rule, contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2625.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
II. Public Participation
III. Summary of Final Rule
IV. Significant Comments and Changes to the Proposed Rule
A. Section 63.90—Program Overview
B. Section 63.91—Criteria common to all approval options
C. Section 63.92—Approval of a State rule that adjusts a section 112 rule
D. Section 63.93—Approval of State authorities that substitute for a section 112 rule
E. Section 63.94—Approval of a State program that substitutes for section 112 emission standards
F. Section 63.95—Additional approval criteria for Federal accidental release prevention programs
G. Section 63.96—Review and withdrawal of approval
H. Other Comments
V. Additional Guidance
VI. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Review

This preamble provides an overview of criteria and procedures for approval by the EPA of State rules and programs that implement and enforce section 112 of the Act.

The preamble also provides a detailed discussion of the changes made to the proposed regulation. Section I discusses the background and purpose of today's rule. Section II provides information regarding public involvement in the rulemaking during the public comment period following proposal. A summary of today's rule is found in section III which gives a brief overview of the regulatory requirements. A discussion of the significant comments and resulting regulatory changes from the proposed requirements is detailed in section IV. The discussion of comments and changes to the rule are found in this section in the sequence of the subpart E rule. In the preamble of the proposed rule, the EPA explained the basis for its various proposed positions. Where the proposed regulation has not been changed in the final rule, the EPA continues to rely on the rationale provided in the proposal notice. In addition, clarification or explanation has been included in those places where comments indicated it would be useful. Section V discusses additional guidance required by section 112(l). Finally, section VI covers administrative requirements necessary for promulgation of this rule.

The EPA proposed these regulations to be codified in 40 CFR part 63 on May 19, 1993 (58 FR 29296). The comment period for the proposal ended on July 6, 1993. The EPA received comments from 27 commenters on the proposed rule during the public comment period. The comments have been carefully considered, and where determined to be appropriate by the Administrator, changes have been made in the proposed rule. Copies of these comments appear in the docket for this action.

The major comments and responses are summarized in this preamble. A separate document providing additional responses to comments on the proposal is included in the docket.

I. Background and Purpose

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the 1990 Amendments. (See, e.g. S. Rep. No. 228, 101st Cong. 1st Sess. 192 (1989) (herein after S. Rep.).) These programs, developed to address specific State needs, may differ from Federal rules being developed by the EPA under section 112 of the 1990 Amendments for the control of emissions of HAP's and other programs. Existing State programs may result in controls that are more stringent than, equivalent to, or less stringent than controls resulting from corresponding Federal standards.

From discussions with States and other interested parties, the EPA has learned that some States want to continue to implement and enforce the requirements of their own air toxics and accidental release prevention programs even though new 1990 Amendments requirements under section 112 relating to hazardous air pollutants will be issued. The prospect of simultaneous implementation and enforcement of both Federal and State air toxics and accidental release prevention programs in some States has caused concerns to be expressed regarding the possible effects on the States and the regulated community. A primary concern is that section 112 could lead to "dual regulation", a situation in which sources are subject to differing State and Federal program requirements. Dual regulation may burden regulated sources and permitting and enforcement agencies for several reasons. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, permit conditions that result from dual regulation may not always be complementary and may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance, it may be difficult or impossible for a source to employ simultaneously the control requirements mandated by both Federal and State regulations.

To avoid dual regulation and the attendant complications, as well as to preserve the integrity of their own air toxics and accidental release prevention programs, some States have contended that section 112(l) of the 1990 Amendments authorizes the EPA to delegate authority to the States to implement and enforce their rules or programs in lieu of Federal rules under section 112. Many States have expressed this argument to the EPA through a series of discussions and informal conversations prior to proposal. The EPA agrees that section 112(l) authorizes the EPA to delegate certain section 112 authorities to States. Today's final rule offers guidance intended to assist States (and local agencies) in submitting rules and programs for approval by the EPA. After approval by the EPA, States may implement and enforce their rules and

programs in place of certain Federal rules promulgated under section 112, with the EPA approved State rules and programs being federally enforceable. Section 112(l) also provides that any delegation of the EPA's authorities under today's rule shall not include the authority to set standards or other emission limitations or requirements less stringent than those promulgated by the EPA under the 1990 Amendments. The regulation in today's notice, along with guidance for review of high-risk point sources fulfills the requirement for the EPA to publish guidance under section 112(l)(2). See section V of this preamble for further discussion of the high-risk point source program guidance. In addition, today's final rule provides a procedural mechanism for approval and delegation of State requirements that are exactly as promulgated by the EPA under section 112.

Today's final rule seeks to achieve the goal of allowing the EPA and the States to work together to minimize potential program redundancies and inconsistencies and to reduce the costs and time involved in permit review and issuance. At the same time today's rule will assure that all sources of hazardous air pollutants and hazardous substances listed under section 112(r) meet emission standards and other requirements that are no less stringent than corresponding Federal requirements.

Today's notice also addresses the requirement in section 112(l)(2) that the EPA include as an element of the guidance "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b)." Pursuant to that provision, the EPA has developed guidance to assist State agencies in establishing a high risk point source program that can work within and beyond the context of section 112. Enabling Guidance to provide further details on the requirements of section 112(l) and information about various technical assistance activities, including an air toxics clearinghouse is published concurrent with promulgation of this rule.

II. Public Participation

A public hearing was held on the proposed rule in Research Triangle Park, North Carolina on June 22, 1993 to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rule. This hearing was open to the public, and each attendee was given an opportunity to comment on the proposed rule. The significant changes to the regulations resulting from public comments are described in this preamble. A summary of all public comments and the EPA responses and transcripts of the public hearing are contained in the docket.

III. Summary of Final Rule

Today's final regulations establish guidance for the EPA approval of State (or local, Tribal or Territorial) air toxics control rules (i.e., promulgated regulations) or programs (i.e., any collection of legally enforceable statutes, regulations) that are at least as stringent as otherwise applicable Federal section 112 rules. No State rule or program is federally approved and enforceable unless and until it is approved by the EPA through the full section 112(l) process established in subpart E. After approval, State rules and operating permit conditions (incorporated in a part 70 permit, as applicable,) that result from approved State programs would be federally enforceable and substitute for the otherwise applicable Federal requirements in that State or local jurisdiction.

State and local agencies with approved part 70 operating permit programs have the responsibility under part 70 to begin immediately the implementation and enforcement of all applicable section 112 rules. Authorities granted at the time of part 70 program approval will not by themselves allow for Federal enforceability of a State rule or program that differs in any respect from an existing Federal rule. State rules or programs that differ from the existing Federal rule remain State enforceable until approved under subpart E. Upon the EPA approval of part 70 programs, States may also receive approval under section 112(l) to implement and enforce federal section 112 rules as promulgated for all part 70 sources. Prior to part 70 approval, States seeking delegation of authority to implement and enforce Federal section 112 rules as promulgated for part 70 sources may request approval under subpart E.

To gain EPA approval of a State rule or program under today's final rule, certain statutory approval criteria contained in section 112 must be met. These criteria require that a submission for approval of a State rule or program must demonstrate adequate authority, adequate resources, an expeditious implementation schedule and an adequate enforcement strategy. In addition, for State rules or programs that differ from Federal requirements, one of three sets of specific criteria must be met to assure adequate stringency. If a State is seeking delegation without changes, these stringency criteria are not necessary. The three sets of specific criteria correspond to three options for requesting approval of such rules or programs: Approval of a state rule that adjusts a section 112 rule, approval of State authorities that substitute for a section 112 rule, and approval of a State program which substitutes for some or all section 112 emission standards. Under the first of these three options, a State rule could be approved that is similar to and at least as stringent as, a Federal rule. The State rule must have undergone a 30-day State notice and public comment period before submission for Federal approval under section 112(l). Under this option, any difference from the Federal rule must have been included in the subpart E list of "adjustments". The Agency believes that those adjustments will result in a rule that is clearly no less stringent than the otherwise applicable Federal rule. There can be no ambiguity regarding the stringency of a rule that differs from the Federal rule by any of the proposed adjustments approved under this option. If the EPA finds that the State request meets the necessary criteria, the State rule with adjustments is approved and becomes Federally enforceable in lieu of the otherwise applicable section 112 rule.

Under the second option, the EPA may approve a State rule (and in certain limited cases, a specific application of broader State authorities) with greater differences from the Federal rule. This could be the case when a State submits a rule written with a different conformation than a Federal rule or when, for example, a State rule achieves equivalent emission reductions but with a combination of levels of control and compliance and enforcement measures not provided for in the Federal rule.

Under today's final rule, a State must make a detailed demonstration that the State rule results in equal or greater emission reductions (or other measure of stringency such as specified for section 112(r)) for each individual source affected by the Federal section 112 rule. Further discussion of detailed demonstrations can be found in the enabling guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities available as described in section V of this preamble. If the EPA finds that the demonstration is satisfactory, subpart A of part 63 would be amended to incorporate the approved State rule. The approved State rule would be federally enforceable and replace the otherwise applicable Federal

rule in the relevant State or local jurisdiction.

For requirements for prevention of accidental releases, approval of a State rule which substitutes for the Federal section 112(r) rule must be no less stringent, cover the substances listed pursuant to section 112(r) at or below the threshold quantity, contain accident prevention requirements, facility registration, enforcement provisions which contain an auditing component as well as other measures, and provisions for the disclosure of facility information.

The third option is for approval of a generic State program that substitutes for some or all section 112 emission standards. Under this option, a State program may be approved in place of specific standards and requirements established under sections 112(d), (f), or (h) for incorporation in part 70 permits. For other Federal rules which are not emission standards, for example the requirements of section 112(g), this third option is not available. Rather, approval for State programs with requirements corresponding to Federal requirements other than section 112 (d), (f), or (h) may be sought under options one or two.

For approval under this third option, a State must make a legally-binding commitment to undertake certain actions; the commitment will be adopted under State law. First, the State must commit to regulate every source that would have been regulated by the otherwise applicable Federal section 112 emission standards for which approval is requested. Second, the State must provide assurance that the level of control and compliance and enforcement measures in each part 70 permit for these sources are at least as stringent as those that would have resulted from the otherwise applicable Federal emission standards. Finally, the State must commit to expressing the part 70 operating permit terms and conditions in the form of the otherwise applicable Federal standard. This means that the State must commit to express in the resulting part 70 permit, a level of control in terms of an emission limit, level or reduction, derived from its own program, that is in the same units of measure as the Federal rule and must commit to express other elements of the standard in the same form as the Federal standard. Required compliance provisions must also be in the same form and units of measure as the Federally promulgated compliance provisions. Underlying these commitments is the premise that a State must demonstrate the authority and commitment to permit all of these sources and to require terms and conditions that are no less stringent than would be required under the otherwise applicable Federal standard. If the EPA approves the State program, the EPA would then promulgate a rule amending part 63 to incorporate the State program.

A State may use any one or any combination of these three options in its request for approval of State rules or programs. To illustrate, a State submitting a request under option three, program approval, might not be able to gain approval for regulation of all source categories. In particular, approval under option three may not be granted for area sources which a State has chosen to exempt from part 70 permits. This would not, however, preclude a State from seeking approval under option two of a State rule regulating these area sources.

Regarding the EPA oversight of approved State programs, in receiving approval of a State rule or program, a State has the responsibility to respond in a timely fashion to the EPA requests for information needed to review the adequacy of State implementation and enforcement of an approved rule or program. The EPA will develop guidance for the regular review and intermittent audits of approved State rules and programs.

After approval has been granted, if the EPA finds that an approved rule or program is not being adequately implemented or enforced, the EPA has the authority to withdraw approval of that rule or program. Before approval is withdrawn, however, the State has the opportunity to correct the deficiencies identified in the EPA's review or audit. The EPA would inform the State of changes that need to be made and, if the State does not take adequate action to correct the deficiencies, a public hearing would be held and public comment accepted. The State would then have 90 days to correct the situation. After this process has taken place, if the State does not correct the identified deficiencies, the EPA would then withdraw approval of the rule, the program or part of the rule or program. Upon withdrawal of approval of a State rule or program that is found to be less stringent than Federal requirements, States would be required to reopen part 70 operating permits according to the provisions in § 70.7(f) and rewrite permit conditions to reflect requirements of the applicable Federal section 112 rule. The federally promulgated section 112 standard is the applicable and federally enforceable standard unless and until a State rule or program is approved by the EPA pursuant to the procedures set forth in this final rule. Once approved, the State rule or program becomes the applicable standard which the EPA has authority to enforce, and the federally promulgated standard is no longer the applicable or enforceable standard. Upon withdrawal of approval of a State rule or program, the federally promulgated standard for which the State rule or program substitutes once again becomes the applicable standard. In the withdrawal notice, the EPA will establish an expeditious schedule for sources to come into compliance with the federally promulgated standard.

Under §§ 63.96(b)(4)(v) and 63.96(b)(7)(iii), which address withdrawal of approval of State programs either by the EPA or voluntarily by the State, the final rule states that the EPA has authority to enforce the applicable section 112 requirement. This authority is a restatement of section 112(l)(7), which provides that nothing shall prohibit the EPA from enforcing any applicable emissions standard or requirement under section 112. The EPA always has concurrent authority to enforce the applicable section 112 standard, which may be either an approved State standard or a Federal standard, depending upon whether the State standard has been federally approved pursuant to the procedures set forth in this final rule.

Today's rule also provides guidance on the approval of State Accidental Release Prevention (ARP) Programs established under section 112(r). The section 112(r) (3)–(5) "list and threshold" rule was proposed in January 1993 (58 FR 5102). A proposed risk management program rule under section 112(r)(7) was proposed in October 1993.

In order to receive approval and delegation for an ARP program which differs from the Federal section 112(r) rules, a State submission must meet the criteria set out in § 63.91, either § 63.92 or § 63.93, and § 63.95. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met.

A State program must demonstrate the authority and resources necessary to implement and enforce regulations which authority covers the regulated substances at or below the thresholds, the accidental release prevention requirements, as well as identify the entity that will be receiving the registration from regulated sources.

In addition, the State submission must include a description of the procedures for registration of sources,

receiving and reviewing risk management plans, making the plans available to the public, and the coordination mechanism the implementing agency will use with the Chemical Safety and Hazard Investigation Board, the State Emergency Response Commission, the Local Emergency Planning Committees, and the air permitting program (if it is not responsible for implementing section 112(r) in the State).

States do have the option of requesting a complete or partial program. Partial delegation in terms of the ARP program here refers to geographic area. This allows delegation of section 112(r) to local agencies, provided that the entire area of the State is subject to the requirements under section 112(r). The Agency believes that the ARP program should not be subdivided into various components based on chemical or industry because this would promote confusion for industry and inhibit the integration of the ARP program into State wide activities. Further, any delegation of the ARP program requires the State program to contain a set of core requirements for all subject sources. This is consistent with the requirements in section 112(l)(5)(A) that requires an approved State program to contain the authorities "to assure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under this section." Section 63.95 sets out the core requirements for an approvable State ARP program.

IV. Significant Comments and Changes to the Proposed Rule

This portion of the preamble is organized by each section in subpart E, and discusses the principal regulatory changes made in the final rule in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.90—Program Overview

This section provides a brief overview of the subpart. It also establishes subpart definitions, outlines local agency roles and enumerates authorities to be retained by the Administrator.

In response to comments received, and to provide for approval of State programs under additional circumstances, the Agency has amended this section to provide for approval of State rules or programs to implement and enforce Federal section 112 rules without change as promulgated by the EPA. Therefore, this section now provides a mechanism for delegation of Federal standards prior to approval of a State's part 70 operating permit program and for Federal section 112 requirements for sources that are not subject to the requirements of part 70. A State seeking approval for programs to implement and enforce Federal section 112 rules must meet the criteria of section 112(l), as specified in this section, including the requirement for notice and opportunity for public comment. Procedural mechanisms for delegation will be addressed in the Enabling Guidance, available as described in section V of this preamble.

Part 70—Approval and Delegation Without Changes

One commenter noted that approval of a State part 70 program would not include a review of resources needed to cover the cost of bringing enforcement actions under section 502(b) and yet this cost must be included in an adequate demonstration of resources before approval under this subpart. In addition, the commenter argued that the part 70 program approval process will not be adequate to assure section 112(l)(5) criteria are met before delegating under section 112(l).

The Agency disagrees with these comments. The Agency notes that approval that occurs under any of the three part 63 subpart E options for approving changes to the Federal program will examine these costs in a specific resource review during the approval process under subpart E. The EPA maintains that program review under part 70 will satisfy the adequate resource criterion under section 112(l) and that the section 112 program requirements may be delegated to the States without changes.

Part 70 requires a demonstration that a State has authority to adequately administer and enforce the part 70 program. Several provisions of the part 70 regulations ensure this type of demonstration. For example, the State must demonstrate under § 70.4(b)(3)(vii) adequate authority to enforce all permit terms and conditions and the requirements of the permit program consistent with the civil and criminal authority required by § 70.11. States must also submit pursuant to § 70.4(b)(4)(ii) all relevant guidance used in implementing the program, including criteria for monitoring source compliance such as inspection strategies, and pursuant to § 70.4(b)(5), a complete description of the State's compliance tracking and enforcement program.

States must also submit a detailed statement that adequate personnel and funding have been made available to develop, administer and enforce the program under § 70.4(b)(8). Finally, States are required to annually submit detailed information regarding the State's enforcement activities under § 70.4(b)(9). In addition § 70.6 (a) and (c) require all permits to contain sufficient monitoring, recordkeeping, reporting and compliance certification requirements to ensure that the permit terms and conditions may be adequately enforced.

The commenter is correct in that section 502(b)(3)(A)(ii) does not require a State to collect permit fees to cover "any court costs or other costs associated with any enforcement action." However, this does not mean that the State does not have to adequately enforce the terms and conditions of permits, including bringing judicial enforcement action where necessary. Rather, it means that the State is not required under title V to collect fees to cover the actual court costs of such enforcement actions. Under section 112(l)(5), the State demonstration must show that adequate resources to implement the program are available; the EPA believes that the requirements under part 70 will meet this requirement as applicable.

In addition, the commenter noted that citizens have not been provided adequate notice that States may receive delegation of section 112 based on their part 70 operating permit program because some States have already begun preparation for submittal of part 70 programs.

The EPA disagrees with this comment. In order to obtain approval of a part 70 operating permit program, adequate resources and authority must be demonstrated. In addition, the part 70 operating permits rule provides that States write permits including "all applicable requirements". Part 70 defines applicable requirement to include "(a)ny standard or other requirement under section 112 of the Act." Clearly, this constitutes adequate notice of intent that section 112 requirements must be included in part 70 programs, and this was included in the part 70 regulations when promulgated.

In addition, during the part 70 permit issuance process, "* * * any person may petition the Administrator to veto a permit * * *." § 70.8(d). The objections in the petition must have been previously raised during the public comment period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable at that time. This provides an additional opportunity for comment on incorporation of particular section

112 requirements in an individual permit.

Clarification of State Rights Under Section 116 and Section 112(d)(7)

Some commenters questioned whether the Act provides authority for the EPA to approve more stringent State standards that are not based on the same considerations the EPA must include when it establishes standards under section 112, for example the cost of achieving emission reduction and any non-air quality health and environmental impacts and energy requirements. See section 112(d)(2). In addition, commenters pointed out that EPA may not approve, under § 70.1(c), State programs that are inconsistent with the Act.

The Agency recognizes the complex interactions that are the consequence of regulation of a community of sources by both the State and Federal governments and that accompany any division of responsibility in such a joint effort. From its inception, the Act has been based on a strategy of air pollution prevention and control at its source that recognizes the States and local governments as bearing the primary responsibility for such prevention and control. Clean Air Act section 101(a)(3). By enacting section 116, Congress also recognized that States and local governments, in responding to concerns within their own jurisdictions, might desire to control air emissions more stringently than would be required by the Federal government on a nationwide basis and might therefore require more stringent limitations on emission of air pollutants from sources within their State. Section 116 explicitly allows such State standards and limitations as long as they are no less stringent than the corresponding Federal standard or limitation.

In enacting the 1990 Amendments, which require the EPA to establish standards for emission of hazardous air pollutants, Congress was aware that many States had already developed active and effective air toxics programs. S. Rep. at 149. Much of the development of these State programs had occurred with the support and encouragement of the EPA, and Congress recognized that existing State programs were a significant component of the nationwide air toxics control strategy. In addition, the preamble to the final rule establishing the part 70 operating permit program recognized that minimizing disruption of existing State programs is an important goal of the Agency's implementation of the Act. (57 FR 32350, 32251, 32263, 32265, 32273 (1992).)

In establishing requirements under the 1990 Amendments, Congress included under the provisions of section 112 a mechanism by which States could seek approval of their air toxics programs and established criteria for determining whether or not a State program was approvable. Section 112(l)(5) requires that the Administrator disapprove a State program if, among other things, the Administrator determines that "the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section." Section 112(l)(1) requires that a program submitted by a State "shall not include authority to set standards less stringent than those promulgated by the Administrator" under the Act. Therefore, State standards and requirements must be at least as stringent as corresponding Federal standards and requirements.

In addition, section 112(d)(7) reinforces the authority of States to issue standards under State authority specifically in the area of air toxics control. No section 112 standard or other requirement is to be interpreted, construed or applied to diminish or replace the requirements of a standard issued under State authority. Since section 116 precludes a State from adopting or enforcing less stringent standards than those under section 112, section 112(d)(7) thus prohibits interpreting, construing, or applying section 112 standards or requirements to diminish or replace State standards if they are no less stringent than section 112 standards.

The part 70 operating permits program regulations also provide for no less stringent State requirements. Section 70.1(c) states that nothing in part 70 shall prevent a State from establishing additional or more stringent requirements not inconsistent with the Act. In addition, § 70.1(c) also states that no permit can be less stringent than necessary to meet all applicable requirements. Section 70.6(b)(2) requires a State to identify any permit terms and conditions that are not required under the Act or under any of its applicable requirements, and thus States may establish more stringent State-only standards for incorporation in that section of the operating permit. The 1990 Amendments section 506 authorizes States to establish additional permitting requirements as long as they are not inconsistent with the Act, and States are free to establish more stringent permit revision procedures provided the minimum requirements of part 70 are met. 57 FR 32250, 32284 (1992).

Thus, States may establish State requirements, as long as they are no less stringent than corresponding Federal requirements, and may incorporate those requirements into part 70 operating permits according to the requirements of part 70. In addition, section 112(l) places no restrictions on the stringency of approvable State standards, other than that they may not be less stringent than corresponding Federal standards, nor does section 112(l) require consideration of any particular factors in development of an approvable State standard.

Federal Enforceability

Several commenters questioned the basis for the EPA's determination that a State rule or program, once approved according to the requirements of section 112(l), resulted in approved State standards and emission limitations that were federally enforceable. Other commenters requested explanation as to the EPA's delegation authority under section 112. One commenter stated that the EPA's delegation of authority would be unconstitutional under the Appointments Clause of the United States Constitution.

Prior to the enactment of the 1990 Amendments, the Administrator was authorized to delegate her authority to implement and enforce standards promulgated under section 112. When this delegation occurred, a **Federal Register** notice was published and the delegation authority cited in the Code of Federal Regulations. Delegation procedures were spelled out in an EPA publication, "Good Practices Manual for Delegation of NSPS and NESHAPs". Duplicate delegation authority for new source performance standards resided in section 111 and was unchanged by the 1990 Amendments section 111(c). In the 1990 Amendments, Congress chose a new mechanism for delegation of EPA's authority under section 112, by adding provisions for approval of State programs to the delegation of authorities and responsibilities that had been present in the pre-1990 section 112. See S. Rep. at 196. The provisions for approval under section 112(l) indicate Congress's view of a dramatically expanded role for the States in regulation of air toxics. For example, Congress recognized that section 112(l) authorities will greatly expand the role of State agencies and stated that "the legislation significantly expands the statutory role for State and local air pollution control agencies in the regulation of air toxics." S. Rep. at 149,

192. In addition, Congress expressly recognized the effectiveness of existing State programs in control of air toxics, *e.g.*, 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics); 136 Cong. Rec. S519–20 (daily ed. Jan. 30, 1990) (statement of Sen. Durenberger).

As enacted under the 1990 Amendments, section 112(l) authorizes the Administrator to approve State programs for control of hazardous air pollutants and for prevention and mitigation of accidental releases if the State program meets certain criteria, which are specified in section 112(l)(5).

These criteria require the State program to contain adequate authorities to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112; adequate authority and resources to implement and enforce the program; and an expeditious schedule for implementing the program and assuring compliance by affected sources. Section 112(l)(5)(A)–(C). The program must be in compliance with the guidance issued under section 112(l)(2) and can not be unlikely to satisfy, in whole or in part, the objectives of the Act. Section 112(l)(5)(D). In addition, the program may not include authority to set standards less stringent than Federal standards promulgated under the Act. Section 112(l)(1). Activities under section 112(l) are subject to the provisions of savings clauses for enforcement of section 112 standards and requirements, section 112(l)(7), and authorities and obligations of the Administrator and the State under title V, section 112(l)(9). However, section 112(l) does not directly address the issue of Federal enforceability of State air toxics standards.

Provisions regarding Federal enforcement of section 112 requirements are specified in section 113. In particular, section 113(a)(3) provides for enforcement of any "requirement or prohibition of (title I, including section 112), including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under (title I, including section 112)." This language was added by the 1990 Amendments, which generally broadened enforcement authorities under section 113. S. Rep. at 358–66.

Under the pre-1990 Amendments, more stringent State standards were not Federally enforceable, since the statute provided for enforcement only of violations of section 112(c), which clearly applied only to standards promulgated by the EPA. The statute as amended in 1990 does not by its own terms prohibit the violation of State hazardous air pollutant emission standards, and thus, such standards are Federally enforceable only if they constitute a "rule, order, waiver or permit promulgated, issued, or approved" under the Act, that is if such State hazardous air pollutant emission standards included within or adopted into an approved program are "promulgated, issued, or approved" under the Act.

There is no doubt that State standards are "emissions standards" that the State must implement and enforce under section 112(l)(1). Section 302(k) defines "emission standard" to mean "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis * * *." Moreover, Congress expressly acknowledged State authority to set emission standards under section 112(l) programs. Section 112(l) prohibits States from submitting programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This formulation implies that States have authority to set more stringent standards. If they lacked such authority, the prohibition would be unnecessary. While section 112(l)(1) permits States to submit programs for the "implementation and enforcement" of emission standards and other requirements, it does not provide guidance as to the scope of applicability of these State programs. Section 112(l) does not specify what is meant by "partial or complete delegation" of the EPA's authorities and responsibilities and does not provide guidance as to the relationship between existing State standards, previously encouraged and supported by the EPA, and newly-promulgated Federal standards. In particular, it does not provide explicitly for the approval of State emission standards. Because the statute is ambiguous regarding the question of Federal enforceability of approved State standards, the EPA must consider Congress's objectives and policy goals in enacting section 112(l), as well as the overall purposes of the Act. Through this rulemaking the EPA is therefore interpreting the provisions of section 112(l) to authorize approval of State programs and rules that are federally enforceable under section 113. Under the two-step analysis of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), if Congress has not "directly spoken to the precise question at issue," and if the statute is silent or ambiguous on the issue, then a regulation must be based on a "permissible construction of the statute." *Id.* at 843. When "competing Congressional goals" are encompassed within the statutory scheme, the EPA may reconcile these with "a reasonable accommodation of (the) differing policy objectives." *Natural Resources Defense Council* v. *EPA*, 822 F.2d 104, 117 (D.C. Cir. 1987). The EPA's interpretation must be "reasonable and consistent with the statute's purpose." *Chemical Mfrs. Ass'n* v. *EPA*, 919 F.2d 158, 162–63 (D.C. Cir. 1990). Section 101(a) of the Act recognizes that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments. In the area of air toxics regulated under section 112, Congress clearly supported States' past efforts to regulate air toxics sources, recognized that some State programs had been developed earlier than the Federal program, and provided a new Federal regulatory scheme under section 112 that included a mechanism for States to maintain existing requirements as long as they were no less stringent than Federal requirements and the State met program approval criteria.

In response to comments, the EPA has added § 63.90(d), Federally enforceable requirements, to clarify that approved rules and requirements are enforceable by the Administrator and citizens under the Act.

However, in exercising EPA's enforcement authority, the Agency would direct its resources towards the provisions of the approved State rule, program, and resulting permit conditions implementing the rule, which the Agency relied on in determining that the State rule or program assured compliance with the Federal requirements. In deciding whether to bring an enforcement action, the Agency would take into account the extent to which any violations implicate the control levels or compliance measures required by the otherwise applicable Federal rule, where the source's compliance with the otherwise applicable Federal standard can be determined. For example, if the Federal standard required a control efficiency of 95 percent and the State rule approved pursuant to section 112(l) required a control efficiency of 99 percent, EPA, in deciding whether to bring an enforcement action, would consider whether the source met the 95 percent control level. If EPA determines that the source was operating equipment that achieved a control level of 96 percent, EPA would not intend to take action

against the source for violation of that element of the State rule.

The EPA does not intend to bring an enforcement action against any source covered by a State rule that would not have been covered by the Federal rule. In cases where an alleged violation does not implicate a control requirement of the otherwise applicable Federal rule, EPA will defer to the State to exercise its own enforcement authorities to enforce the more stringent provisions of the approved State rule.

Regarding the constitutionality of delegation under section 112, the EPA notes that delegation of authority is a well-established practice that has long provided a mechanism for States and local governments to carry out certain provisions of Federal mandates, as authorized by Congress, according to specific criteria and standards, and as overseen by the delegating Federal agency. For example, under the Act, Congress has expressly granted the EPA authority to delegate to a State in section 111(c)(1) (new source performance standards), section 112(l)(1) (hazardous air pollutant and accidental release prevention requirements), and section 328(a)(3) (outer continental shelf activities). Delegation of authority from Federal agencies to State or local governments, including delegation of authority under the Act, has been upheld by the courts. *Southern Pacific Transp. Co.* v. *Watt*, 700 F.2d 550 (9th Cir. 1983) *cert. denied* 464 U.S. 1064 (1984); *Nance* v. *Environmental Protection Agency*, 645 F.2d 701, 714–15 (9th Cir. 1981) *cert. denied sub nom Crow Tribe of Indians* v. *Environmental Protection Agency*, 454 U.S. 1081 (1981); *United States* v. *Matherson*, 367 F.Supp. 779, 782 (E.D.N.Y. 1973) *aff'd without op.* 493 F.2d 1399 (2d Cir. 1974).

Stringency

Several commenters requested clarification of the measure of stringency that the EPA would use to determine whether a State program or rule was approvable. Commenters asked whether stringency would be measured by emissions reductions and whether the comparison would be made at the emission point, source, or facility level.

As explained below, stringency may be measured by level of control as expressed by emissions reductions, applicability as to the sources subject to requirements, compliance and enforcement measures, such as averaging times, or other measures as determined by the Administrator. Simply put, comparison is made at the point at which the Federal requirement is determined, so that if the Federal requirement is a requirement at the source, so too must the approvable State requirement be at the source; and if the Federal requirement is placed on an emission point, the State requirement must do the same.

In the general description of State Programs under section 112, section 112(l)(1) describes programs that States may develop and submit for approval by the EPA. Section 112(l)(1) prohibits State programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This prohibition against standards less stringent than Federal standards implies a comparison between the State requirements and the corresponding Federal requirements. Under section 112(l)(5), the EPA must disapprove a State program if the program's authorities are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112.

Taken together, these requirements provide that State programs maintain, as a minimum, all Federal standards, regulations, and requirements as established by the Administrator and ensure that any corresponding State requirements are at least as stringent. Thus, an approvable State standard could not allow, for example, less emissions reductions than the corresponding Federal standard, and the emission reductions would be measured according to the requirements of the Federal standard, that is, if the Federal standard measured emissions reductions at each emission point, a State standard would have to do likewise to be approvable.

Several commenters also felt that the basis for stringency should not be restricted to emission reductions but should instead focus on the impacts that result from emissions. Also, a commenter noted that the basis for stringency should be in accordance with the criteria for establishment of regulatory requirements, e.g. cost, non-air quality health, environmental, and energy impacts of section 112(d) standards.

The EPA recognizes that several provisions under section 112 examine specific impacts to human health and the environment and call for future regulation based on such impacts. The central basis for section 112, however, is the maximum achievable control technology (MACT) program that mandates the installation of controls and the reduction of emissions of listed HAP's regardless of proof of specific resulting impacts. While a reduction of the impacts of HAP emissions to human health and the environment are the central objectives of section 112 of the 1990 Amendments, Congress based the establishment of MACT stringency on "reduction of emissions" and "emission limitation." (See sections 112(d)(2) and 112(d)(3).) This then should also be the primary basis for determining the stringency of State rules and programs to be approved in lieu of Federal section 112 rules. Further, the EPA believes that reliance on a comparison of impacts would be extremely difficult and resource-intensive and such analysis might often require approval decisions in the face of large degrees of uncertainty. Section 63.90 defines "stringency" to be measured by the quantity of emissions or by parameters relating to rule applicability, level of control, and compliance and enforcement measures, or as otherwise determined by the Administrator. Thus determinations that State rules are no less stringent than corresponding Federal rules will typically compare the parameters in the State and Federal rules using the definitional measures or as mandated by a particular Federal standard.

The EPA wishes to clarify that, where Federal emission limitations are expressed as an aggregate total, or as a total of an aggregate grouping (for example total volatile organic compounds), the stringency comparison is made based upon the aggregation that is identified in the Federal rule. For example, for an emission limitation in a Federal rule expressed as a given pounds per hour of total HAPs, the stringency comparison in a section 112(l) submittal would be made on a total HAP basis. To clarify this point, the definition of "level of control" has been changed in the final rule to explicitly address such situations where the Federal rule provides for emission limitations on an aggregate basis. The change to this definition also reflects a requirement to ensure that, when such aggregate comparisons are made, there would not be an increase in public health risk.

One commenter also indicated that the EPA had not articulated the basis for determining the equivalency of State ARP programs. Since the ARP program is not necessarily based on emissions, determining equivalency based on potential emission reduction can not be done. These requirements are structured as a performance based standard and provide considerable flexibility to the regulated community in terms of compliance. Consequently, State programs may contain different requirements for accidental release

prevention which are at least as stringent as the Federal requirement and that may be approvable under the criteria in this rulemaking.

Challenging Mechanism

Several commenters sought clarification of judicial review provisions for approval of State rules and programs. Another commenter asked whether approved State rules and programs would be subject to challenge in State or Federal court.

The EPA will look to the provisions of section 307 of the Act regarding judicial review of this rulemaking and of rulemakings for approval of State rules or programs under subpart E. Challenge to State rules when enacted by the State would be under the requirements of State law. However, approval of State rules or programs under subpart E will be a Federal rulemaking and thereby will be subject to the provisions of section 307.

Public Notice and Comment

One commenter stated that approvals, particularly approvals under § 63.92, should be subject to section 307 notice and comment rulemaking.

Section 307 provides for administrative proceedings and judicial review under the Act. Section 307(d)(1) lists actions to which section 307(d) rulemaking procedures apply, and publication of guidance under section 112(l)(2) is not among them. Although the Administrator may determine under section 307(d)(1)(U) that otherwise unlisted actions are subject to section 307, the Administrator has not done so here. Therefore, the rulemaking provisions of the Administrative Procedures Act rather than those of section 307(d) are the relevant provisions for this section 112(l) rulemaking. The commenter noted that approvals under section 112(l) effectively constitute promulgation or revision of section 112 standards and are therefore subject to notice and comment requirements. Although the commenter is correct that section 307 requires notice and opportunity for comment for revisions of certain section 112 standards, the EPA believes that Congress's specific provision for notice and comment under section 112(l)(5) rather than the provisions of section 307(d) guides the procedures required under section 112(l). The EPA notes that approvals under section 112(l) are not national in scope like those listed in section 307(d) but are instead limited to a State or local area. Moreover, a State's request for approval may include State standards corresponding to section 112(r), section 112(h), or other section 112 standards that are not listed in section 307 at all, and Congress nowhere indicated that different procedures should be followed depending on the particular section 112 standard for which the State was seeking approval.

Section 112(l)(5) contains procedural requirements that include a requirement for notice and comment. The EPA has revised § 63.91 to clarify that requests for approval, including requests for delegation of unchanged Federal standards, are subject to the notice and comment requirements of section 112(l)(5). Once a State's initial request has been approved, the notice and comment provisions of §§ 63.91, 63.92, 63.93, or 63.94 apply. In the case of requests under § 63.92, i.e. requests for adjustments that are unequivocally no less stringent than the otherwise applicable Federal standard, today's rulemaking along, with the notice and opportunity for comment at the time of the State's initial request fulfills the notice and comment requirement under section 112(l)(5). Because the EPA has determined in this rulemaking, which has provided notice and opportunity for comment, that each of the listed adjustments is unequivocally no less stringent, and because at the time of the State's initial request, the EPA will evaluate the State's program to ensure that it meets the requirements of section 112(l)(5), the requirement for notice and opportunity for comment will be fulfilled both for determination of stringency and for determination of adequacy of the State's program.

Delegation

One commenter noted that the term "delegation" should be more clearly defined to explain how it relates to Federal enforceability.

Delegation under section 112(l) means the transfer of authority from the Administrator to a State, according to certain criteria and standards, to implement and enforce the rules or programs approved according to the requirements of section 112(l). Once approved under the provision of section 112(l), a State rule or program is federally enforceable, which means that the Administrator can enforce the approved State rule or program in Federal court. The State may also enforce approved State standards in State court under State law. In addition, with the exception of requirements designated in the permit as State-enforceable only, and terms and conditions of an approved State rule or program, must be incorporated in the Federally enforceable section of a part 70 permit, and are enforceable according to the provisions of part 70. State law may determine the actual mechanism by which delegation occurs and by which requirements are incorporated in part 70 permits. Also, delegation of authority may occur according to requirements under State law for sources not subject to the requirements of part 70.

Adding Pollutants

In response to EPA's solicitation of comment regarding delegation of authority to add to the list of pollutants under section 112(b), many commenters expressed a view that this was not authorized under section 112(l). Similar comments were received regarding delegation of authority to regulate substances beyond those listed under section 112(r) and to modify the list of source categories under section 112(c). Other commenters feared adverse effects on State programs that contain pollutants other than those specified in section 112(b) if the EPA did not delegate authority under section 112(l) for regulation of additional pollutants.

The EPA notes the many comments regarding delegation of authority to regulate additional pollutants and substances under section 112 (b), (c), and (r). Some commenters noted that these sections contain procedures under which the Administrator may revise the list of pollutants, substances, or source categories and that these procedures are the appropriate mechanism for changes to the lists. The EPA has carefully considered the comments received on this issue and has chosen not to revise the proposal as to delegation of these authorities. Therefore, the EPA retains its authority and will not delegate the authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b), the authority to add or delete substances from the list of substances established under section 112(r), or the authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard, as was specified in the proposal in § 63.90(c).

The Agency notes that Congress recognized that many State programs prior to enactment of the 1990 Amendments addressed many more pollutants than those finally listed under section 112(b). In fact, Congress explicitly provided for support of State programs for additional pollutants in requiring the EPA to include the high-risk point source program as an element in the guidance to be published under section 112(l)(2). The EPA is publishing

this guidance for high-risk point source programs, available as described in section V of this preamble. Congress also provided for technical assistance and grants, which may include support for high-risk point source review. Section 112(l)(4). These mechanisms provide additional support for broader State programs that address pollutants other than those listed under section 112(b), without requiring approval of State standards for additional pollutants.

B. Section 63.91—Criteria Common to All Approval Options

This section describes the basic process for approval under this subpart, criteria which must be met for all three approval options and discussion of the process employed when previously approved State authorities are later revised.

The EPA has revised this section to incorporate procedures for approval of State programs that contain section 112 rules exactly as promulgated by the EPA. States are likely to seek these approvals prior to receiving approval of their part 70 operating permit programs or for sources not subject to part 70, such as deferred or exempt sources.

In addition, in response to comments received, the EPA has revised this section to delete the reference to a determination by the EPA of whether a State rule or program is likely to satisfy the objectives of the Act in whole or in part. This reference has been deleted because it is not a criterion for approvability to be included in this subpart. Section 112(l)(5) provides that the Administrator must disapprove a State program if the Administrator determines that the program is not in compliance with the guidance issued under section 112(l)(2), that is subpart E, or the program is not likely to satisfy, in whole or in part, the objectives of the Act. Therefore, since the determination as to satisfying the objectives of the Act is separate and distinct from the requirement to comply with subpart E, the EPA has deleted the reference from this section.

The EPA's evaluation of a State's request for approval will necessarily ensure that an approved program is not inconsistent with the objectives of the Act. Consideration of consistency with objectives of the Act is a qualitative judgement implicitly incorporated in the EPA's overall determinations, not only for approval of State programs under section 112(l) but in other determinations that the EPA must make as well, rather than a separate criterion for approval under the guidelines of section 112(l)(5) (A), (B), and (C) and the regulations as promulgated here. The EPA would not and will not approve a State program that is not likely to satisfy, in whole or in part, the objectives of the Act.

Timing for Approvals

Several commenters felt that the 180 days that the EPA is allowed by the statute to approve or disapprove a State rule or program is unnecessarily long.

Submissions for approval under §§ 63.93 and 63.94 require evaluation of the State's submittal and a determination as to the stringency of the State rule or program, as well as notice and opportunity for public comment and a careful consideration by the EPA of those comments prior to approving or disapproving a State submittal. The EPA, therefore, finds 180 days to be an appropriate period to consider State requests made under these sections. As explained in the previous section on public notice and comment, under § 63.92, additional public comment beyond public comments at the State level for each rule submitted under § 63.92 and public comment on this subpart E rulemaking will not be taken. For this reason, the EPA is committing to grant requests for approval under this section within 90 days. Shortening this period for approval will result in less uncertainty for sources and States affected by a request for approval under this section. The rule has been revised accordingly to reflect this shorter review period.

Part 70—Approval as a Precondition for Section 112(l) Approval

Several commenters noted that approval of a State's part 70 program should not be a precondition for approval of a State's request under section 112(l).

Under § 70.4, States must submit to the Administrator a proposed part 70 operating permit program. Elements of the initial program submission are specified in § 70.4(b) and include a complete program description; regulations that comprise the permitting program; a legal opinion from the State Attorney General that the laws of the State provide adequate authority to carry out all aspects of the program including all applicable 112 requirements; a complete description of the State's compliance tracking and enforcement program; a demonstration that permit fees required by the State program are sufficient to cover per program costs; a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program; a commitment from the State to submit information regarding the State's enforcement activities; provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications; and other information.

Under section 112(l)(5), the Administrator must disapprove a State's program if she determines that the authorities contained in the program are not adequate to assure compliance with each applicable standard, regulation, or requirement established by the EPA under section 112; adequate authority does not exist or adequate resources are not available to implement the program; the implementation and compliance schedule is not sufficiently expeditious; or the program is not in compliance with the guidance issued under section 112(l)(2) or is not likely, in whole or in part, to satisfy the objectives of the Act.

As outlined above, the information which must be submitted by a State under part 70 encompasses the information required under section 112(l)(5) for approval of State programs that seek only to implement and enforce Federal standards exactly as promulgated. Moreover, the EPA's exercise of its oversight functions under part 70 will help ensure that a State with an approved part 70 program will continue to meet the criteria in section 112(l)(5) for sources subject to the requirements of the part 70 program. Therefore, duplicate applications for such programs would be unnecessary and redundant for any sources a State will permit under part 70. States will need to receive delegation of authorities to implement and enforce section 112 rules and this delegation may take place according to the provisions of the EPA guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities".

Part 70 approval also confers approval under section 112(l) for delegation of unchanged Federal standards because part 70 approval suffices to satisfy section 112(l) approval requirements for unchanged section 112 standards. Requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by the EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, for part 70 sources, part 70 approval also constitutes approval under section 112(l)(5) of the State's programs for delegation of section 112 standards that

are unchanged from Federal standards as promulgated.

An approval action under the provisions of part 63 may in fact include the actual delegation of existing standards. It will not, however, include delegation of future standards. Rather, it will make provisions—for example, as structured in an accompanying MOU—for the delegation of future standards. Such an MOU may allow for automatic delegation, or case-by-case delegation, or automatic delegation except for certain standards, such as the radionuclides standard, or other delegations as appropriate. The provisions of individual approvals and MOUs will differ depending on the authority the State has under State law to accept delegation.

In addition, States may seek approval of State programs prior to receiving approval of their operating permit programs under part 70. In this instance, States must fulfill the requirements of § 63.91, including requirements for notice and comment, even for programs containing only Federal standards exactly as promulgated by the EPA or containing only adjusted rules under § 63.92. The EPA has revised the provisions of § 63.91 to reflect this requirement.

Delegation of section 112 standards is subject to the requirements of section 112(l). Procedurally, implementation of section 112(l) requires submittal of a request for approval, notice in the **Federal Register** that the EPA has received a request, a public comment period of at least 30 days, and notice in the **Federal Register** that the EPA has approved or disapproved the request.

Newly promulgated standards under section 112 must be delegated under the provisions of section 112(l). Delegations of section 112 standards that occurred prior to the 1990 Amendments may remain in effect. Although the EPA could require rescission of these delegations under section 112(l)(1), which provides for review of enforcement delegations previously granted, it is permissible to conclude from that section's provisions and from the savings provisions in section 112(q) that delegations occuring prior to November 15, 1990 remain valid. Nevertheless, the EPA may choose to conduct a review of previously granted delegations under section 112(l)(1), and if the EPA finds, as a result of this review, that the basis for the Agency's determination under pre-1990 section 112(d) of adequacy regarding the State's program is no longer valid, the Agency may require the State to submit a request under section 112(l) to renew its delegation authority.

States may submit requests for section 112(l) programs that would provide for approval of existing standards without the need to repeat section 112(l)(5) notice and comment, as long as the State's law allows such delegation and there is a mechanism to assure that the State continues to meet the approval criteria of section 112(l). A State might be authorized under State law to accept delegation automatically, and as long as the State committed to an adequate funding mechanism, delegation of future standards would be approvable as long as any other section 112(l) requirements were met. If the State for some reason was unable to meet its commitment to provide adequate resources in the future, the auditing and withdrawal mechanism would allow the EPA to withdraw approval, thus providing protection against a State's failure to continue to meet the criteria.

Another procedural streamlining mechanism is the use of direct final rulemaking where appropriate for delegations where there has been no prospective approval like that discussed above. In the instances where the EPA did not expect any comment upon publication of a notice of approval, the notice could specify that the approval would become effective in 30 days unless comments were received. If comments were received, then the EPA would have to renotice the approval and provide for a 30-day public comment period. The time and resource savings from this use of direct final rulemaking would thus depend on the correctness of the Agency's judgement regarding whether or not comments would be submitted.

For States seeking approval of programs under section 112(l) that will include requirements different from Federal requirements, additional information must be submitted. The requirements for these programs are specified under subpart E and in individual section 112 rules. In some cases, States will obtain approval of part 70 programs before they submit requests under part 63. When this is not the case, under certain circumstances, such as prior to approval of a State's part 70 program, or for a request for approval of standards or requirements for sources not subject to the requirements of part 70, the EPA will review State submissions under § 63.91, § 63.92 or § 63.93 according to the criteria in part 63 and will not require approval of the State's part 70 program as a precondition to approval under part 63. Nevertheless, § 63.94 continues to require part 70 program approval prior to section 112(l) approval (see § 63.94 comments). The EPA reserves the right to establish requirements for delegation under section 112(l) according to the criteria of section 112(l) and under other circumstances which may arise in the future. Because part 70 program approval may not necessarily precede approval under subpart E, the following changes have been made concerning the general criteria for approval:

Section 63.91(b)(5) is amended to state the plan should include "at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies."

Section 63.91(b)(3) is expanded to require the demonstration to include: (i) A description in narrative form of the scope, structure, coverage and processes of the State program; (ii) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; (iii) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

Section 63.91(b)(6) is revised to read: "A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement: (i) The State shall have enforcement authorities that meet the requirements of § 70.11; (ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11.

The language of § 63.93(b)(4) "whenever they are a part of the rule for which the approved rule would substitute" is deleted.

Section 63.93(b)(4)(iv) is revised to read "The results of all required monitoring or testing must be reported at least every 6 months." Approval of a State part 70 program will substantially meet these requirements.

Objectives of the Act

Nearly every commenter discussed the application of the statutory provision under section 112(l)(5)(D), "not likely to satisfy, in whole or in part, the objectives of the Act." A wide diversity of viewpoints was expressed. Some commenters felt that this requirement gave the EPA the ability to disapprove State rules or programs that, although more stringent than the relevant Federal rule, ran counter to a policy direction the EPA has pursued.

Other commenters pointed out that the EPA policies are not themselves objectives of the Act.

The EPA agrees that in application of this provision, the EPA policies do not necessarily represent the only possible way of meeting the objectives of the Act. The EPA policies generally represent the EPA decisions about the means it will use to achieve the Act's objectives. The 1990 Amendments support the adoption of alternative State and local standards that are at least as stringent as Federal standards and section 112(l) itself is structured to provide flexibility and to accommodate differing State and local approaches.

It would be counter to the goals of section 112(l) and the 1990 Amendments, therefore, for the EPA to disapprove a State or local rule or program simply because it perceives its policies to be different than those of the State standard. As previously explained, the EPA has deleted reference to "objectives of the Act" from § 63.91 because this provision is separate from the approval criteria under subpart E.

Opportunity for Public Comment and Review of Permit Modifications

One commenter expressed concern about public opportunity to review and comment on permits which must be updated as a result of an approval under this subpart.

The EPA agrees that public involvement in the review of such permits is appropriate and beneficial to help assure proper implementation. To clarify this position, § 63.91(a)(6) states that newly approved requirements be included in a permit via the process described under § 70.7(f) of this chapter.

Additional Language on Reopening of Permits

Another commenter pointed out that the requirement that language be inserted in each permit describing permit reopening upon possible withdrawal of approval was unnecessary.

The EPA maintains the need to have a State reopen every permit per the process described in § 70.7(f) upon withdrawal. The EPA feels that such instances are cause for reopening because after withdrawal of the approved State standard, permits containing only the State standard no longer contain applicable requirements.

Compliance Uncertainty

Numerous commenters expressed concerns about the uncertainty sources face in the time period between a State submission for approval and the EPA's decision to approve or disapprove.

Until the EPA approves or disapproves a State submission, sources will remain uncertain about what standards will ultimately apply to them. Several factors may decrease this uncertainty. First, in many cases sources will already be in compliance or soon need to be in compliance with State requirements that are being submitted for approval. It will generally be far more beneficial to such sources to have approval granted, thereby obviating the need for such sources to take further action to comply with the otherwise applicable Federal requirements. Second, any State requirements submitted for approval will have undergone a public comment process at the State level. A third reason tempering concern can be added. While it is true that for any approval under this subpart, a source must always be in compliance with either the underlying Federal rule or the approved State rule or program requirements applicable to that source, this does not mean that sources need be immediately subject to a State rule or program upon approval. It is possible for States to grant additional time to sources to come into compliance with the approved State rule. In their submission to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, sources must be in compliance with the underlying Federal rule according to any specified compliance timeframes in the interim period.

C. Section 63.92—Approval of a State Rule That Adjusts a Section 112 Rule

This section describes the process and criteria for gaining approval under the first of three approval options. "Rule Adjustment" is the streamlined approval option based on a promulgated list of allowable adjustments to Federal rules that the EPA has determined to result in rules that are categorically no less stringent than the corresponding unchanged Federal rule.

Under each of the three approval options, the EPA will publish the approved rule or program in the **Federal Register** and incorporate the approved rule or program, directly or by reference, under the appropriate subpart of part 63. Several commenters suggested that incorporation of the approved rule or program under the subpart containing the otherwise applicable Federal rule would simplify sources' understanding of applicable requirements. The EPA agrees and will incorporate rules upon approval into these subparts to the extent appropriate. As approvals under § 63.94 can cover numerous section 112 standards, approvals made under that section as well as approvals of ARP programs may be treated differently. For example, ARP programs may be incorporated under the part containing other accidental release regulations.

Stringency Comparison

A few commenters discussed whether comparisons of stringency are best made at the source level or the level of individual emission points.

Among the criteria for approval under this section, a State rule must be unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each source and emission point. The test for stringency of a State submission under the adjustment approval option is a check to assure that proposed State changes qualify as adjustments under § 63.92 and do not deviate from the Federally promulgated list of allowable adjustments in this section. Once that determination is made, no further judgment is necessary. Therefore, no additional Federal public notice and comment are necessary prior to approval of the adjusted State rule because this rulemaking to establish guidance for approval of State programs under section 112(l) constitutes adequate notice and opportunity for public comment for this approval option. For these reasons there can be no question about stringency of a rule submitted for approval under this section. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point. If a State seeks to submit a rule that creates opportunities for shifting emissions between emission points within the same source or some other type of averaging scheme, that rule must be submitted under § 63.93 in order that the EPA may evaluate the stringency of the State rule compared to the corresponding Federal rule in detail.

Public Notice and Comment

Several commenters felt that approvals granted under this section should be subject to additional opportunity for Federal public notice and comment. Another commenter stated that for approval under § 63.92, a public comment period at the Federal level is unnecessary if the State or local program is already subject to public participation requirements as stringent as the Federal process.

This section was specifically developed to provide sources and States an opportunity to use a streamlined

approval process. The adjustment list was carefully chosen to include only adjustments that are unequivocally no less stringent and has been subject to public comment during this rulemaking under section 112(l). The Agency has considered the public comments regarding the stringency of the adjustments and generally disagrees with those commenters that thought the adjustments could under certain circumstances result in less stringent requirements. If however, a State request for approval under § 63.92 includes an adjustment that as applied in a particular circumstance would not be unequivocally no less stringent, the EPA will disapprove the State's request. The State would be free to resubmit its request under another approval option, such as § 63.93. Therefore, the EPA believes that additional notice and comment for requests under § 63.92 would be unnecessary and redundant and that this rulemaking constitutes adequate notice and opportunity for public comment. First of all, each State rule for which a state seeks approval must have undergone rulemaking at the State level that included public participation equivalent to that required at the Federal level. The regulated community and interested public would have had ample opportunity for comment at that time. Furthermore, this rulemaking for part 63 has provided additional opportunity for comment on the list of adjustments and its application to State rules. Prior to the 1990 Amendments, delegation to implement and enforce unchanged section 112 standards was granted under section 112(d), which did not require opportunity for public notice and comment if the State met "adequate procedures". Those "adequate procedures" specifically called for a demonstration of adequate legal authority, adequate resources, and expeditious compliance. Once a State successfully completed this demonstration, the authority to implement and enforce the unchanged rules was granted.

Under the 1990 Amendments, it is possible for a State to obtain delegation to implement and enforce State rules or programs that may differ from the Federal requirements by submitting them for approval under subpart E. The EPA believes that certain types of changes will clearly result in State rules that are unequivocally no less stringent than the relevant Federal rule. Only a limited set of changes, referred to under this section as adjustments, fall under this definition. These adjustments were included in the proposed subpart E and public comment was sought. A State rule that included only changes from the list of adjustments, therefore, can be approved without additional public notice and comment since the public has had the opportunity through the proposal of this rule to comment on each of the submitted changes. As discussed above, by streamlining the procedures, the EPA has been able to reduce the normal period of the EPA approval time under this section from 180 days to 90 days and has made this change in § 63.92 in response to comments received. Finally, the EPA anticipates that approvals under § 63.92 will be numerous, routine, and noncontroversial. The Administrator may not approve, under § 63.92, any State program or rule in which "any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point." Section 63.92(a)(2). If a State submittal under § 63.92 is in any way ambiguous, the EPA will disapprove the request. The State may then resubmit the request under § 63.93 and the EPA will seek public comment for no less than 30 days. Section 63.93(a). The EPA believes that the regulated community and the interested public will have had sufficient notice and opportunity to comment on the unambiguous, unequivocally no less stringent adjustments listed in § 63.92(b)(3) at the State level and through this rulemaking, and that additional safeguards are provided by the provision that requires a State to seek approval under § 63.93 for nonroutine changes to the Federal requirement.

"Any Other Adjustments"

Some commenters felt that the EPA should include among the list of adjustments one which read, "any other adjustments which are unequivocally no less stringent and which have been approved by the Administrator upon petition by the State."

The EPA believes that additions to the list of adjustments must afford an opportunity for Federal public notice and comment. This would generally amount to an amendment of this regulation and, therefore, such a category should not be included in the listed adjustments under § 63.92. Note, however, that the EPA may propose new adjustments specific to a particular section 112 rule at the time that the Federal section 112 rule is proposed. (See § 63.92(b)(3)(xiii).) The public will have opportunity to comment on such Federal rules when they are proposed.

Adjustment for Additional Pollutants

Several commenters felt that the EPA should include an adjustment allowing for the regulation of pollutants not among those listed under section 112(b).

The EPA has chosen not to include such an adjustment at this time. This situation may be difficult for the many States that regulate pollutants not on the section 112(b) list, as those States may not incorporate requirements that do not relate to Federally listed pollutants in the Federally enforceable section of the part 70 permit and therefore State-only requirements for additional pollutants would need to be incorporated in a different section of the part 70 permit. See § 70.6(b)(2). Instead, the EPA encourages States with data that indicate a pollutant should be Federally regulated to submit a petition to the EPA to include such pollutants on the section 112(b) list.

D. Section 63.93—Approval of State Authorities That Substitute for a Section 112 Rule

This is the second of three approval options under this subpart. Under this option States are given the widest possible range of flexibility in seeking approval of authorities that differ significantly from an otherwise applicable Federal rule. The EPA will make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of this section.

Need for Emission Point Basis Rather Than "Affected Source"

One commenter felt that § 63.93 should be deleted from the rule, because it allows stringency to be compared at an "affected source" level rather than for each emission point. The EPA disagrees with the view that this option should be deleted. Under § 63.93, a detailed demonstration is required that will ensure that any approved State alternative will achieve an equal or greater reduction in emissions. This section is further reinforced by requirements to address in detail the effects of alternative enforcement and compliance methods. The final rule continues to address stringency for § 63.93 on a source" basis. The term "affected source" has, however, been deleted from § 63.90(a), because there does not appear to be a compelling need to define the term in both subpart E and also in subpart A "General Provisions" of this part. The final rule will, as a result, rely on the definition in subpart A once it is promulgated. The rule was

proposed on August 11, 1993 (58 FR 42760).

For a given source category, the "affected source" definition will be specifically defined when the section 112 standard is promulgated for the category. In making stringency comparisons under § 63.93, the reviewer should therefore consult the appropriate subpart of part 63 for the "affected source" definition for the category in question.

Incorporation of Approved Rules

As discussed in the previous section of this preamble, several commenters suggested incorporation of an approved rule under the subpart containing the otherwise applicable Federal rule. The EPA agrees and will do so as appropriate.

Form of the Standard for Work Practice, Design, Operational or Equipment Standards

For approval under § 63.93, States are required to provide the EPA with a detailed demonstration showing that implementation and enforcement of State authorities results in as great or greater emission reductions (or other appropriate measures in the case of section 112(r)) for each affected source as the implementation and enforcement of the otherwise applicable Federal rule. In contrast, under the approval option in § 63.94, no detailed demonstration is necessary but States are required to express permit terms and conditions that result from the approved State program requirement in the form of the Federal standard.

Numerous commenters expressed concern about inflexibility that the "form of the standard" requirement imposes. Several commenters had specifically suggested the addition of a provision allowing for a source specific detailed demonstration of stringency in instances where the "form of the standard" requirement severely limited needed flexibility. To address the concerns about this inflexibility, the EPA is broadening the type of State authority that can be approved under § 63.93 for certain types of standards and under certain conditions.

The EPA agrees that under certain conditions, requiring States to write permit conditions in the form of the Federal standard could be unnecessarily inflexible. Those conditions are when the following circumstances exist together: (1) The EPA writes a work practice, equipment, design or operational standard (in other words, when the EPA does not write a standard based on performance, such as control efficiency or an emission rate) and (2) such a Federal standard does not address a State work practice, equipment, design or operational standard as either meeting or failing to meet the Federal standard. These conditions will generally only arise when a State has decided to require control equipment or practices which have been developed since the EPA promulgated the relevant standard. In such cases the State standard may be at least as stringent as the previously promulgated Federal standard but can not be expressed in the form of the Federal standard. The flexibility otherwise provided in § 63.94 here would not allow the State standard to be the basis for the permit in these cases since the State standard would not be able to be expressed in the form of the Federal standard.

In this rule as proposed, States would have had the opportunity to solve this problem by codifying their standard in a source category-specific rule through a State rulemaking and then seeking approval of that rule under § 63.93. Since many States regulate hazardous air pollutants through authorities which do not include source-category-specific rules, pursuit of approval under these circumstances would require a significant employment of resources for largely administrative purposes so that the State standard could be expressed as a source-category specific State rule for which the State could seek approval.

To address this difficulty, the EPA has revised § 63.93 to allow for slightly broader applicability of this section. Under the narrow circumstances discussed above, the EPA is not requiring the submission of a source-category-specific rule for approval under this section. Instead the EPA is willing to review and to consider for approval a specific application of broader State authorities under certain conditions as explained here. As at proposal, the EPA will only grant approval under this section in lieu of a single specific section 112 rule that specifies work practice or similar requirements. Approval of a specific application of broad State authorities will only be given to a State with a program already approved under § 63.94 to regulate the applicable source category, only for a source category that is not federally regulated by a performance based standard and only where the Federal standard has not addressed the State's particular approach to controlling emissions. In this case, a State need not submit a rule specifically and exclusively addressing the requirements of the Federal rule. Instead a State may submit for approval legally enforceable broader authorities which allow it to regulate the source category in question, identifying the sources in that source category, and specifying proposed section 112 permit terms and conditions (such as the controls that are required by application of those authorities) and the authorities which will assure adequate compliance and enforcement according to the provisions of this subpart and part 70. If the EPA approves a State's request in such a case, only the specific application of the State authorities to a single source category as approved will be Federally enforceable terms and conditions. If a State later revises its authorities to require different controls or compliance and enforcement measures, those changed requirements will not be federally enforceable unless the State submits documentation or a request under § 63.91(c) regarding revisions of State authorities. The source will remain subject to the approved requirements incorporated in its part 70 permit according to the provisions of part 70 unless the EPA disapproves the revision or otherwise finds that the authorities are inadequate and initiates withdrawal proceedings. The EPA has included in § 63.93 the types of "authorities" needed for approval. Authorities submitted under that section must meet the criteria of section 112(l)(5)(A), that is the authorities must be adequate to assure compliance by all sources subject to the request for approval with each applicable Federal standard, regulation or requirement. A threshold requirement for approvability is that State authorities must be legally enforceable by the State under State law. Such legally enforceable authorities may be statutes, rules, regulations, or other instruments that impose legally enforceable requirements.

For example, a State might have a single regulation that assesses risk at facilities that emit hazardous air pollutants and based on estimates of risk, requires specific emission rates or specific controls at particular facilities which might differ from facility to facility. The State's regulation might apply to a wide range of source categories in the State. If such a State initially received approval under § 63.94 for a State program that included a source category which was later regulated under a Federal equipment standard, approval under § 63.94 might provide very little flexibility to the State to require different types of equipment in lieu of equipment specified by the otherwise applicable Federal requirements. This might be especially problematic when a State sought to

require innovative controls not evaluated at the time of Federal standard promulgation because they were not yet developed. If a State can demonstrate to EPA, via the process described in § 63.93 that such controls resulted in emission reductions for all sources in the source category as great or greater than the emissions reductions the Federal standard would achieve, the EPA is willing to consider a request to approve the State authorities requiring such controls as Federally enforceable in lieu of the otherwise applicable Federal standard. Resulting terms and conditions would be incorporated in a part 70 permit. This would be an approval of a specific application of broad State authorities under the narrow circumstances described.

Thus, as described above, provisions for approval under § 63.93 has been revised to allow a State to request approval of a limited application of its general air toxics regulatory authority as that authority applies to a single source category. To do so, the State would need to meet the requirements of this section which call for, among other things, a detailed analysis of emission reductions that would result from both the Federal and State scenarios. Only the terms and conditions to be incorporated in the source's part 70 permit, as approved under this subpart for the single application of authorities for the single source category for which the request was submitted, would be federally enforceable.

Stringency Criterion for Accidental Release Prevention Programs

In terms of the ARP program, one comment indicated that States should not be allowed to submit ARP programs under § 63.93 because approval is unnecessary. Rather, the Federal and current State programs could be easily meshed together and the most stringent requirements of each be included. The commenter also pointed out that the criteria for approval of equivalent State programs are primarily based on the ability of the State program to achieve equivalent or better emission reductions and that this criterion makes little sense in the context of accidental releases.

The Agency disagrees that States do not now, or will not in the future, need the flexibility of submitting ARP programs for approval which differ from the Federal requirements. However, EPA recognizes that the criteria in the proposed rulemaking may not have been sufficiently broad to include all the requirements under the section 112(r) program. Thus, the Agency has added additional approval criteria to § 63.93 which are specific to the ARP program.

E. Section 63.94—Approval of a State Program That Substitutes for Section 112 Emission Standards

This is the third of the three approval options. It allows for a one-time approval of a legally binding commitment adopted through under State law to adequately regulate sources subject to hazardous air pollutant section 112 emission standards as specified under § 63.94(b)(2). This section applies only to sources for which part 70 permits will be issued by the State and which are subject to section 112 requirements expressed as terms and conditions of the part 70 permit. Part 70 permit requirements must be written in the form of the Federal standard which would be otherwise applicable to the source. This section may be used to approve standards corresponding to Federal section 112 (d), (f), or (h) standards only and can not be used to approve infrastructure rules such as those developed under sections 112(g), 112(i)(5) or 112(r).

Infrastructure Rules

Some commenters felt that the EPA could approve under this section requests for approval of infrastructure rules. As mentioned above, stringency requirements for approval under this section require that permit terms and conditions resulting from approval be expressed in the form of the Federal standard. Infrastructure rules may include requirements that can not be simply compared for stringency through a test of emission rates or control efficiencies.

In fact, some infrastructure rules provide guidelines for case-by-case determinations on controls where no simple stringency comparison can be made but rather the determinations must meet criteria specified in the applicable section 112 provisions. For these reasons, State infrastructure rules can only be approved under subpart E when they either adjust the Federal rule per § 63.92 or the State submits a detailed demonstration of stringency according to the provisions of § 63.93.

Stringency Comparison

As in the previous section, commenters questioned whether the basis for stringency comparisons should be at the source or emission point level. Approvals under this section require States to write permits in the form of the Federal standard. If the Federal standard requires for example, specific controls or emission rates from specific emission points, that form must be maintained in permits resulting from an approval under this section. If, on the other hand, a Federal standard has no requirements that apply at the emission point level, but instead stringency is measured at a more broadly defined source level, a State could choose to express terms and conditions at the source level also, as long as those terms and conditions were no less stringent than the Federal requirements and were expressed in the Federal form. This allows States to express terms and conditions with the same degree of flexibility that is allowed by the Federal standard.

Part 70—Approval Prior to Section 112(l) approval

As discussed earlier, commenters expressed preferences both for and against the requirement of part 70 program approval prior to a State receiving approval under this subpart. The primary Federal determination of stringency under this approval option occurs through EPA review of a part 70 permit with terms and conditions expressed in the form of the Federal standard. The EPA therefore finds that it is necessary for a State to be implementing an approved part 70 program before it would approve a request under this section for different but equally effective State programs. More specifically, approval under this section for this purpose would only apply to those sources for which the State is the part 70 permitting authority. This addresses any potential applicability issues that might arise from a partial or interim approval under part 70.

State Enforceability

Two commenters noted that States with existing hazardous air pollutant programs, which can include State statutes, regulations, or other requirements that limit the emissions of hazardous air pollutants from affected sources and that may be structurally dissimilar from section 112 regulations (e.g. risk-based standards) should be allowed the option to operate independently of and in addition to the Federal MACT standards and programs while at the same time maintaining Federal applicable requirements in part 70 operating permits. These State standards would be State enforceable only.

EPA agrees with this comment. Nothing in today's rule precludes a State from operating existing programs that may differ from federal section 112 emission standards and requirements as long as they are enforceable as State-only requirements. Such State-only requirements may be incorporated in a part 70 permit under § 70.6(b)(2). In

addition, as discussed previously, section 116 of the Act preserves the right of States to adopt and enforce standards or limitations as long as they are no less stringent than Federal section 112 standards or limitations.

F. Section 63.95—Additional Approval Criteria for a State Rule That Adjusts or Substitutes for the Federal Accidental Release Prevention Program

Section 63.95 contains specific approval criteria for the approval of State programs which adjust or substitute for the Federal accidental release prevention program.

Section 112(r) Registration of Facilities Under Section 112(l)

One comment disputed whether the proposed rule properly addressed the provision of section 112(l)(2) which directed the EPA to draft guidance under this section which "provides for" the registration of facilities producing, processing, handling, or storing over a threshold quantity of a substance listed under section 112(r). The comment stated that § 63.95 lacked sufficient specificity to fulfill the guidance required by the statute. The commenter suggested specific components of a registration program, including standards for outreach, verification of coverage through database crosschecking, and the specific contents of a registration form. The commenter suggested that by using the phrase "provide for" in the requirement to promulgate guidance, Congress did not intend for the EPA to delay informing affected parties of the minimum requirements of an acceptable program. The EPA generally disagrees with the comment that the EPA has failed to provide sufficient guidance to States as required by section 112(l)(2). However the EPA notes that it has made some modifications to the provisions of §§ 63.93 and 63.95 to clarify the regulatory provisions. Furthermore, the EPA believes that the publication of the proposed rule implementing section 112(r)(7)(B) provides additional guidance to States concerning the specific minimum contents of registration. Together, these actions provide not only for the guidance required by statute but also provide much of the supplementary specifics suggested by the commenter.

Today's rule requires a State agency seeking delegation of the Accidental Release Prevention Program to include procedures for registering stationary sources covered by the section 112(r) rules in a manner consistent with the registration requirements under those rules. Section 63.95(b)(2). In addition, to make clear that a State must include a procedure for registration in its application for delegation of the Accidental Release Prevention Program, § 63.95 requires a State to demonstrate authority and resources to enforce all core release prevention requirements. Furthermore, the rule requires a State to describe its outreach program.

The Agency has modified § 63.95 to clarify that a State seeking delegation of the Accidental Release Prevention Program must identify the State entity with which a source must register. Identifying the entity receiving the registration is a necessary aspect of describing the procedures by which a State would register subject sources. The Agency has determined that no specific standards for outreach or database crosschecking are appropriate because such activities are extremely State specific. Certain States may maintain computerized Emergency Planning and Community Right-to-know Act Tier 2 databases while others may be able to rely on Standard Industry Classification (SIC) codes, property tax filings, and other information for outreach purposes and for determining whether all covered sources are registered. However, a description of such outreach and oversight activities would be relevant in consideration of the adequacy of program resources.

The Agency set out proposed specific requirements for registration of risk management plans in the proposed rule implementing section 112(r)(7)(B) (proposed § 68.12). The proposed section 112(r)(7)(B) rule, if adopted, would require a stationary source that has over a threshold quantity of a substance listed pursuant to section 112(r)(3) to register with the Administrator within three years of the final rule's publication. The registration would contain identifying information about the source (name, street and mailing addresses, telephone number, contact persons, Dun and Bradstreet number, applicable SIC codes), data on listed substances present in above-threshold quantities, and a certification by the owner or operator concerning the accuracy of the information submitted and the submission of risk management plans to appropriate local, State and Federal authorities. Such data would need to be updated when it is no longer accurate. The proposed section 112(r)(7)(B) rule does not propose to require additional information concerning the plant's safety programs and surrounding populations because such data would be difficult to standardize for data management purposes. Furthermore, such information does not need to be included in the registration for right-to-know purposes because such information already would be available to the public in the risk management plans filed locally, with the State, and with the Chemical Safety and Hazards Investigation Board. Comments concerning the contents of registration submittal should be directed to the rulemaking docket for the section 112(r)(7)(B) proposed rule.

The Agency believes that today's rule and the discussion herein fulfills its duty to promulgate guidance that provides for registration of facilities that have more than a threshold of a section 112(r) regulated substance. The rule promulgated today unambiguously requires a State seeking delegation of a section 112(r) program to have an element providing for facility registration, which is consistent with the 1989 Senate Environment and Public Works Committee report explaining the guidance requirement. See S. Rep. 1630 at 193. The Agency interprets the requirement to provide guidance for registration of covered facilities to mean that the Agency must make clear that a State seeking a delegation of the section 112(r) program must have a registration element in its program.

The Agency does not believe that today's rule must detail the substantive data requirements for registration because such detail would be inconsistent with the structure of section 112(l) and section 112(r). Under section 112(r)(7)(B), all stationary sources that have over a threshold quantity of a substance regulated under section 112(r) must prepare a risk management plan. Sources that prepare risk management plans must register such plans with the Administrator. Section 112(r)(7)(B)(iii). The Agency interprets the registration of facilities mentioned in section 112(l)(2) to be the same registration as the registration of stationary sources required under section 112(r). Facilities described in section 112(l)(2) would not have a threshold quantity or more of a chemical unless the quantity would also trigger registration under section 112(r). To interpret section 112(l) to require a different registration than section 112(r) would require States opting to develop a delegated Accidental Release Prevention Program to run two redundant registration programs. Section 112(l) provides a means to delegate the section 112(r) registration requirement as part of a delegation of the Accidental Release Prevention Program. No commenter has suggested otherwise.

The statute provides the Agency with a different and more lengthy time frame to develop the section 112(r) registration requirements than it provides for the development of "guidance * * * useful to the States in developing programs for submittal." Section 112(l)(2). It would be a strained reading of the section 112(l) guidance requirement to say that the Agency must detail the specific registration requirements for State programs that elect to seek delegation of the Accidental Release Prevention Program prior to the Agency developing the actual registration requirement.

The Agency has provided useful guidance to the States concerning the registration requirement by promulgating this rule, discussing registration in today's preamble, and responding to this comment. The rule outlines the minimum content of a State delegation submittal and explicitly provides that such submittal must include a description of the State's registration process. Such description must include an identification of the State entity with which parties must register. Furthermore, as noted above, the Agency has discussed its most current view of the specific details of what registration will entail. Section 112(l) does not require the Agency to provide the specific elements of what information is necessary for facility registration. The 1990 Amendments leave the development of the specific elements of registration to a future section 112(r)(7) rulemaking.

Section 112(r) Authorities

One commenter indicated that States should be required to obtain the authorities for the general duty and emergency order authority provisions found in section 112(r)(1) and (9) respectively, because State agencies will often receive citizen complaints about hazards and will have more of the expertise necessary to use such authorities properly than the EPA's regional personnel. The Agency believes, however, that States should be given the option to have authorities beyond the core elements necessary to administer the program. While the general duty and emergency order authority provisions could enhance the State program by providing them with additional compliance and enforcement tools, they are not essential elements which would be required to maintain a functioning ARP program at the State level.

Further, many States already have emergency order authorities under other environmental statutes and may not find section 112(r)(9) critical to the administration of their program. In terms of the general duty provisions, some States are prohibited from having general duty authorities.

Section 112(r) Enforcement Authorities

One commenter indicated that the EPA should specifically advise States that they must have the authority to impose the penalties required under the 1990 Amendments for violators of section 112(r). The proposed rulemaking contained specific language which indicates that the State submission would need to contain a demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy that is consistent with the proposed section 112(r)(7) rule and this language has been retained in the final rule. Section 63.95(b)(3).

Interface Between Section 112(r) and Part 70

One commenter suggested that the Agency should require States to establish appropriate interagency agreements which would promote the exchange of information between the administering agency and the permitting agency if they are different. The Agency agrees that information flow is critical if the implementing State agency is not the permitting agency. This is particularly important since section 112(r) requires the development, submittal, and implementation of a risk management plan which must be addressed in a part 70 permit for subject sources. Consequently, the Agency has added language to § 63.95 which requires a description of any coordination mechanisms the implementing agency will use with the air permitting program, provided it is not the implementing agency.

G. Section 63.96—Review and Withdrawal of Approval

This section discusses terms for the EPA review of the implementation and enforcement of approved State rules and programs and describes the process and criteria for EPA withdrawal of a State approval.

Source Uncertainty About Withdrawals

Numerous commenters expressed concern over the uncertainty that sources might face when approval of a rule or program to which they are subject is withdrawn.

Generally, there are three reasons upon which the Administrator might base a withdrawal. The State might lack adequate authority or resources, the State might not be implementing or enforcing the rule or program adequately, or the rule or program might be found to be less stringent than the otherwise applicable Federal rule or program, perhaps, for example, as a result of EPA review sometime after approval.

If the Administrator withdraws a program for the third of these three reasons, sources' permits will need to be reopened according to the provisions of part 70 and the underlying Federal standard will become the applicable Federally enforceable requirement again on the date set forth by the Administrator in a compliance schedule published concurrently with the withdrawal.

This withdrawal and permit reopening would be due to the fact that the rule or program was found to be less stringent than the Federal standard and is, therefore, no longer appropriate as a substitute for the Federal standard in the part 70 permit. In this case, the permits of sources subject to the requirement will be reopened according to procedures specified in § 70.7(f) because the withdrawal amounts to a finding by the EPA that the permit no longer assures compliance with the applicable requirement consistent with § 70.7(f)(iv). The withdrawal also results in additional requirements becoming applicable to the source, which triggers a reopening under § 70.7(f)(1)(i). Sources would be required to come into compliance by the date specified in the **Federal Register** withdrawal notice regardless of whether or not the permit has been reopened. Since the Federal standard is considered a new requirement, the permit shield in § 70.6(f) would not apply. When only the first or second reasons are cited by the Administrator, and the stringency of the State standard is not in question, reopening of part 70 permits will not be required for sources affected by withdrawal of an approval under § 63.92 or § 63.94. Any source that is in compliance with permit conditions established under such approvals will also be in compliance with the underlying Federal standard upon withdrawal, because a source in compliance with a no less stringent State standard that is in the same form as the Federal standard is also in compliance with the Federal standard. Approved State standards under § 63.92 and permit terms and conditions resulting from an approved State program under § 63.94 are necessarily in the same form as the otherwise applicable Federal standard.

The situation is different for approvals under § 63.93, in particular for work practice, design, operational or

equipment standards because such approved State standards would commonly not be in the same form as the otherwise applicable Federal standard. To assure sources of greater certainty, EPA has revised § 63.96 to provide that permits need not be reopened if the Administrator finds at the time of withdrawal that the approved State rule is still demonstrated to be no less stringent than the otherwise applicable Federal standard. Section 63.96(b)(5). In such cases the Administrator will approve as equivalent according to the provisions of the appropriate subpart of part 63 the equipment, design, work practice or operational standard, emission limitation, or other requirement upon which the original approval was based. This is in accordance with the provisions of section 112(h)(3) for alternative standards. Such an equivalence determination was proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

To further increase certainty for sources affected by a withdrawal, the EPA will publish an expeditious schedule for compliance by sources for both involuntary and voluntary withdrawals. Included in this schedule are interim emission limits, as appropriate, to limit emissions for the time period between withdrawal and the deadline for the source coming into compliance with the Federal standard. Sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions at all times during this transition period. The schedule will be published in the **Federal Register** notice withdrawing the approval.

Audits

One commenter noted that the EPA should commit to audits, at least every 3 years, of programs which implement any averaging allowed in approved rules. Today's rule provides that the EPA "may at any time * * * review the adequacy of implementation and enforcement of an approved rule or program * * *". The EPA believes that today's rule provides the appropriate degree of flexibility in performing periodic reviews and allowing the EPA to determine on a case-by-case basis the frequency of those reviews.

One commenter asked the EPA to consider employing an auditing program instead of individual permit reviews. As allowed under § 63.96(a), the EPA intends to establish a program for a review of approved rules and programs and the audit of permits that result from such approvals. Such a program, however, can not replace the EPA's authority to review and potentially veto any rule or program approved under subpart E if and when the EPA finds such review to be necessary. In addition, § 70.10 provides additional protection through Federal oversight of State part 70 programs.

H. Other Comments

Potential To Emit

The May 19, 1993 proposal, requested comment on the potential to emit definition and how it related to submittals under section 112(l). The potential to emit issue, including concerns raised by comments to the subpart E proposal on this issue will not be addressed here but rather will be addressed in a later rulemaking. The issue was also discussed in the proposal for the General Provisions under subpart A of this part (58 FR 42760, proposed August 11, 1993). Since the potential to emit issue is currently under discussion, the EPA is deferring discussion of that issue at this time in this preamble.

Alternative Equipment Under Section 112(h)(3)

One commenter noted that the form of the standard limitation on State authority imposed by § 63.94 diminishes the flexibility in encouraging alternative technologies. The commenter believes that this approach is inconsistent with the fundamental policy goals of the CAA, including the goal of pollution prevention. The commenter feels that State programs should be allowed by the proposed rule to approve alternative technologies, particularly for equipment standards consistent with section 112(h)(3) of the Act.

Section 112(h) of the Act allows the EPA to promulgate equipment standards, in cases where an emission limitation is not feasible. An example of this type of equipment standard is the standard recently promulgated for perchloroethylene dry cleaning facilities (58 FR 49354, September 22, 1993). Under section 112(h)(3) of the Act, sources may request permission from the EPA for use of an alternative means of control. Procedures for review of these requests by the EPA have been proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

The EPA wishes to clarify in this rulemaking, the process for making these section 112(h)(3) equivalency determinations for a State that has an approved program under § 63.94, or for a State that believes a given technology would satisfy the requirements of § 63.93. In the final rule for perchloroethylene dry cleaners (58 FR 49354, 49371, September 22, 1993), the EPA indicated that "Section 112(l) of the Act would allow a State to request approval of a State's program that permits a source to seek permission to use an alternative means of emission limitation under section 112(h)(3), provided that the State demonstrated that its program would be no less stringent and that certain conditions were met."

The EPA is here in this discussion further clarifying the procedures by which a State may seek and obtain approval of such a program under section 112(l).

It is unlikely that, for an equipment standard promulgated in accordance with section 112(h) of the Act, there would be an alternative means of control that could satisfy the § 63.94 requirement that the program express the limitation in the same "form as the Federal standard." Accordingly, § 63.94 approval by itself would likely not be sufficient to provide for section 112(h)(3) equivalency determinations. There are, however, two other avenues for an equivalency finding that are provided in today's rule.

First, as described above (preamble section IV), § 63.93 has been modified to provide a means for approval of work practice, equipment, or similar standards that do not require the State to submit a category-specific rule. In order to use this process, the State must have prior approval under § 63.94, and must identify in its submittal under § 63.93, (1) the specific work practice, design, equipment or operational standard that would replace the Federal requirement, (2) a specific description of the State authorities that would be exercised, and (3) proposed part 70 permit terms and conditions. Once approved, the State equipment standard would become the applicable requirement.

Second, the State may develop a State rule containing the alternative equipment limitation and provide a detailed demonstration in accordance with § 63.93 that the rule is no less stringent than the Federal standard. A source seeking permission to use an alternative means of emission limitation under section 112(h)(3) would thus first request permission from the State, demonstrating that the subject alternative means is no less stringent than the Federal requirement. The State would then seek approval from the EPA for that kind of equipment or alternative means of emission limitation.

Currently, the EPA does not delegate authority to determine equivalency of emission control technologies to the States. The February 1983 "Good

Practices Manual for Delegation of NSPS and NESHAPS", reserved to the EPA the determination of equivalency for design, equipment, or work place standards that will achieve a reduction in emissions as allowed for in section 112(h)(3) of the Act to the Administrator because these determinations require notice and opportunity for comment and impact National consistency of standards. While the EPA continues to retain the authority for this decision process, the EPA is providing as much flexibility as possible to the State and sources to receive approval of an equivalent emission control technology under subparts A and E of part 63.

Guidance on Acceptable Controls

Commenters noted that to reduce the paperwork burden and enhance national consistency, the EPA should provide guidance to States regarding acceptable controls on a source category basis. The EPA will usually provide information regarding acceptable controls in MACT rules (reference control technologies). Therefore, the EPA encourages States to provide comments to EPA on alternative compliance during development of MACT standards so that alternatives will receive the fullest possible consideration.

Approvals Should Be for Entire Rules

Commenters expressed concern that approval under section 112(l) should be for entire rules and not for individual provisions within rules.

In accordance with section 112(l)(1), the EPA has allowed for approval of State provisions which meet the stringency requirements specified in this section 112(l) rule and thus as previously described to become federally enforceable. This subpart provides flexibility to the states in submitting programs for approval and also minimizes dual regulation by providing a mechanism to approve those portions of existing State rules which meet the approval criteria specified in the section 112(l) rule. Determination of stringency as required under section 112(l)(1) is predicated on a corresponding Federal standard, rule, or requirement. As the section 112 regulations are developed, elements relevant to stringency determinations will be included, and State rules submitted for approval may be compared with the corresponding Federal requirements.

Notice of Delegation

One commenter noted that the EPA must provide clear notice of rule applicability, effectiveness, and enforceability by providing a notice of delegation which clearly states which Federal or State rules remain in effect and whether they are enforceable by the EPA or the State.

The EPA agrees with this comment and the **Federal Register** notice of approval will specify this information. In addition, the EPA has added § 63.90(d) to make clear that approved rules and requirements are Federally enforceable.

Exemption of Electric Utility Steam Generating Units Exemption of Sources of Radionuclide Emissions

One commenter noted that electric utility steam generating units are exempt under section 112(n) which provides for such exemption unless and until the EPA finds regulation to be appropriate and necessary after considering the results of a study currently being performed. The commenter stated that therefore the EPA can not enforce State regulation of such units at this time. Additionally, a commenter noted that radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission (NRC) should be exempted per section 112(d)(9).

The EPA agrees with these exclusions from subpart E regulation at this time according to the provisions of section 112(n) and section 112(d)(9). Under section 112(n), no Federal standard will be promulgated until some future time, and therefore no stringency comparison can be made at this time for a State rule applicable to sources subject to section 112(n).

One commenter argued that the EPA should not enforce State regulations of radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission ("NRC"), citing the intention of Congress in section 112(d)(9) of the 1990 Amendments to avoid duplicative regulation of NRC licensees and the pending EPA proposal to rescind 40 CFR part 61, subpart I, for nuclear power reactors. Under section 112(d)(9), the EPA may decline to regulate radionuclide emissions from a particular category of NRC licensees if it determines by rule that the NRC program for that category of licensees provides an ample margin of safety to protect human health. Thus, before the EPA may decline to regulate radionuclide emissions from a category of NRC licensees, it must examine the NRC regulatory program for that category and determine that it provides a level of protection equal to or greater than would be provided by implementation of the EPA standard. Although the EPA has not yet made the requisite finding for any category of NRC licensees, it has proposed to rescind 40 CFR part 61, subpart I, as applied to nuclear power reactors (56 FR 37196, August 5, 1991) and to NRC licensees other than nuclear power reactors (57 FR 56877, December 1, 1992), and to rescind 40 CFR part 61, subpart T (56 FR 67561), December 31, 1991), which governs inactive uranium mill tailings disposal sites.

The EPA agrees with the commenter that recognition and enforcement by the EPA of State regulations of radionuclide emissions from NRC licensees which differ from the EPA standards is not consistent with the Congressional objective to eliminate unnecessary duplicative regulation of NRC licensees. Acceptance of alternative State standards or programs for such emission could also complicate the rescission of any Federal standards for which the EPA ultimately makes the necessary finding concerning the NRC program. So long as the EPA standards governing radionuclide emissions for NRC licensees are in effect, States may request that the EPA delegate enforcement of such standards pursuant to § 63.91, but the EPA will not grant requests to adjust such standards or to substitute State authorities or programs for such standards pursuant to § 63.92, § 63.93, or § 63.94. The EPA has added a provision to § 63.90 clarifying this issue.

Of course, in those instances where a State may lawfully adopt differing or more stringent standards regulating radionuclide emissions from NRC licensees under its own authorities, the State may then include terms and conditions implementing such State standards in the State-enforced section of the permit for each facility. Moreover, the decision by the EPA not to adopt or enforce State standards governing radionuclide emissions from NRC licensees does not affect the ability of the States to seek EPA recognition and enforcement of other State standards or programs which may apply to NRC licensees.

High Risk Point Source Program

One commenter pointed out that section 112(l)(2) requires the EPA to publish guidance that includes as an element "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to (section 112(b))."

This final rule, along with a guidance document addressing the high-risk point source program described in section 112(l)(2), will fulfill the requirement to "publish guidance useful to the States in developing programs for submittal

under (section 112(l))." A summary of the high-risk point source program guidance document, which will be available concurrently with the final rule is discussed below in section V of this preamble.

V. Additional Guidance

As stated previously in this preamble, additional guidance is concurrently published with this final rule. Specifically: (1) Guidance to review high-risk point sources; (2) information about establishing and maintaining various technical assistance activities, including an air toxics clearinghouse; and (3) enabling guidance outlining procedures, roles and responsibilities for section 112(l) approvals. These guidance documents are separate documents which are available with the promulgation of today's rule and may be revised and updated from time to time as appropriate. Each of these documents is discussed here.

A. High-Risk Point Source Guidance

Purpose of High Risk Point Source Guidance

The purpose of the High Risk Point Source (HRPS) guidance is to outline a methodology that State agencies may wish to employ in order to assess the risks from potentially high-risk point sources. The EPA envisions several uses of this program, particularly for those agencies that do not already have comprehensive air toxics programs. First, the guidance can help agencies evaluate and regulate sources which will not be regulated under the Federal program. As an example, a listed source category may consist of major sources (those that emit greater than 10 tons per year of one hazardous air pollutant (HAP), or 25 tons per year of a combination of HAP's), and area sources (sources of a HAP that are not major). The major sources in the category will be covered by a section 112(d) standard, but the area sources may not be regulated unless the EPA finds that such sources present a threat of adverse effects to human health or the environment warranting Federal regulation under section 112 (section 112(c)(3)) (see source category list (57 FR 31576, July 16, 1992). In this case, the State agency may choose to assess a source to determine whether the State may wish to pursue state mandated controls. States may also undertake such analyses to examine residual risk after installation of Federal controls or risk from pollutants not on the section 112(b) list.

Second, an agency may wish to regulate sources under a faster timetable than the Federal program. Section 112(e) of the 1990 Amendments requires the EPA to regulate source categories on a specific schedule, either within 2, 4, 7, or 10 years after the date of enactment (November 15, 1990). A State may wish to apply the methodology offered in the HRPS guidance to evaluate a source or sources to determine whether early controls required at the State level are warranted. Similarly, States may wish to evaluate sources in order to set residual risk standards sooner than the Federal program. Section 112(f) requires the EPA to address the issue of residual risk eight years after the promulgation of a MACT standard. A State Agency may wish to examine the need for a residual risk examination before the eight year Federal analysis would be conducted.

Third, in response to public concern, agencies may wish to determine the risks associated with sources of air toxics, for a number of reasons, including questions from the public raised during part 70 permit hearings, or in response to public inquiries as to the safety of ambient air. A HRPS program can also increase environmental equity in that it helps an agency address, for example, a single source that may otherwise be missed because it was not in a source category to be regulated under the Federal regulatory program. See 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics).

Finally, the methodology and resources presented in the HRPS guidance can add to the available tools States can use to evaluate the potential for adverse health impacts and protect the public health from local sources of HAPs. Information collected from the HRPS evaluations will be useful to the public, the State agencies themselves and to the Federal program.

The use of this guidance does not mandate regulation. It is designed to provide ideas for developing or expanding upon State high-risk point source programs in keeping with the provisions of section 112(l)(2) that specify the optional nature of the high-risk point source program. Publication of this document fulfills the requirement of section 112(l)(2) to publish guidance that includes as an element the optional high-risk point source program begun in 1986.

Organization of this Document

The document that the EPA developed to fulfill Congress's directive concerning the HRPS program under section 112(l)(2) is based in large part on information and documentation that the EPA has developed from its experience with the program since the program's inception in 1986. See S. Rep. at 193–94 which describes the agency's efforts and support for the HRPS program. The document begins with a discussion of policy issues: how to determine what chemicals to assess, how to choose sources to assess, and how to communicate program objectives and risks to health. The document then outlines a tiered methodology agencies may choose to follow to determine whether the risk from a particular source (or sources) is significant, and worthy of regulation. The reader is then directed to appropriate EPA documents and services to assist in evaluating health effects from High Risk Point Sources.

B. Technical Assistance Activities

Several sources of technical assistance are provided by the EPA to State and local agencies. Each is briefly described.

Air Risk Information Support Center (Air RISC)

Developed to assist State and local air pollution agencies and EPA Regional offices on technical matters pertaining to health, exposure, and risk assessments for toxic air pollutants, the primary goal of Air RISC is to serve as a focal point for obtaining information and, where needed, provide assistance in the review and interpretation of that information.

Emission Measurement Technical Information Center (EMTIC)

Created for the purpose of promoting consistent and accurate emissions test method application in the development and enforcement of national, State, and local emission prevention and control programs, the EMTIC is an information exchange network that communicates the EPA emissions measurement technology to the emissions measurement community. The EMTIC provides information in the form of publications, videos, workshops, computer information databases, and support projects.

National Air Toxics Information Clearinghouse (NATICH)

This clearinghouse is intended to facilitate information exchange among State and local agencies, and between the EPA and State and local agencies, and to minimize duplication of effort. The Clearinghouse consists of a computerized data base which contains information on potentially toxic air pollutants, hard copy reports of information from the data base, special reports, and a bi-monthly newsletter.

Clearinghouse for Inventories/Emission Factors (CHIEF)

This clearinghouse contains the latest information on air emission inventories and emission factors. It provides access to tools for estimating emission of air pollutants and performing air emission inventories for both criteria and toxic pollutants.

C. Enabling Guidance

The enabling guidance was developed as a further tool to assist State and local agencies interested in receiving approval of State programs under the process described in subpart E of this part. Also included is detailed information for procedures for receiving delegation for unchanged Federal section 112 rules. Included in this document is information on the following: (1) Specific roles and responsibilities of State and the EPA offices; (2) specifics regarding "detailed demonstrations" under § 63.93 submittals and "form of the standard" under § 63.94 submittals; (3) Forms used in submittals; and (4) commonly asked questions regarding section 112(l) submittals.

D. Accessing Additional Guidance

Technology Transfer Network (TTN) Bulletin Board System

This network provides information and technology exchange in different areas or air pollution control, ranging from emission test methods to regulatory air pollution control models. The individual bulletin boards offered with respect to air toxics are: (1) Emission Measurement Technical Information Center (EMTIC); (2) National Air Toxics Information Clearinghouse (NATICH); (3) Clean Air Act Amendments (1990 Amendments) and (4) Clearinghouse for Inventories/ Emission Factors (CHIEF). The access number to the bulletin board system is 919–541–5742. If problems are encountered accessing the bulletin board, call 919–541–5384.

High Risk Point Source Guidance

The guidance document for the review of high risk point sources is available in Air Docket A–92–46. It can also be found on the EPA Technology Transfer Network (TTN) bulletin board system in the 1990 Amendments section under "Title III Policy and Guidance". The EPA Publication number for this document is EPA–453/R–93–039. To obtain copies, contact the EPA Library in Research Triangle Park, North Carolina at 919–541–2777 or the National Technical Information Service (NTIS) at 800–553–6847. For other questions regarding this document, contact Kelly Rimer at 919–541–2962.

Air RISC

Air RISC services include a hotline, detailed technical assistance, and general technical assistance. Contact the hotline at 919–541–0888 and requesting the specific type of assistance needed.

Enabling Guidance

The enabling guidance document for Approval of State Programs and Delegation of Federal Authorities is available in Air Docket A–92–46. It can also be found on the TTN Bulletin Board system noted in the above paragraph. The EPA Publication number for this document is EPA–453/R–93–040 and can be obtained from the EPA Library or NTIS. For questions regarding this document, contact Sheila Milliken at 919–541–2625.

E. Grants

Section 112(l)(4) gives the Administrator the discretion to award grants to States to support the development of air toxics programs, including high-risk point source programs and the development and implementation of areawide area source programs pursuant to subsection 112(k).

The EPA has, for a number of years, supported air toxics program activities under State and local assistance grants issued pursuant to section 105 of the Act. The EPA will continue to evaluate, in close cooperation with the States, the types of activities that can and should be supported in this manner. The EPA is currently reviewing the exact mechanisms to be used for this purpose, including any administrative changes that may be required to track the grants pursuant to section 112(l)(4) authority instead of under section 105.

VI. Administrative Requirements

A. Docket

The docket for this regulatory action is A–92–46. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, (LE–131), ATTN: Docket No. A–92–46, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain the OMB clearance for collection of information from ten (10) or more non-Federal respondents. Under this final rule, each State or other air pollution control agency which elects to develop a section 112(l) program, or to take any other approved actions under section 112(l), shall be required to submit to the Administrator a program, written findings, schedules, plans, statements, and/or other documentation required for approval of the submitted program or action. The effect of this rule is to subject those States and other air pollution control agencies utilizing section 112(l) to the

informational requirements of this rule in order to assure that the requirements of a section 112(l) program or approved action have been met under section 112(l)(5) of the Act. These statutory requirements for approval give rise to the informational requirements of this rule.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the OMB control number 2060-0264.

The burden to States and other air pollution control agencies for the collection of information under this rule for the first year is estimated to be a maximum of 1901 hours per State or agency. This estimate includes time for rule interpretation, analysis and/or revision of state or local legislative authority, development of a program and schedule of implementation, as well as demonstrations of adequate resources, compliance and enforcement. Since most of these requirements are not recurring, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA believes that there will be no impact on any small entities as a result of the promulgation of this rule since all the entities which would have the authority to accept partial or complete delegation of the Administrator under section 112(l) of the Act are States and other governmental jurisdictions whose populations exceed 50,000 persons. With no impacts expected on entities whose populations are less than 50,000, a RFA is not required by law. What follows is the certification of the Administrator that an RFA is not required with the promulgation of this rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Review

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors including overlap with other programs, the existence of alternative methods, enforceability, and result of section 112 standards review.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
63.91—63.96	2060-0264
* * * * *	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 63 is amended by adding subpart E to read as follows:

Subpart E—Approval of State Programs and Delegation of Federal Authorities

Sec.
63.90 Program overview.
63.91 Criteria common to all approval options.
63.92 Approval of a State rule that adjusts a section 112 rule.
63.93 Approval of State authorities that substitute for a section 112 rule.
63.94 Approval of a State program that substitutes for section 112 emission standards.
63.95 Additional approval criteria for accidental release prevention programs.
63.96 Review and withdrawal of approval.

§ 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 Amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes may be delegated under procedures established in this subpart. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart.

(a) *Definitions.* The following definitions apply to this subpart.

Applicability criteria means the regulatory criteria used to define all emission points within all affected sources subject to a specific section 112 rule.

Approval means a determination by the Administrator that a State rule or

program meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93 or § 63.94, where appropriate. For accidental release prevention programs, the criteria of § 63.95 must also be met.

Compliance and enforcement measures means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accidental release prevention oversight.

Level of control means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(1)(i) Each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

(ii) The aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule or program would not lead to an increase in risk to human health or the environment; and

(2) each substance regulated under section 112(r).

Local agency means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

Program means, for the purposes of an approval under § 63.94, a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

Stringent or stringency means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation; and

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under title V of the Act or under regulations promulgated pursuant to that title.

(d) *Federally-enforceable requirements.* All rules and requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and citizens under the Act.

(e) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to 40 CFR part 61, subpart I, T, or W, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to § 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to § 63.92, § 63.93, or § 63.94.

§ 63.91 Criteria common to all approval options.

(a) *Approval process.* To obtain approval under this subpart of a rule or program that is different from the Federal rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. For a State's initial request for approval, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following.

(1) Upon receipt of a request for approval, the EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 45 days after receipt of a complete request for approval, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section are met, the State rule or program will be approved by the Administrator under this section, published in the **Federal Register**, and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(4) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(5) If the Administrator finds that; any of the criteria of this section are not met, or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be

considered a new request under this subpart.

(6) If the Administrator finds that; all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules; emission standards or requirements. The approved State rule or program shall be Federally enforceable from the date of publication of approval. When a State rule or program is approved by the Administrator under this subpart; applicable part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter. Operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's part 70 permits or otherwise implemented or enforced by the State or by the EPA unless and until authority to enforce the approved State rule or program is withdrawn from the State under § 63.96. In the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and relevant part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(l) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with the following:

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iii) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(iv) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval.

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval, which includes:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program;

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval.

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval. The plan should include at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.

(6) A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State rule, program, or other authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and meet the requirements of either paragraph (c)(1) or (2) of this section.

(1) (i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement.

(ii) If the Administrator determines that the written finding is not adequate, the State shall request approval of the revised rule or program according to the provisions of paragraph (c)(2) of this section.

(2) The State shall request approval under this subpart of a revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previously approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

§ 63.92 Approval of a State rule that adjusts a section 112 rule.

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the **Federal Register** and incorporated, directly or by reference, in the appropriate subpart of this part 63, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(3) Within 90 days of receiving a complete request for approval under this section, the Administrator will

either approve or disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or de minimis level;

(ii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iii) Increasing a required control efficiency;

(iv) Increasing the frequency of required reporting, testing, sampling or monitoring;

(v) Adding to the amount of information required for records or reports;

(vi) Decreasing the amount of time to come into compliance;

(vii) Subjecting additional emission points or sources within a source category to control requirements; and

(viii) Any adjustments allowed in a specific section 112 rule.

§ 63.93 Approval of State authorities that substitute for a section 112 rule.

Under this section a State may seek approval of State authorities which differ in form from a Federal section 112 rule for which they would substitute, such that the State authorities do not qualify for approval under § 63.92.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State authorities will be approved by the Administrator under this section and the approved authorities will be published in the **Federal Register** and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(3) If the Administrator finds that any of the requirements of this section or § 63.91 have not been met, the Administrator will disapprove the State authorities.

(4) Authorities submitted for approval under this section shall include either:

(i) State rules or other requirements enforceable under State law that would substitute for a section 112 rule; or

(ii) (A) The specific permit terms and conditions for the source or set of sources in the source category for which the State is requesting approval under this section, including control requirements and compliance and enforcement measures, that would substitute for the permit terms and conditions imposed by the otherwise applicable section 112 rule for such source or set of sources.

(B) The Administrator will approve authorities specified under paragraph (a)(4)(ii)(A) of this section only when the State submitting the request already has an approved program under § 63.94, the Federal standard for the source category has been promulgated under section 112(h), and the Administrator has not determined the work practice, design, equipment or operational requirements submitted by the State to be inadequate under the provisions of the Federal standard.

(5) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State authorities contain or demonstrate:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule; and

(4) At a minimum, the approved State authorities must include the following compliance and enforcement measures. (For authorities addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in § 63.95.)

(i) The approved authorities must include a method for determining compliance.

(ii) If a standard in the approved authorities is not instantaneous, a maximum averaging time must be established.

(iii) The authorities must establish an obligation to periodically monitor or test for compliance using the method established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

(iv) The results of all required monitoring or testing must be reported at least every 6 months.

§ 63.94 Approval of a State program that substitutes for section 112 emission standards.

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted by the State under part 70 of this chapter.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section

and reference to all documents submitted under § 63.91(b)(2) will be published in the **Federal Register** and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of this section or § 63.91 have not been met, the Administrator will disapprove the State program.

(4) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources or source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval:

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 of this chapter and in accordance with the schedule submitted under § 63.91(b)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each affected source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

§ 63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of an Accidental Release Prevention (ARP) program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that specify substances, related thresholds and a risk management program,

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act; and

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy;

(4) A description of the coordination mechanisms the State implementing agency will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees; and

(iii) The air permitting program with respect to sources subject to both section 112(r) of the Act and permit requirements under part 70 of this chapter.

(c) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (b) of this section.

§ 63.96 Review and withdrawal of approval.

(a) *Submission of information for review of approval.* (1) The Administrator may at any time request any of the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or since the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that the EPA has promulgated since approval or since the immediately previous EPA review,

(v) A list of part 70 or other permits issued, amended, revised, or revoked since approval or since immediately previous EPA review, for sources subject to a State rule or program approved under this subpart.

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a state rule or program.* (1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to

the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate authorities to assure compliance or resources to implement and enforce the approved rule or program, or

(ii) The State is not adequately implementing or enforcing the approved rule or program, or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State rule or program for which approval is withdrawn is no longer Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will be the federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements. Such schedule shall include interim emission limits where appropriate. During this transition, sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Upon withdrawal, the State shall reopen, under the provisions of § 70.7(f) of this chapter, the part 70 permit of each source subject to the previously approved rules or programs in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to part 70 permits, the applicable State rules are no longer Federally enforceable.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(5) If a rule approved under § 63.93 is withdrawn under the provisions of § 63.96(b)(2) (i) or (ii), and, at the time of withdrawal, the Administrator finds the rule to be no less stringent than the otherwise applicable Federal requirement, the Administrator will grant equivalency to the previously approved State rule under the appropriate provisions of this part.

(6) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new rule or program or portion of a rule or program is approvable according to the criteria and procedures of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(7) A State may voluntarily withdraw from an approved State rule, program or portion of a rule or program by notifying the EPA and all affected sources subject to the rule or program and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the Administrator will publish a timetable for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(f), and the Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(iii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(iv) Voluntary withdrawal shall not be effective sooner than 180 days after the State notifies the EPA of its intent to voluntarily withdraw.

[FR Doc. 93-28821 Filed 11-24-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-139; RM-8211, RM-8307]

Radio Broadcasting Services; Anchorage and Seward, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C1 for Channel 275C2 at Anchorage, Alaska, and modifies the license for Station KXDZ (FM) to specify operation on the higher powered channel, in response to a request filed by American Radio Brokers, Inc. Additionally, Channel 290A is substituted for vacant Channel 276A at Seward, Alaska, to accommodate the modification of Station KXDZ (FM) at Anchorage, in response to a counterproposal filed by American Radio Brokers, Inc. (RM-8307). See 58 FR 32338 (June 9, 1993). Coordinates for Channel 276C1 at Anchorage are 61-09-58 and 149-49-34. Coordinates for Channel 290A at Seward are 60-06-15 and 149-26-32. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 27, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-139, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street NW., room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 275C2 and adding Channel 276C1 at Anchorage, and by removing Channel 276A and adding Channel 290A at Seward.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28923 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-222; RM-8297]

Radio Broadcasting Services; Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C3 to Moberly, Missouri, as that community's third local FM broadcast service in response to a petition filed by KWIX Inc. The coordinates for Channel 247C3 are 39-26-22 and 92-15-28. There is a site restriction 15.2 kilometers (9.5 miles) east of the community. With this action, this proceeding is terminated.

DATES: Effective December 27, 1993. The window period for filing applications for Channel 247C3 at Moberly will open on December 29, 1993, and close on January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93-222, adopted October 28, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 247C3, Moberly.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28927 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-209; RM-8282]

Radio Broadcasting Services; Rainelle, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of R-B Company, Inc., substitutes Channel 237B1 for Channel 237A at Rainelle, West Virginia, and modifies Station WRRL-FM's construction permit accordingly. See 58 FR 40402, July 28, 1993. Channel 337B can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements with a site restriction of 21 kilometers (13 miles) northeast to avoid a short-spacing to Station WXIL, Channel 236B, Parkersburg, West Virginia. The coordinates for Channel 237B1 at Rainelle are North Latitude 38-07-21 and West Longitude 80-37-37. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6430.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-209, adopted October 19, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 237A and adding Channel 237B1 at Rainelle.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28926 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 93-35; FCC 93-479]

Private Land Mobile Radio Services; Channel Exclusivity for Qualified Private Paging Systems at 929-930 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules governing private paging systems at 929-930 MHz to grant channel exclusivity to qualified local, regional, and national paging systems. This action responds to a petition for rule making filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc., and is intended to prevent frequency congestion and provide incentives for paying licensees to invest in superior technology.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Furth, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 93-35, FCC 93-479, adopted October 21, 1993, and released November 17, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

A. Introduction and Background

1. In the Report and Order, we amend part 90 of the Commission's rules to

grant channel exclusivity to qualified 929–930 MHz private paging systems. The proceeding was initiated by a Notice of Proposed Rule Making, 8 FCC Rcd 2227, published at 58 FR 17819 (April 6, 1993). Under the rules adopted today, paging systems consisting of six or more transmitters will be entitled to local exclusivity in most areas, and larger systems can obtain regional or nationwide exclusivity. Exclusivity will be implemented on 35 of 40 private paging channels, while five channels will continue to be assigned on a shared basis. Exclusivity is conditioned on completion of construction within eight months of licensing, with "slow growth" extensions allowed under some circumstances. Existing systems meeting the new criteria will obtain immediate exclusivity, and all other existing systems will be grandfathered.

B. Need for Exclusivity

2. Under our previous rules, the 40 private paging frequencies at 900 MHz were assigned on a shared basis, with applications subject to frequency coordination to maximize efficient channel use. Since these rules were adopted in 1982, however, the demand for paging services, and particularly for services that can be offered on a wide-area basis, has increased dramatically. As demand for paging spectrum grows, the sharing of paging frequencies, although technically feasible, threatens to discourage optimally efficient use. Even where sharing has not been necessary in the past, licensees are reluctant to invest in advanced paging technology because of the risk that others will be assigned to the same frequency in the future. Therefore, in order to create a more stable, predictable environment for investment in wide-area, high-capacity paging systems, we are establishing "earned" channel exclusivity for 929–930 MHz paging systems.

C. Exclusivity Criteria

3. In all but the three largest urban markets, we will grant local exclusivity to any paging system comprised of at least six contiguous transmitters (to be "contiguous," each transmitter must be within 25 miles of at least one other transmitter in the system and not co-located with another transmitter being counted toward the minimum on the same frequency). In the three largest markets, 18 transmitters will be required. For purposes of meeting this minimum, multiple licensees (e.g., affiliates, subsidiaries, joint venture partners) will be allowed to aggregate transmitters provided they are part of a single jointly operated system and otherwise meet our criteria.

4. Regional systems comprised of 70 or more transmitters situated in no more than 12 adjacent states will receive the same co-channel protection as local systems, except that protection is extended to non-contiguous transmitters in the system. However, to prevent applicants from attempting to "block out" major markets through strategic transmitter placement, regional system operators proposing to serve any of the top 30 markets must meet the criteria for local exclusivity in those markets.

5. Nationwide paging systems may obtain nationwide exclusivity provided they (1) have a minimum of 300 transmitters, (2) provide service to fifty or more markets, including at least twenty-five of the top fifty markets, and (3) serve at least two markets in each of seven designated regions. This standard distinguishes truly national paging systems from those that are essentially regional in character. We also adopt the suggestion of several commenters to extend the scope of nationwide exclusivity to include Alaska, Hawaii, and Puerto Rico.

6. Many commenters raise the issue of whether licensees should be allowed to count the same transmitter for exclusivity purposes on more than one frequency by use of "frequency-agile" transmitters. To prevent the potential hoarding of multiple frequencies, we will allow multi-frequency transmitters to be counted only once for exclusivity purposes. A licensee using multi-frequency transmitters may qualify for exclusivity on two frequencies, however, by constructing twice the number of transmitters required to obtain one channel.

7. For those systems that qualify for local and regional exclusivity, minimum mileage separations will be imposed on co-channel licensees. Required separation distances are based on the antenna height and effective power of the protected system's transmitters, and are similar to our rules for 930–931 MHz common carrier paging frequencies. For those systems that qualify for nationwide exclusivity, no new licensing of co-channel systems will be allowed anywhere in the continental United States, Hawaii, Alaska, or Puerto Rico.

D. Channel Allocation

8. The new rules apply to 35 of the 40 929–930 MHz channels. The remaining five channels (929.0375, 929.0625, 929.0875, 929.1625, and 929.2625) will continue to be assigned on a non-exclusive basis. This reserve will be particularly useful to small non-commercial systems that do not need or desire an exclusive channel assignment. Commercial and non-commercial operators are equally eligible to apply for any 929–930 MHz frequency, whether it is shared or exclusive.

E. Construction and Technical Requirements

9. Exclusivity is granted conditionally upon frequency assignment and runs for eight months from initial licensing, at which point constructed stations will receive final exclusivity. Licensees will not be allowed to extend the eight-month limit by applying for license modifications. Applicants seeking to build larger systems (30 or more transmitters) may apply for up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable, and a commitment to obtain a performance bond or place funds in escrow to cover estimated construction costs. If the system is not constructed and operating at the end of the relevant construction period, exclusivity will be forfeited and the channel made available to other applicants.

10. To discourage speculative applications, the Order establishes minimum technical standards for each transmitter to be counted towards the number required for channel exclusivity. Specifically, each transmitter must have 100 watts minimum output power and simulcast capability, and all transmitters must function together as part of a single operating system.

11. To prevent applicants from applying for multiple frequencies to block entry by potential competitors, applicants are limited to requesting one frequency at a time at any location. An applicant may not request a second frequency in a given area unless and until it completed construction and commenced operation of a qualified system in that area on the initial frequency.

F. Existing Systems and Future Licensing

12. The Order provides that all incumbent licensees will be grandfathered with respect to their existing systems, and those who meet our exclusivity criteria will be granted exclusivity. The grandfathering provisions of the Order apply to all 929–930 MHz paging licenses granted on or before October 14, 1993 and to licensees subsequently granted based on applications filed on or before October 14, 1993. It should be emphasized that the rules grant incumbent licensees protection only against new co-channel

licensing: To the extent that grandfathered licensees are currently sharing frequencies with each other, they must continue to comply with the obligations of mutual cooperation and non-interference that have applied previously.

13. With respect to future expansion, the Commission will process all future applications for 900 MHz paging licenses, i.e., applications filed after October 14, 1993, on a first-come, first-served basis. Applications for new licenses will be accepted only if the resulting system qualifies for exclusivity under our rules and does not violate our minimum separation standards with respect to other systems that have previously qualified for exclusivity on the same frequency. In the event of simultaneously filed mutually exclusive applications, we will grant a dispositive preference in favor of an application to expand an existing system over an application to construct a new system. With respect to simultaneous mutually exclusive applications where no party is entitled to a preference, we will defer action until the conclusion of our pending rule making on competitive bidding procedures.

G. Coordination

14. NABER will continue as coordinator for this during the initial implementation and commencement of licensing under this Order, but we are prepared to introduce additional coordinators into this process once we are assured that they are capable of developing a coordination data base and exchanging data base information instantaneously with other coordinators. The Order delegates authority to the Chief of the Private Radio Bureau to develop specific standards for those who wish to provide coordination service at 929–930 MHz and to authorize coordination as soon as possible by those who demonstrate the ability to meet those standards.

H. Transition Procedures

15. To facilitate the transition from shared to exclusive licensing, we are implementing the following procedures. Within thirty days of the effective date of this Order, any incumbent licensee that believes it qualifies for exclusivity based on existing construction or authorizations shall submit a request for designation of exclusive status to NABER. The request shall provide information demonstrating that the licensee's paging system qualifies for exclusivity under the criteria set forth in this Order. NABER will review all submissions, confirm that they meet our exclusivity criteria, and forward confirmed requests to the Commission for final review, approval, and entry into our licensing data base. Once this process is complete, we will begin processing new applications. New applicants will be required to provide the exclusivity information described above as part of their application. Further details of these procedures will be provided by Public Notice.

I. Conditional Operation

16. We are making a minor modification to our rules on conditional licensing to allow conditional operation of 929–939 MHz stations located above "Line A," i.e., within 250 miles of the Canadian border. Previously, we did not allow conditional operation of such stations above Line A because such applications required coordination with Canada prior to licensing. In July 1992, however, the Commission and Canada's Department of Communications agreed that such coordination was no longer necessary at 929–930 MHz. We have received a petition from PageNet requesting that we amend our conditional permit rules to conform to this agreement. Although this matter was not raised in the Notice in this proceeding, we consider this to be a minor and non-controversial matter in which the public is unlikely to be interested. Accordingly, we find good cause to conclude that notice and comment is unnecessary. Therefore, we are amending our rules to allow conditional operation of 929–939 MHz stations above Line A, provided all other requirements of our rules are met.

Final Regulatory Flexibility Analysis

17. Pursuant to the Regulatory Flexibility Act of 1980, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be viewed at the Commission's offices or obtained from its copy contractor.

Ordering Clauses

18. Accordingly, *it is ordered that,* Pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth below.

19. *It is further ordered* that this Report and Order will be effective thirty days after publication in the **Federal Register**.

20. *It is further ordered* that PageNet's Petition for Rule Making, filed August 9, 1993, is dismissed as moot.

21. *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Business and industry, Channel exclusivity, Private carrier paging, Private land mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.159 is amended by revising paragraph (b)(1) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) * * *

(1) For applicants proposing to operate below 470 MHz, that the proposed station location is south of Line A or west of Line C as defined in § 90.7; for applicants in the one-way paging 929–930 MHz band, that the proposed station location is west of Line C as defined in § 90.7.

* * * * *

3. Section 90.175 is amended by revising paragraph (c) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(c) For frequencies in the 929–930 MHz band. A statement from the coordinator recommending the most appropriate frequency. For applications under § 90.495, the coordinator's statement must verify that the proposed system meets the requirements of that section.

* * * * *

4. Section 90.494 is revised to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

(a) The following frequencies are available to all eligible part 90 users for one-way paging systems on an exclusive basis as provided under § 90.495:

929.0125, 929.1125, 929.1375, 929.1875, 929.2125, 929.2375, 929.2875, 929.3125, 929.3375, 929.3625, 929.3875, 929.4125, 929.4375,

929.4625, 929.4875, 929.5125, 929.5375, 929.5625, 929.5875, 929.6125, 929.6375, 929.6625, 929.6875, 929.7125, 929.7375, 929.7625, 929.7875, 929.8125, 929.8375, 929.8625, 929.8875, 929.9125, 929.9375, 929.9625, 929.9875

(b) The following frequencies are available to all eligible part 90 users for one-way paging systems on a shared basis only and will not be assigned for the exclusive use of any licensee.

929.0375, 929.0625, 929.0875, 929.1625, 929.2625

(c) All frequencies listed in this section may be used to provide one-way paging communications to persons eligible for licensing under subpart B, C, D, or E of this part, representatives of Federal Government agencies, and individuals. The provisions of § 90.173(b) apply to all frequencies listed in this section.

(d) Licensees on these frequencies may utilize any type of paging operation desired (tone only, tone-voice, digital, tactile, optical readout, etc.).

(e) There shall be no minimum or maximum loading standards for these frequencies.

(f) Except as provided in paragraph (g) of this section, the effective radiated power and antenna height for base stations providing one-way paging service in the frequency band 929–930 MHz must not exceed 1 kilowatt (30 dBw) and 304 meters (1000 feet) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) [meters/(feet)]	Effective radiated power (ERP) (watts)
Above 1357 (4500)	65
Above 1205 to 1357 (4000 to 4500)	70
Above 1056 to 1205 (3500 to 4000)	75
Above 904 to 1056 (3000 to 3500)	100
Above 762 to 904 (2500 to 3000)	140
Above 609 to 762 (2000 to 2500)	200
Above 457 to 609 (1500 to 2000)	350
Above 304 to 457 (1000 to 1500)	600

(g) Stations operating as part of nationwide paging systems under § 90.495(a)(3) may operate at a maximum effective radiated power of 3500 watts.

5. Section 90.495 is added to read as follows:

§ 90.495 Channel exclusivity for local, regional, and national paging systems.

(a)(1) Applicants for commercial or non-commercial private paging stations in the 929–930 MHz band are eligible for channel exclusivity based on the minimum separation standards provided in this section. To qualify for exclusivity, applicants must construct and operate a local, regional, or nationwide paging system that conforms to the following criteria:

(i) A local system must consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets, as defined in § 90.741, where 18 contiguous transmitters are required. For purposes of this section, transmitters will be considered contiguous if:

(A) Each transmitter is located within 25 miles (40 kilometers) of at least one other transmitter in the system;

(B) The combined areas defined by a 12.5 mile radius around each transmitter form a single contiguous area; and

(C) No transmitter is co-located with any other transmitter being counted as part of a local system for purposes of this section.

(ii) Transmitters will be considered co-located for purposes of this section if they are situated on a common antenna, building, antenna farm, or similar facility.

(2) A regional system must consist of 70 or more transmitters, not necessarily contiguous as defined in paragraph (a)(1)(i) of this section, located in no more than twelve adjacent states in the continental United States. In each of the top thirty markets listed in § 90.741, no transmitter may be counted as part of a regional system under this paragraph unless it would also qualify as part of a local system under paragraph (a)(1)(i) of this section.

(3) A nationwide system must consist of 300 or more transmitters in the continental United States, Alaska, Hawaii, and Puerto Rico, and must provide service to at least 50 markets listed in § 90.741, including 25 of the top 50 markets and two markets in each of the following regions:

(i) Region 1—Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.

(ii) Region 2—Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.

(iii) Region 3—Illinois, Indiana, Ohio, Michigan, Wisconsin.

(iv) Region 4—Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.

(v) Region 5—Arkansas, Kansas, Missouri, Oklahoma, Texas.

(vi) Region 6—Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.

(vii) Region 7—California, Nevada.

(4) No transmitter may be counted as part of a local, regional, or nationwide system under this section unless it is capable of at least 100 watts output power, has simulcast capability, and is to be operated as part of the paging system for which channel exclusivity is sought. Transmitters that are part of a single paging system need not be licensed to a single entity to comply with this requirement.

(5) Frequency-agile transmitters may be counted no more than once for purposes of this section. A licensee using frequency-agile transmitters may qualify for exclusivity on a second frequency by constructing twice the number of transmitters required to obtain exclusivity on a single frequency, provided that all other requirements of this section are met.

(6) The provisions of this section apply solely to the frequencies listed in § 90.494(a).

(b) If a paging licensee qualifies for exclusivity under paragraph (a) of this section, no co-channel authorization may be granted to another applicant except in compliance with the separation requirements set forth in this paragraph.

(1) The following table of heights and powers is used to classify all 929–930 MHz paging stations:

Average antenna height above average terrain [meters/(feet)]	Station Class					
1206–1526 (4001–5000)	G	G	F	E	F	F
862–1205 (2826–4000)	H	G	G	F	F	F
610–861 (2001–2825)	K	H	H	G	F	F
427–609 (1401–2000)	L	K	H	G	G	G
304–426 (1001–1400)	L	L	K	H	G	G

Average antenna height above average terrain [meters/(feet)]	Station Class					
177–303 (581–1000)	L	L	L	L	K	H
0–176 (0–580)	L	L	L	L	L	L
Effective radiated power (watts)	125	250	500	1000	1860	3500

(2) The minimum distance between each co-channel station and each transmitter in a system qualified for local or regional exclusivity under paragraph (a) of this section is determined by the following table:

MINIMUM SEPARATION BETWEEN CO-CHANNEL STATIONS

[kilometers/(miles)]

Station Class:					
L	112 (70)				
K	120 (75)	125 (78)			
H	128 (80)	133 (83)	138 (86)		
G	163 (101)	168 (104)	173 (107)	187 (116)	
F	223 (139)	227 (142)	233 (145)	247 (154)	275 (171)
Station class	L	K	H	G	F

(3) No co-channel authorization will be granted in the continental United States, Alaska, Hawaii, or Puerto Rico on any frequency assigned to a nationwide paging system as defined in paragraph (a)(3) of this section.

(4) The separation standards set forth in this section do not apply to the placement of co-channel stations that have been authorized on or prior to October 14, 1993 or that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993.

(c) A proposed paging system that meets the criteria for channel exclusivity under paragraph (a) of this section will be granted exclusivity under this section at the time of initial licensing. Such exclusivity will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within eight months of the licensing date. If exclusivity expires for failure to construct a qualified system:

(1) The licensee may operate constructed stations, but such operation will be secondary to that of any licensee who qualifies for exclusivity under this section; and

(2) The licensee may not apply for any new station authorization in the previously proposed service area for one year from the expiration of exclusivity.

(d) Applications for channel exclusivity may request no more than one frequency in each location to be served. No applicant or affiliate of an applicant may apply for an additional frequency in an area that is the subject of the applicant's prior application unless the system proposed in the prior application has been constructed, is operating, and meets the criteria set forth in paragraph (a) of this section.

(e) Paging licensees may obtain channel exclusivity for stations that have been authorized on or prior to October 14, 1993, or for stations that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993, by showing that such stations constitute part of a paging system that meets the criteria set forth in paragraph (a) of this section.

(f) Applications for stations will be deemed mutually exclusive if they are filed on the same day for the same frequency and if the grant of both applications would violate the separation standards set forth in paragraph (b) of this section. Where a 929–930 MHz licensee applies to add a station or stations to a system that has previously qualified for exclusivity under paragraph (a) of this section, applicants who are seeking to construct new systems in the same area and whose applications are mutually exclusive with the licensee's application will be deemed ineligible and such applications will be dismissed as unacceptable for filing.

6. Section 90.496 is added to read as follows:

§ 90.496 Extended implementation schedule.

For applications filed with the Commission after October 14, 1993, a period of up to three years may be authorized for construction and commencement of operations if the proposed system to be constructed qualifies for channel exclusivity under § 90.495(a), is comprised of more than 30 transmitters, and the applicant submits justification for an extended implementation period.

(a) The justification must include reasons for requiring an extended construction period and a proposed construction schedule (with milestones). The applicant must also provide a construction cost estimate and must certify that within 30 days of the grant of its application, it will either place a sum equal to the estimate in an escrow account or obtain a performance bond payable in that amount. An applicant who proposes to establish an escrow fund or obtain a bond equal to $20,000 for each proposed transmitter and who otherwise meets our slow-growth criteria will be presumed to qualify for an extension. An applicant whose request is based on a cost estimate lower than $20,000 per transmitter will not receive this presumption and must submit an itemized statement demonstrating that the reduced estimate is reasonable.

(b) A licensee who elects to place funds in escrow as provided in paragraph (a) of this section must provide the Commission with the name of the financial institution that holds the escrow account and the account number. A licensee who elects to post a performance bond as provided in paragraph (a) of this section must use a surety company deemed acceptable within the meaning of 31 U.S.C. 9304 *et seq.* (see, e.g., Department of the Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies, 57 FR 29356 (1992)), and the bond must name the United States Treasury as beneficiary in the event of the licensee's default. The licensee must

provide the Commission with a copy of the performance bond, including all details and conditions.

(c) As construction of the system proceeds, the licensee may draw from the escrow account or reduce the bond amount to reflect costs incurred, except that the amount of any reduction amount may not exceed the originally estimated construction cost of that portion of the system, even if the actual cost was higher. The amount of the reduction is subject to review and modification by the Commission. If the licensee fails to construct all or part of the proposed system within the extended construction period, the escrow balance or the outstanding principal on the bond will be paid to the United States Treasury.

(d) If an extended construction schedule is authorized under this section, channel exclusivity under § 90.495 will be extended for the duration of the construction period.

(e) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss or authorizations for facilities not constructed and loss of exclusivity as provided in § 90.495(c).

[FR Doc. 93-28920 Filed 11-24-93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 14]

Passenger Automobile Average Fuel Economy Standards; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for its model year (MY) 1995 and 1996 passenger automobiles, and that lower alternative standards be established for it. This decision exempts Rolls-Royce and establishes an alternative standard of 14.6 mpg for each of MYs 1995 and 1996 for Rolls-Royce.

DATES: *Effective date:* January 10, 1994.

Applicability: This exemption and the alternative standards apply to Rolls-Royce for MYs 1995 and 1996.

Petitions for reconsideration: Petitions for reconsideration must be received no later than December 27, 1993.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Yolene Young, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Young's telephone number is: (202) 366-4802.

SUPPLEMENTARY INFORMATION:

Background

NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1995 and 1996 model year (MY) passenger automobiles and establishing alternative standards applicable to Rolls-Royce for each of these model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second MY before the MY for which the exemption is sought (the affected MY) and that will manufacture fewer than 10,000 passenger automobiles in the affected MY. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Proposed Decision and Public Comment

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable MY 1995 and 1996 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 14.6 mpg be established for Rolls-Royce for each of those model years (58 FR 41228; August 3, 1993).

The agency received one comment in response to the proposed decision. The comment was from Mr. William R. Ludt, who recommended that the alternative standards proposed for Rolls-Royce be amended to 16.5 mpg for MY 1995, and 17.8 mpg for MY 1996. Mr. Ludt stated that the alternative standards he recommended would "more closely reflect the intent of the regulations," since 16.5 and 17.8 mpg represent, respectively, "compliance factor(s)" of 60 percent and 65 percent of the generally applicable standard of 27.5 mpg.

NHTSA has decided not to adopt Mr. Ludt's recommendation. NHTSA's proposed decision presented several reasons why it would not be technologically feasible or economically practicable for Rolls-Royce to improve the fuel economy of its MY 1995 and 1996 automobiles above an average of 14.6 mpg. Mr. Ludt did not refute the agency's reasoning or provide a technical evaluation of how the higher standards he proposed for MYs 1995 and 1996 would be technologically feasible and economically practicable. Thus, the agency has no basis to adopt Mr. Ludt's recommendations.

NHTSA Final Determination

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in each of MYs 1995 and 1996 is 14.6 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1995 and 1996 model years and establishes an alternative standard of 14.6 mpg for Rolls-Royce for each of these years.

Regulatory Impacts

NHTSA has analyzed this decision, and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and

procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Departmental policies and procedures were applicable, the agency would have determined that this action is not "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's MY 1995 and 1996 automobiles cannot achieve better fuel economy than 14.6 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Rolls-Royce. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MYs 1995 and 1996. Since the price of 1995 and 1996 Rolls-Royce automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

[Miles per gallon]

Model year	Average fuel economy standard
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8
1995	14.6
1996	14.6

* * * * *

Issued on November 19, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93-28946 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–53]

Airworthiness Directives; Pratt & Whitney Canada Model PT6A–67D Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede priority letter AD 92–27–19 by adopting a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that currently requires inspections of the compressor turbine (CT) disk and blades for cracking and other irregularities using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) and installing a placard that alerts the pilot of this restriction. This proposal would continue all the requirements of the current priority letter AD and require the installation of parts having an improved design including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. This proposal is prompted by the manufacturer developing new design improvements that will reduce the susceptibility of the CT blades to high cycle fatigue (HCF) damage. The actions specified by the proposed AD are intended to prevent engine failure and inflight engine shutdown due to HCF failure of the CT blades.

DATES: Comments must be received by January 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–53." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 28, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–27–19, applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that requires deblading the compressor turbine (CT) disk; inspecting the entire disk surface area and fir tree areas of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) by inserting requirements that describe restricting continuous engine operation above 94.0% and below 97.1% N1 (Gas Generator RPM); and installing a placard that alerts the pilot of this restriction. That action was prompted by a report from Transport Canada, which is the airworthiness authority of Canada. Transport Canada advised that they received a report of a CT blade failure due to a high cycle fatigue (HCF) fracture in the fir tree area of the blade while exposed to normal engine vibrations. That condition, if not corrected, could result in an engine failure and inflight engine shutdown due to a CT blade fracture.

Since the issuance of that priority letter AD, the manufacturer has developed parts having an improved design, including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. These design improvements entail installing a CT vane ring with fourteen vanes, replacing 25 vanes on the existing PWC PT6A–67D engine, thereby reducing vibratory input to the CT blades. The improved CT blade with feather seals also improves blade root cooling air flow.

PWC has issued Service Bulletin (SB) No. 14128, Revision 3, dated April 19, 1993, that specifies procedures for CT blade inspections; SB No. 14132, Revision 1, dated May 12, 1993, that specifies procedures for CT stator vane

replacement; and SB 14142, Revision 1, dated May 12, 1993, that specifies procedures for CT blade replacement. Transport Canada classified these service bulletins as mandatory and issued AD CF-92-25-R1, dated June 1, 1993, in order to assure the airworthiness of these PWC PT6A-67D engines in Canada.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other PWC PT6A-67D engines of the same type design registered in the United States, the proposed AD would supersede priority letter AD 92-27-19 to retain the inspections and AFM revisions required by the current AD, but would also require installation at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first, the CT turbine stator assembly, CT shroud housing, small exit duct assembly, CT blades, and feather seals. Installation of this hardware constitutes terminating action to the inspections required by this AD. PWC has advised the FAA that December 31, 1994, is the earliest compliance end-date possible due to parts availability. The actions are required to be accomplished in accordance with the service bulletins described previously. Engines manufactured after the introduction of these new parts already include these design improvements. Therefore, this proposal limits the applicability by engine serial number to those engines manufactured before the new parts were introduced.

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that 87 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per engine to accomplish the proposed installation of improved hardware, and that the average labor rate is $55 per work hour. PWC advises the FAA that it will reimburse operators for the cost of labor and the cost of required parts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be negligible.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 93-ANE-53.

Applicability: Pratt & Whitney Canada (PWC) Model PT6A-67D turboprop engines with serial numbers prior to PC-E114100, installed on but not limited to Beech Model 1900D airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and inflight engine shutdown due to high cycle fatigue (HCF) failure of the compressor turbine (CT) blades, accomplish the following:

(a) Prior to further flight, amend the Beech Model 1900D Aircraft Flight Manual (AFM), Part Number (P/N) 129-590000-3, by inserting the following requirements between pages 2-4 and 2-5:

"ENGINE OPERATING LIMITATIONS

Gas Generator RPM (N1)—Continuous operation of the gas generator between 94.0% and 97.1% is prohibited.

Notes

1. This limitation does not prohibit the use of N1's between 94.0% and 97.1% when the pilot in command determines that the power setting is required for the safe operation of the airplane. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

2. This limitation does not prohibit the use of static Take-Off Power and Maximum Continuous Power between 94.0% and 97.1% N1 to meet the required Take-Off performance. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

3. Operation at 94.0% and below, and at 97.1% and above are permitted. Continuous operation at 94.1% through 97.0% is prohibited.

4. "Continuous Operation" means time periods exceeding 5 minutes.

5. High Speed Cruise Power Tables found in the Pilot's Operating Manual may produce N1's in the prohibited range. Flights should be planned using Intermediate or Long Range Power settings.

6. The goal of the operator should be to keep the total time of operation in the prohibited range to the absolute minimum, since the effects of operating between N1's of 94.0% and 97.1% are cumulative.

Placards

Located in front of the pilot on the aft edge of the glareshield between the Master Caution annunciator and the fire extinguisher control switch:

CONTINUOUS OPERATION BETWEEN

94.0% AND 97.1% N1 IS PROHIBITED

SEE AFM

(b) Compliance with the requirements of paragraph (a) of this AD may also be accomplished by inserting a copy of this AD into the Beech Model 1900D AFM.

(c) Prior to further flight, install the placard as specified in paragraph (a) of this AD.

(d) For engines that have not been inspected prior to the effective date of this AD in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, or debladed and inspected in accordance with PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, accomplish the following:

(1) For engines with Serial Numbers PC-E114001 to PC-E114044, within 25 hours time in service (TIS) after the effective date

of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(2) For engines with Serial Numbers PC-E114045 to PC-E114099, within 50 hours TIS after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(e) For engines that have been inspected in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, prior to the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, as follows:

(1) For blade sets with greater than 600 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 50 hours TIS.

(2) For blade sets with greater than or equal to 250 hours TIS, and less than or equal to 600 hours TIS, since new, on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 100 hours TIS.

(3) For blade sets with less than 250 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 250 hours TIS.

(f) For uninstalled CT disk and blade assemblies that have not been inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, in the preceding 250 hours TIS from the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to installation.

(g) For engines with CT disk and blade assemblies that have been debladed and inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to the effective date of this AD, within 250 hours TIS since the last deblading and inspection, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(h) For CT disk and blade assemblies that have been debladed and inspected in accordance with paragraphs (d), (e), (f), and (g) of this AD, deblade the CT disk, reinspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, at intervals not to exceed 250 hours TIS since the last deblading and inspection performed in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(i) Install a CT stator assembly, a CT shroud housing, and a small exit duct assembly in accordance with PWC SB No. 14132, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(j) Install CT blades and feather seals in accordance with PWC SB No. 14142, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(k) For the purpose of this AD, a shop visit is defined as when major engine flanges are separated.

(l) Installation of improved hardware in accordance with paragraphs (i) and (j) of this AD constitutes terminating action for the inspections required by paragraphs (d) through (h) of this AD.

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-28954 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-ASW-49]

Proposed Modification of Class E Airspace: Follett, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Follett, TX. The cancellation of the nondirectional radio beacon (NDB) Runway (RWY) 35 standard instrument approach procedure (SIAP) serving the Follett/Lipscomb County Airport has necessitated this proposal. Controlled airspace extending upward from 700 feet above ground level (AGL) is no longer needed for instrument flight rule (IFR) operations for the NDB RWY 35 SIAP at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-49, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: 817-624-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following

statement: "Comments to Airspace Docket No. 93–ASW–49." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 4400 blue Mound Road, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Follett, TX. The cancellation of the NDB RWY 35 standard instrument approach procedure (SIAP) serving the Follett/Lipscomb County Airport has prompted this proposal. Controlled airspace will no longer be needed for the NDB RWY 35 SIAP at this location. Airspace reclassification effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Follett, TX [Revised]

Follett/Lipscomb County Airport, TX
(Lat. 36°26′27″ N., long. 100°07′25″ W.)
Gage VORTAC
(Lat. 36°20′37″ N., long. 99°52′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Follett/Lipscomb County Airport and within 8 miles north and 4 miles south of the 296° and 117° radial's of the Gage VORTAC extending from the airport to 29.1 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28976 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–64–91]

RIN 1545–AQ88

Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of the location of a public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of location for the public hearing on proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 263A of the Internal Revenue Code. The notice of public hearing on these proposed regulations was published in the **Federal Register** for Friday, October 29, 1993 (58 FR 58145), and a rescheduling of this public hearing; change of date to submit requests to speak and outlines of oral comments was published in the **Federal Register** for Wednesday, November 10, 1993 (58 FR 59698). The notice of public hearing and rescheduling of the public hearing for the related proposal to prepare a revenue procedure (TD 8482) were published simultaneously at 58 FR 58101 and 58 FR 59657, respectively. The proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA–64–91) and the requests for comments regarding the approach for implementing required

method changes (TD 8482) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See change of location of the public hearing for TD 8482 elsewhere in this issue of the **Federal Register**.

There is a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

All other details with respect to the previously published documents remain the same.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-28925 Filed 11-24-93; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CCGD11-93-007]

RIN 2115-AE62

Regulated Navigation Area; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to restrict vessel movement in Commercial Anchorage G and to expand the Regulated Navigation Area at the approach to Los Angeles/Long Beach Harbor, California and prescribe certain vessel operating requirements for vessels operating in that area. The proposed changes are proactive prevention measures to enhance navigation safety in the approach to and departure from this heavily transited area. The proposed rule would not change existing regulations associated with the pilot areas.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments may be mailed to Commander(oan), Eleventh Coast Guard District, 501 West Ocean Blvd., Long Beach, CA 90822, Attn: CCGD11-93-007 or may be delivered to suite 6200 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (310) 980-4300 ext 501.

The Eleventh Coast Guard District Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at suite 6200, Eleventh Coast Guard District office, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott Pisel, Aids to Navigation and Waterways Management Branch, telephone (310) 980-4300 ext 501.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CCGD11-93-007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eleventh District Commander at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Commander Michael Haucke, Project Manager, and Lieutenant Commander Craig Juckniess, Project Counsel.

Background and Purpose

The combined harbor of Los Angeles and Long Beach is the largest shipping complex in the United States. Since 1980, over 7,000 vessels have called on the port annually, equalling over 14,000 transits of the regulated navigation area. During times of heavy traffic, incoming traffic in the morning and outgoing traffic in the evening, large ships may be closer than one minute apart when moving through the bottleneck of the two breakwater harbor entrances or gates. The Coast Guard, desiring to take a proactive role in the prevention of maritime accidents, proposes to restrict vessel movement in Commercial Anchorage G and expand the regulated navigation area to ensure maritime safety through better regulation of vessel movements in the prescribed area.

The proposed regulated navigation area contains two pilot areas, a restricted navigation area and a precautionary area. All are marked on navigational charts.

The now disbanded Los Angeles/Long Beach Port and Navigational Safety Committee, consisting of Long Beach, Los Angeles and Navy Pilots; Ports of Los Angeles and Long Beach; dry cargo vessel operators; the tanker industry; the towing industry; and the U.S. Navy and Coast Guard, worked to minimize risk, reduce close calls, and prevent collisions in San Pedro Bay. After the EXXON VALDEZ grounding in 1989, the Committee accelerated their work to improve navigational safety and focused specifically on San Pedro Bay. The Committee agreed that a larger regulated navigation area, better organization, and better regulation of incoming and outgoing vessel traffic was needed to prevent accidents.

Pursuant to the State of California Oil Spill Prevention, Abatement, and Removal Act of 1990, the Long Beach/Los Angeles Harbor Safety Committee was created. This new committee, with representatives from the Ports of Los Angeles and Long Beach, local pilots, tank vessel operators, dry cargo vessel operators, towing industry, a local environmental representative, Los Angeles Fisherman's Association, a maritime labor representative and the State of California, agrees that better regulation of vessel movements in the prescribed area will increase navigation safety.

Discussion of Proposed Amendments

The proposed rules will enhance navigation safety by requiring specific vessels within the designated area to operate within certain parameters.

It is proposed that the existing regulation concerning Commercial Anchorage G (33 CFR 165.1109(d)) be moved to 33 CFR 110.214(a)(7)(iii). Regulations concerning the anchorages are more appropriately located in 33 CFR part 110.

The following changes to § 165.1109 are also proposed:

(1) The regulated navigation area be expanded to three nautical miles from the breakwaters;

(2) The pilot area coordinates be converted to 1983 North American Datum;

(3) Specified vessel speed in the regulated navigation area be limited to 12 knots;

(4) All verbal contact between specified vessels in the regulated navigation area be communicated in the English language;

(5) Specified vessels in the regulated navigation area be required to make verbal passing arrangements via radiotelephone in addition to sound signals required by the COLREGS;

(6) A prohibition from entering the pilot area unless inbound or outbound be added.

These changes are proposed for the following specific reasons:

(1) Increasing the size of the regulated navigation area will provide for safer and more orderly traffic movement further away from the breakwater entrances than exists now. This increased distance will oblige ships to prepare earlier to enter port and increase the level of awareness on the bridge of the ship. The expanded regulated navigation area will also oblige ships to align themselves before getting too close to the breakwater gates;

(2) The geographic boundaries of the pilot areas are currently described in 1927 datum. The proposed rule would update the boundary coordinates to reflect the datum of the current nautical charts;

(3) Limiting vessel speed to 12 knots will increase safety and reduce the risk of collisions. The current practice of assigning longshoremen when the vessel arrives at the sea buoy has encouraged inbound vessels to exceed 20 knots when approaching the pilot area as they race each other for longshoreman assignments. Pilots have reported difficulty approaching inbound vessels with the pilot boat because of excessive speed. Stopping and turning distances on the vessels to which this limit applies are substantial. A speed of 12 knots will reduce those distances and allow for longer reaction time while still allowing sufficient maneuverability. The common practice of high speed transits of this small congested area is unsafe.

(4) and (5) Communication is the essence of collision prevention between vessels in close proximity. A significant portion of the requirements from both International and Inland Navigation Rules is basic communication. These communication requirements are based on lights, sounds, and shapes. The Ports and Waterways Safety Act (33 U.S.C. 1221 *et. seq.*), and the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 *et. seq.*) as implemented by 33 CFR parts 26 and 165, authorize the issuance of regulations requiring both the carriage and use of voice communications equipment by specified vessels in areas, such as the San Pedro Bay regulated navigation area, which have been determined to pose hazardous vessel traffic conditions. This proposed rule requires voice communication between vessels that are meeting, overtaking, or crossing in the regulated navigation area and will enhance and complement the Rules and the Act by improving communications between approaching ships.

(6) The mix of recreational boaters and large ships in the approach areas of the Los Angeles and Long Beach harbors has long been a problem and concern. The existing regulated navigation area already includes restrictions (which will remain) on loitering in the pilot areas. The Coast Guard, in cooperation with local recreational organizations, established two buoys for the recreational boaters to use as turn marks. This was a highly unusual and unique effort to move small boat traffic out of the pilot areas and away from the large ships because boaters were using the harbor approach buoys as turn marks. This effort has enjoyed qualified success mainly from organized groups. The problem still exists however, necessitating a regulation to prohibit all vessels from entering the pilot area unless inbound or outbound.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted will not have a significant economic impact on a substantial number of small entities.

Collecton of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage regulations 18, Nov. 93.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the U.S. Coast Guard proposes to amend 33 CFR parts 110 and 165 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.214 is amended by adding paragraph (a)(7) (iii) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California.

(a) * * *

(7) * * *

(iii) Vessels 30 meters or over in length, towing vessels of 8 meters or over in length, every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating, and each dredge and floating plant engaged in operations shall not enter anchorage G unless:

(A) In an emergency;

(B) Proceeding to anchor in or departing from Commercial Anchorage G;

(C) Standing by with confirmed pilot boarding arrangements; or,

(D) Engaged in towing vessels to or from Commercial Anchorage G.

* * * * *

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

4. Section 165.1109 is revised to read as follows:

§ 165.1109 San Pedro Bay, California—Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area: The water area of San Pedro Bay encompassed by the following geographic coordinates:

From Pt. Fermin Light (33°42′18″ N, 118°17′36″ W) thence along the shoreline to the San Pedro Breakwater, thence along the San Pedro Breakwater and the Middle Breakwater (following the COLREGS Demarcation Lines) to Long Beach Channel Entrance Light "2" (33°42′42″ N, 118°14′42″ W), thence south southeast to: 33°40′31″ N, 118°08′42″ W; thence west to 33°40′31″ N, 118°12′03″ W; thence west southwest to 33°39′17″ N, 118°16′00″ W; thence northeast to 33°40′06″ N, 118°17′38″ W; thence north to the point of origin.

[Datum: NAD 1983]

(b) *Pilot areas.* There are two pilot areas within the regulated navigation area described in paragraph (a) of this section. They are defined as follows:

(1) The Los Angeles Pilot Area is enclosed by a line beginning at Los Angeles Light (33°42′30″ N, 118°15′06″ W); thence easterly to Los Angeles Main Channel Entrance Light 2 (33°42′42″ N, 118°14′42″ W), thence southeasterly to: 33°41′36.2″ N, 118°13′46.2″ W; thence southwest to 33°41′13.9″ N, 118°14′55.4″ W; thence north to the point of origin.

[Datum: NAD 1983]

(2) The Long Beach Pilot Area is enclosed by a line beginning at Long Beach Light (33°43′24″ N, 118°11′12″ W); thence easterly to Long Beach Channel Entrance Light 2 (33°43′24″ N, 118°10′48″ W), thence southerly to: 33°42′09.1″ N, 118°10′26.2″ W; thence west to 33°42′09.1″ N, 118°11′35.5″ W; thence northeasterly to the point of origin.

[Datum: NAD 1983]

(c) *Definitions.* For the purposes of this section:

(1) Floating Plant—means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation.

(2) Vessel—means every description of watercraft, used or capable of being used as a means of transportation on water.

(d) Paragraphs (d) (1) and (2) apply to all vessels while operating within the regulated navigation area:

(1) Los Angeles Pilot Area:

(i) No vessel may enter the Los Angeles Pilot Area unless it is entering or departing the Los Angeles Main Channel via the Los Angeles Harbor Entrance (Angel's Gate).

(ii) Vessels entering the Los Angeles Pilot Area shall pass directly through without stopping or loitering unless stopping is necessary to embark or disembark a pilot.

(iii) Vessels shall leave Los Angeles Approach Lighted Bell Buoy LA to port when entering and departing Los Angeles Main Channel;

(2) Long Beach Pilot Area:

(i) No vessel may enter the Long Beach Pilot Area unless it is entering or departing the Long Beach Harbor Entrance (Queen's Gate).

(ii) Every vessel entering the Long Beach Pilot Area shall pass directly through without stopping or loitering unless stopping is necessary to embark or disembark a pilot.

(iii) Every vessel shall leave Long Beach Approach Lighted Whistle Buoy LB to port when entering and departing Long Beach Channel and departing vessels shall pass across the southern boundary of the Long Beach Pilot Area.

(e) Paragraphs (e) (1) through (4) apply to vessels 30 meters (approximately 98 feet) or over in length, each towing vessel of 8 meters (approximately 26 feet) or over in length, every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating, and each dredge and floating plant engaged in operations in the regulated navigation area:

(1) The vessel's speed shall not exceed 12 knots;

(2) All verbal contact between vessels shall be communicated in the English language. No vessel may enter or transit within the regulated navigation area unless there is at least one person on the bridge immediately available to communicate with other vessels in the English language;

(3) When vessels in the regulated navigation area encounter meeting, crossing, or overtaking situations as defined by the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) the master, pilot or person in charge of such vessels shall make verbal passing arrangements with each other over radiotelephone in addition to sound signal requirements of the 72 COLREGS;

(4) No such vessel may enter the waters between Commercial Anchorage G and the Middle Breakwater as defined by an area enclosed by a line beginning at Los Angeles Main Channel Entrance Light 2 (33°42′42″ N, 118°14′42″ W); eastward along the middle breakwater to Long Beach Light (33°43′24″ N, 118°11′12″ W); south to latitude 33°43′05.3″ N, longitude 118°11′15.3″ W; thence westerly to latitude 33°43′05.3″ N, longitude 118°12′15.7″ W; thence southwesterly parallel to the breakwater to latitude 33°42′29.9″ N, longitude 118°14′16.0″ W and back to the point of origin, unless such vessel is:

(i) In an emergency;

(ii) Proceeding to anchor in or departing Commercial Anchorage G;

(iii) Standing by with confirmed pilot boarding arrangements; or,

(iv) Engaged in towing vessels to or from Commercial Anchorage G.

Dated: August 24, 1993.

R.D. Herr,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–28861 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 93–031]

Drawbridge Operation Regulations; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Oregon State Department of Transportation (ODOT), the Coast Guard is considering the amendment of the regulations governing the operation of the dual Interstate 5 drawbridges across the Columbia River between Portland, Oregon, and Vancouver, Washington. The proposed amendment would lengthen the weekday closed periods of the drawspans to accommodate the increased commuter traffic on the interstate highway. The proposed weekday closed periods are 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410, Seattle, Washington. Normal office

hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7270.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Austin Pratt, project officer, and Lieutenant Laticia Argenti, project attorney.

Discussion of the Proposed Regulations

The purpose of the proposed regulations is to alleviate commuter traffic congestion by lengthening the lift span closed periods of the Interstate 5 drawspans to coincide with the increased periods of peak highway use. The proposed regulations would extend the rush hour closed periods for the drawspans by two hours in the morning and one hour in the afternoon. The regulations presently governing the Interstate 5 Bridges prescribe daily periods during which the twin vertical lift spans need not be raised for the passage of vessels. These weekday periods are from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Based upon the records of the drawbridge operators, the Oregon State Department of Transportation believes that the proposed regulations would affect only a tenth of the river traffic while preventing lengthy halts of roadway traffic during its peak volume hours. Since many vessels on this reach of the Columbia can traverse the bridge via the fixed spans, the proposed regulations do not increase closures that would delay all river traffic.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard certifies that the proposed regulations, if adopted, will not have a significant impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.869 is amended by revising paragraph (a) to read as follows:

§ 117.869 Columbia River.

(a) The draw of the Interstate 5 bridges, mile 106.5, at Vancouver, Washington, shall open on signal; except that, from 5:30 a.m. to 9 a.m. and 2:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays, the draws need not open for the passage of vessels.

* * * * *

Dated: November 10, 1993.

John A. Pierson,

Captain, Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 93–29039 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 05–93–079]

Drawbridge Operation Regulations; Pamunkey River, West Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations that govern the operation of the drawbridge, SR 33, across Pamunkey River, mile 1.0, located in West Point, Virginia, by eliminating bridge openings between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

This change is being considered due to the increase volume of vehicular traffic crossing this bridge at peak traffic times. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names

and addresses, identify this rulemaking (CGD 05–93–079) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Background and Purpose

The Virginia Department of Transportation has requested that openings of the drawbridge across Pamunkey River, mile 1.0, located in West Point, Virginia, be restricted due to the increase in vehicular traffic during rush hour periods. The Coast Guard is proposing to restrict the passage of vessels between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. The bridge will continue to open on signal at all other times.

According to the most recent traffic counts, vehicular traffic has increased to the point that any drawbridge openings on weekdays during the morning and evening peak traffic periods as well the noon hour cause extreme backups and traffic problems. The Virginia Department of Transportation, in an effort to improve this situation, has requested these proposed regulations.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. Section 117.1023 is added to read as follows:

§ 117.1023 Pamunkey River.

(a) The draw of the Eltham Bridge (SR33/30), mile 1.0, located in West Point, Virginia, shall open on signal; except that, from 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need not be opened for the passage of vessels.

(b) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: November 5, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–28858 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO20–1–5681; FRL–4798–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Comments can be mailed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, Mail Code–8ART-AP, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal

business hours at the following location: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

The State of Colorado has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

The State of Colorado has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. At a public hearing held before the Colorado Air Quality Control Commission (Commission) on October 15, 1992, the plan for the PROGRAM was approved. A notice of approval dated October 30, 1992, was issued by the Technical Secretary of the Commission adopting the PROGRAM plan. Legal authority to implement the PROGRAM was obtained through Senate Bill 105 and is contained in the Colorado Act (ACT) Section 25–7–109.2. The collection of fees to cover the cost of implementing the PROGRAM is contained in the ACT Section 25–7–114.7.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The State's PROGRAM meets these six requirements which are contained in eight SBAP elements in its proposed SIP revision. It also establishes a Task Force that will discuss these eight SBAP elements and choose some or all of the implementation methods listed for each element, or add additional implementation methods, as required. The Task Force consists of members from the Colorado Department of Health Air Pollution Control Division (Division), the Commission, the Office of Regulatory Reform, the CAP and other State entities which assist small businesses and small business associations.

The first requirement set forth in section 507(a) is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Dissemination of compliance issues, regulation, monitoring, modeling, and control technology information." The proactive component of this element states the following: "General information regarding the services provided by the PROGRAM shall be developed," "The Division shall develop information regarding existing regulations that affect small business," and "The Division shall coordinate with the Ombudsman to develop a procedure through which the information can be developed as new regulations are proposed by the EPA or the State." The reactive component of this element states that "The SBAP shall refer calls as they are received to appropriate Division staff or other resources, depending on the type and complexity of information being sought."

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Pollution prevention and accidental release assistance." This element states that "the Division shall compile a directory of Federal, State, Local, and trade group and other industry resources that can provide assistance in these areas," and "establish a central "clearinghouse" of information from these various entities."

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Dissemination of compliance issues, regulation, monitoring, modeling, and control technology information." In addition to the implementation methods listed under the first requirement above, the Division "shall develop information regarding small businesses' requirements for obtaining operating and construction permits," and "will explain the requirements, ... and how a source can calculate their emissions, and ... determine their compliance status."

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by committing in its proposed SIP revision

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

to implement a SBAP element titled "Notifying small businesses of their rights under the Act." This element states that when Federal or State air regulations are proposed that affect small businesses, the Division and Ombudsman "shall develop brochures and/or presentations for informing small businesses," and "obtain small business comments or to ensure that small businesses submit their comments to the EPA." They will further "develop and implement a procedure that contains specific timeframes for proceeding with development of information regarding a new requirement proposal," and "develop information explaining enforcement procedures and source's rights."

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Small business source auditor referrals or audit provisions." A list of auditors will be compiled as follows: "The Division shall consult with trade groups and other small business representatives, and shall solicit names of companies that these entities are familiar with and approve of," and "shall add to the list any companies ... dealt with in the past." "When compiling the list, the Division shall consider the company's ability to provide environmental audits, especially in regard to providing pollution prevention assistance." The Division does not plan to directly conduct audits of small businesses.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Modification of work practices or alternate control method requests." This element states that the Division shall develop a formal procedure for sources to follow when making such requests in cases where a SIP revision is not required. If a SIP revision is required, the Division shall "consult with the EPA Region VIII to establish the least intensive method of obtaining a SIP revision for these requests," and "develop a "generic" alternative control procedure as part of the State SIP, where possible."

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by locating the position of the Small Business Ombudsman in the Office of Regulatory Reform.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by outlining in its proposed SIP revision how the members will be determined, which is consistent with the method described above.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act[2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by outlining in its proposed SIP revision the functions of the CAP which are consistent with those stated above.

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

4. Eligibility

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

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

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

(C) Is not a major stationary source;

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

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

The State of Colorado has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in Section 507(c)(1) of the CAA. The State of Colorado has also provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants, and for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In this proposal, EPA is proposing to approve the SIP revision submitted by the State of Colorado.

The State of Colorado has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The Small Business Ombudsman started in the Office of Regulatory Reform in August, 1992. A schedule for implementation of the PROGRAM submitted in a letter by the State dated January 7, 1993, indicates that members of the CAP will be appointed by July 1, 1993, and a final report of the Task Force on implementation methods for the SBAP is scheduled for completion by October, 1993. EPA is therefore proposing to approve this submittal.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of

Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 19, 1993.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 93–29047 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[DE 11–1–5979; FRL–4800–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires all major sources of nitrogen oxides (NOx) to implement reasonably available control technology (RACT). The intended effect of this action is to propose approval of Delaware Regulation No. 12, Control of Nitrogen Oxides Emissions for the limited purpose of strenthening the Delaware SIP which currently has no requirements for existing NOx sources. In addition, this action is intended to propose disapproval of Delaware Regulation No. 12 for the limited purpose of allowing Delaware the opportunity to correct the deficiencies in the regulation which result in its failure to meet all requirements of the Clean Air Act (CAA). This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address indicated in the ADDRESSES section.

SUPPLEMENTARY INFORMATION: On January 11, 1993, Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its State Implementation Plan (SIP) for the control of NOx emissions from major sources. The revision consists of a new regulation which would require sources which emit or have the potential to emit 25 tons or more of NOx per year in New Castle and Kent Counties and 100 tons or more of NOx per year in Sussex County to comply with reasonably available control technology requirements by May 31, 1995.

Background

Pursuant to section 182 of the Clean Air Act (CAA), Delaware is required to implement RACT for all major NOx sources by no later than May 31, 1995. The major source size in determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR) which is established by the CAA. New Castle and Kent Counties in Delaware are part of the Philadelphia ozone nonattainment area and are classified as severe. Sussex County, Delaware is classified as marginal nonattainment but is located in the OTR on which the CAA imposes certain additional requirements, including the NOx RACT requirement for all major NOx sources. For New Castle and Kent Counties, section 182 requires that, among other requirements, all sources which emit or have the potential to emit 25 tons of NOx or more per year must implement RACT by no later than May 31, 1995. For Sussex County, sections 182 and 184 require that all sources which emit or have the potential to emit 100 tons of NOx or more per year implement RACT by May 31, 1995.

Delaware NOx RACT Regulation

Specific NOx Requirements

Delaware's proposed NOx RACT regulation contains specific emission limits for fuel burning equipment with a rated heat capacity of 100 million BTU (MMBTU)/hour or greater. Gas fired face and tangential units are required to meet an emission limit of 0.2 pounds of NOx per million BTU input. Oil or gas fired face and tangential units are required to meet an emission limit of 0.25 lbs of NOx per million BTU input. Oil or gas fired cyclones are required to meet an emission limit of 0.43 lbs of NOx per million BTU input. Dry bottom coal fired face and tangential units are required to meet an emission limit of 0.38 lbs of NOx per million BTU input. Dry bottom coal fired stokers are required to meet an emission limit of 0.40 lbs of NOx per million BTU input. All emission limits are required to be met on a 24 hour rolling averaging period using continuous emission monitoring (CEM) data approved by the Department. EPA is proposing to approve the above emission limits as RACT for fuel burning equipment with a rated heat input capacity of 100 MMBTU/hour or greater. The numerical emission limits are supported by data gathered by the State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO). The 24 hour rolling average compliance period is consistent with protection of the short-term ozone National Ambient Air Quality Standard (NAAQS).

EPA is, however, proposing to disapprove Delaware's proposed

emission limit of 1.0 lbs of NOx per million BTU for wet bottom coal fired face and tangential units. There are no applicable sources in the State of Delaware, no data to support such an emission limit, and no reason to adopt such an emission standard. Any newly constructed wet bottom coal fired face and tangential units would be subject to the Delaware SIP's new source review requirements.

Delaware's regulation also contains specific emission limits for gas turbines. The emission limit for gas fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 42 parts per million (ppm). The emission limit for liquid fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 88 ppm. Both emission standards require compliance to be demonstrated using a one hour averaging period based on CEM data approved by the Department.

NOx Technology Requirements

The Delaware regulation, in Section 3.3 also requires fuel burning equipment with a rated heat capacity of less than 100 MMBTU/hr to emit no more NOx than what would be emitted if either low excess air and low NOx burner technology or flue gas recirculation technology is used or some equivalent control technology approved by the Department and EPA. Section 3.4 requires stationary internal combustion engines to limit their emissions to no more than those emitted when using pre-ignition chamber combustion (also referred to as clean burn technology) for gas fired units and those emitted when using lean burn technology for diesel fired units. As in Section 3.3, these sources may also meet an equivalent control technology which is approved by the Department and EPA.

Source-specific Requirements

All other major sources of NOx are required to notify the Department of their subject status, submit a proposal as to what constitutes RACT for the source including technical and economic support documentation, and provide a schedule, acceptable to the Department, to implement RACT no later than May 31, 1995. The notification to the Department, submittal of a RACT proposal and schedule must be made no later than November 15, 1993.

Alternative Requirements

Section 5 of the Delaware regulation allows sources to obtain alternative and equivalent RACT determinations all of which require EPA approval as a SIP revision. Included in these alternative and equivalent RACT determinations is a specific provision to allow averaging of emissions at multiple installations to meet applicable RACT emission limits if those installations have a common owner.

EPA Analysis

EPA is proposing a limited approval of Regulation No. 12 into the Delaware SIP, which was submitted on January 11, 1993. EPA is also proposing to disapprove Delaware Regulation No. 12 for the limited purpose of allowing Delaware the opportunity to correct certain deficiencies in Regulation No. 12. These deficiencies are located in Section 2 (definition of potential to emit), Section 3.2 (emission limit for wet bottom coal fired face and tangential units), Section 4.1 a. through f. (pertaining to exemptions for certain sources and compliance extensions), and Section 7.4 b. (use of alternative test methods). EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

EPA requires that states determine potential emissions by using the maximum emission rate, production capacity and hours of operation unless the source is restricted by federally enforceable conditions. The Delaware definition of "potential to emit", located in Section 2, is deficient in that it does not require that the emissions limiting conditions be federally enforceable. Therefore, EPA is proposing to disapprove this definition to the extent that it does not require federally enforceable emissions limiting conditions.

EPA is proposing to disapprove the exemptions contained in Section 4.1 a. through f. Section 4.1 a. and b. would allow exemptions of fuel burning equipment used primarily for residential heating and incinerators or oxidizers built before November 15, 1992 and used primarily for the control of air pollution. The exemptions contained in Section 4.1 c. and d. pertain to fuel burning units with a rated heat capacity of less than 15 MMBTU/hr and stationary internal combustion engines with a rated capacity of less than 450 hp of output power, respectively. Delaware has not provided any support information to indicate what population of sources these two exemptions would represent or what the total emissions from these sources are compared to the total NOx emissions in the state. Section 4.1 e. would allow sources which operate exclusively during the months of November through the end of March to be exempt from RACT requirements. There is, however, no requirement in Regulation No. 12, or elsewhere in the Delaware regulations which would apply to this regulation, for these sources to keep the necessary records to prove their exempt status. Therefore, EPA is proposing to disapprove this exemption.

If Delaware wishes to allow exemptions of major NOx sources from RACT requirements, there is a mechanism to do so under section 182(f) of the Clean Air Act. Under section 182(f), any person, including a state, is allowed to petition EPA so that if the petition were granted, some or all of the Act's Title I NOx requirements would not apply. Under section 182(f)(1)(B), this petition can only be granted if the NOx reductions do not provide a net air quality benefit and if those emission reductions could be considered excess. EPA interprets the term air quality to include both health and welfare effects that may be directly or indirectly related to NOx emissions. Therefore, these impacts include ozone, nitrogen dioxide, and particulate matter formation, visibility impariment, acid deposition, air toxics formation, and nitrogen deposition in nutrient-sensitive areas. The net air quality benefit test requires that a modeling demonstration with and without the proposed NOx emission reductions be performed for the applicable area. The petitioner must show that there is a detrimental air quality effect with the control of NOx emissions, not simply that there is no effect on air quality.

EPA is also proposing to disapprove Section 7.4 b. which allows alternative test methods to be approved by the Department without EPA approval. Since the stringency of the emission standards and other RACT requirements are dependent on compliance using EPA approved test methods, EPA cannot agree to allow Delaware to approve alternative test methods without knowing how those alternative test methods may affect RACT.

EPA has evaluated Delaware's submitted Regulation No. 12 for consistency with the CAA and EPA regulations, and has found that the revisions will require emission reductions from a population of sources which were previously unregulated. The Delaware regulation, as noted above, also contains certain deficiencies which result in enforceability problems and in the regulation of a smaller population of sources than required by the CAA. Further discussion can be found in the

accompanying technical support document.

Because of the deficiencies discussed above, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Delaware's submitted Regulation No. 12 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which result in less than the full population of required NOx sources to be regulated and enforceability problems, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the 24-month Federal implementation plan (FIP) requirement under section 110(c).

Proposed Action

For the above stated reasons, EPA is proposing a limited approval/limited disapproval of Delaware Regulation No. 12. In order to correct the deficiencies in Regulation No. 12 which EPA is proposing as a limited disapproval, Delaware must successfully petition EPA under section 182(f) of the Act if it wishes to exempt any major NOx sources from RACT requirements or delete the exemptions, correct the definition of potential to emit to require Federal enforceability of restricting operating conditions, provide adequate technical support for the proposed emission limit for wet bottom coal fired face and tangential units or delete the emission limit, require adequate recordkeeping requirements for all NOx sources, including those which claim exempt status, and require EPA approval for alternative test methods.

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.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofSection 110(a)(2)(A)-(K), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q

Dated: September 16, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–29045 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IL67–1–5721; FRL–4799–8]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled (VMT) Offsets; Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) proposes to conditionally approve a request for a State Implementation Plan (SIP) revision, addressing the Chicago ozone nonattainment area, submitted by the State of Illinois for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable

Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). The implementation plan request was submitted by the State of Illinois to satisfy the statutory mandate that the State submit a SIP revision which identifies and adopts specific enforceable transportation control measures (TCMs) to offset any growth in emissions from growth in VMT or number of vehicle trips in severe and extreme ozone nonattainment areas. The rationale for the proposed conditional approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the State's submittal and U.S. EPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act as amended in 1990 requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

Section 110(k) of the Act contains provisions governing U.S. EPA's action on VMT Offset SIP submittals. Once found to be complete (or deemed complete by the passage of time), this section authorizes U.S. EPA to take one of three actions on SIP submittals. As provided by section 110(k)(3), if the submittal satisfactorily addresses all of the required VMT Offset elements, the U.S. EPA will grant full approval. U.S. EPA may grant a conditional approval of the submission under section 110(k)(4), however, if the submittal contains: (1) A commitment from the Governor or the Governor's designee to take the required actions; (2) a schedule establishing a date certain for taking the required actions, with the date not being later than one year from the time U.S. EPA will issue a final conditional approval; and (3) evidence that a public hearing was held on the commitments. See July 22, 1992 memorandum from Michael M. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992." Finally, if the submittal fails to adequately address or commit to address one or more of the mandatory VMT Offset elements, the U.S. EPA must issue a disapproval. A State plan may therefore be approved, conditionally approved or disapproved.

In order to satisfy the applicable requirements, and to gain full approval, section 182(d)(1)(A) requires that a State VMT Offset SIP submittal must:

(1) Identify and adopt specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips;

(2) Identify and adopt specific enforceable transportation control strategies and TCMs that attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with RFP milestones;

(3) Consider the measures specified in section 108(f) of the Act and choose from among and implement such measures as necessary to demonstrate attainment with the National ambient air quality standards; and

(4) Ensure adequate access to downtown, other commercial and residential areas, and that emissions and congestion are reduced rather than relocated.

II. Analysis

The following discussion provides more information on the requirements for full approval, and Illinois' efforts to meet these requirements. Section 182(d)(1)(A) sets forth four requirements that must be met by a VMT Offset SIP. The first and second requirements mandate that the State submit a revision, by November 15, 1992 that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips in affected areas, and attains reduction in motor vehicle emissions as necessary in combination with other emission reduction requirements of Act title I, part D, subpart II to comply with the requirements of section 182(d)(1)(A). These requirements are to ensure that projected motor vehicle volatile organic compound (VOC) emissions will never be greater during the ozone season in any given year than during the preceding year's ozone season. When growth in VMT or vehicle trips would otherwise cause a motor vehicle emissions upturn, that upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. Motor vehicle VOC emission projections for meeting this requirement will be determined consistent with U.S. EPA's section 187 VMT forecasting and tracking guidance.

It should be noted that while the above requirements are simple in concept, their application could encourage areas to delay VMT or emissions reduction measures suitable for use as offsets until the trend in motor vehicle emissions reaches its minimum point and is about to turn upwards. To implement the VMT offset provision while avoiding this counterproductive incentive for delay, U.S. EPA looks for State compliance with the following approach: if projected motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied. However, if the State plans to implement control measures over and above those specifically required by the Act and those required to demonstrate RFP and attainment, earlier than would be necessary and sufficient to prevent an emissions upturn, a projected subsequent growth-related increase to the level of emissions that would occur if these measures were scheduled later will not be considered to violate the requirement to offset emissions due to growth in VMT or vehicle trips. The latter situation will be viewed as a temporary reduction in emissions to a level below that required by the provision, rather than an increase above the required level, with no effect on emissions at or after the point at which

offsetting measures become essential to compliance.

The U.S. EPA will approve a SIP revision as meeting this provision despite a forecasted upturn in vehicle emissions, as long as motor vehicle VOC emissions in the ozone season of a given year do not exceed a ceiling level which reflects a hypothetical strategy of implementing otherwise specifically required measures on schedule and saving offset measures until the point at which VMT growth would otherwise cause an emission upturn. The ceiling level is therefore defined (up to the point of upturn) as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure controls, and reformulated gasoline, as well as Act mandated SIP requirements such as enhanced inspection and maintenance, the fleet clean-fuel vehicle program, and the employer commute options program. The ceiling line would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. The ceiling line must, in combination with projected emissions from nonvehicle sources, satisfy the RFP requirements for the area. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 and not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling line.

Forecasted motor vehicle emissions must be held at or below the minimum level of the ceiling line after the ceiling line reaches its minimum level. If an area implements offset measures early, the forecasted emissions will be less than the ceiling line, and forecasted motor vehicle emissions could increase from one year to the next, as long as forecasted emissions never exceed the ceiling line.

These emissions offset requirements apply to projected emissions during the years between submission of the SIP revision and the statutory ozone national ambient air quality standard (NAAQS) attainment deadline. The State has not met these requirements but is in the process of forecasting future travel and emissions levels and has committed to implement these requirements by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The third requirement is that the State shall consider transportation control measures specified in section 108(f) and choose from among and implement such measures as necessary to demonstrate attainment with the NAAQS. The State has not met this requirement, but is assessing TCM strategies to offset any growth in emissions from growth in VMT or number of vehicle trips and has committed to implement this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The fourth requirement is that the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. The State has not met this requirement, but is making progress towards forecasting future emissions that would occur from implementing specific TCMs, and has committed to meet this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

III. Analysis of State Submittal

The State of Illinois has not submitted a SIP revision implementing all the requirements relevant to the nonattainment classification of the State's nonattainment areas contained in section 182(d)(1)(A) of the Act. Illinois has, however, set forth the process for evaluating and selecting TCMs for implementation. The Illinois Environmental Protection Agency (IEPA) has worked with the Illinois Department of Transportation and the Chicago Area Transportation Study (the metropolitan planning organization (MPO) for the Chicago area) to set up a number of committees and taskforces to review and evaluate TCMs. An Air Quality Executive Committee (chaired by IEPA) is providing overall direction and integration, and seven taskforces are addressing air quality issues, including three new taskforces which have been formed to address environmental quality, conformity and employee commute options.

Illinois describes a 3 step process for evaluating TCMs through coordination of activities as specified by section 174 of the Act for transportation planning activities. The CATS, the IDOT and the IEPA have agreed to coordinate activities. The first step, in the three step process, is to determine the acceptability of a TCM through a series of white papers. The second step is to assess the implementability of the TCM. The third step is to evaluate the results of steps one and two. This process is to be completed by November 15, 1993.

The Illinois submittal contains interim dates for completion of work toward the VMT offset SIP. Specifically, the submittal states: all measures pertaining to step 1, step 2 and step 3 will be completed by November 15, 1992, June 30, 1993 and November 15, 1993. In completion of step one, a document entitled "Transportation Control Measures Committal for the State Implementation Plan" dated November 5, 1992 has been made available to the public.

Illinois has been actively participating in the Lake Michigan Ozone Control Program and in the urban air shed modeling for the area. Because of active participation, U.S. EPA expects the attainment demonstration for the Lake Michigan area and specifically the Chicago nonattainment area to be completed by November 15, 1994 and include TCM's as necessary to meet attainment.

Illinois has made commitments to adopt each of the required elements, and has provided a schedule with specific dates for additional work products and a process that will lead to adoption of enforceable measures, that will not extend over one year from the date of final conditional approval, and has subjected the commitments and schedule to a public hearing on October 27, 1992. Illinois has committed to adopt and submit specific enforceable measures to satisfy the requirements of section 182(d)(1)(A) by November 15, 1994. Illinois committed to this date in a letter dated October 13, 1993, which is part of the administrative record of this approval.

U.S. EPA believes that VMT Offset submittals such as Illinois' are appropriate for conditional approval considerations because section 182(d)(1)(A) of the Act requires that specific, enforceable measures identified and adopted by the State be submitted by November 15, 1992 along with a demonstration that they are adequate to offset any growth in emissions from growth in VMT or number of vehicle trips, which U.S. EPA interprets to mean adequate to hold vehicle emissions within the emissions ceiling described in the General Preamble to Title I, Section III. (A)(5)(d) (57 FR 13498, 13521–13523). The Act also states that these measures, beyond offsetting growth in emissions, shall be sufficient to allow total area emissions to comply with the RFP and attainment requirements. These requirements create a timing problem. Ozone nonattainment areas affected by this provision are not

otherwise required to submit SIP demonstrations which would predict attainment of the 1996 RFP milestone until November 15, 1993 and likewise are not required to demonstrate post-1996 RFP and attainment until November 15, 1994. U.S. EPA does not believe that Congress intended the offset growth provisions to advance the dates for these broader submissions. Even without the requirement that the offset growth measures be sufficient to allow overall RFP and attainment in conjunction with other measures, U.S. EPA believes that the November 15, 1992 date might not allow the States sufficient time to develop a set of measures that would comply with the offset growth provisions over the long term.

To solve this timing problem and to allow a more coordinated and comprehensive planning process, U.S. EPA may accept and conditionally approve committal SIP revisions for the offset growth requirements under the authority of section 110(k)(4) of the Act. This could allow States one (1) year from the date of U.S. EPA's final conditional approval of the committal SIP revision, but not beyond November 15, 1994 to submit the full revision containing sufficient measures in specific and enforceable form.

IV. Proposed Rulemaking Action

The U.S. EPA proposes to conditionally approve the requested SIP revision commitment submitted by the State of Illinois.

If the U.S. EPA conditionally approves the State's commitment, the State must meet its commitment to adopt the specific enforceable VMT requirements and submit these rules to U.S. EPA by November 15, 1994. If the State fails to adopt or submit any rules to U.S. EPA within this time frame, this conditional approval will become a disapproval upon U.S. EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved Illinois SIP. The U.S. EPA subsequently will publish a document in the Federal Register indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits these rules to U.S. EPA within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until the U.S. EPA takes final action approving or disapproving the new submittal. If the commitment is associated with existing rules and the U.S. EPA disapproves the subsequent submittal, the rules on which the conditional approval was based will also be disapproved at that time. If U.S. EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If the U.S. EPA issues a final disapproval, or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time U.S. EPA issues the final disapproval or at the time U.S. EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit the implementation plan on which the disapproval was based within 18 months of the disapproval, U.S. EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). Finally, under section 110(m), U.S. EPA has discretionary authority to impose sanctions at any time after a final disapproval or conversion of conditional approval to disapproval. Furthermore, if U.S. EPA does not approve the implementation plan revision request, the 18 month clock will begin where it stopped.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric CO. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to disapproval under section 110(k) of the Act, based upon the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, U.S. EPA certifies that this potential disapproval does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 21, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–29046 Filed 11–24–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 411

[BPD–705–P]

RIN 0938–AE98

Medicare Program; Medicare Coverage of Screening Pap Smears for Early Detection of Cervical Cancer

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would address provisions of section 6115 of the Omnibus Budget Reconciliation Act of 1989, which provides limited coverage of screening Pap smear services. The rule would amend current

Medicare regulations to set forth conditions and limitations for coverage of screening Pap smear services.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 25, 1994].

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–705–P, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–705–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: William Larson, (410) 966–4639.

SUPPLEMENTARY INFORMATION:

I. Background

The Papanicolaou (Pap) smear is recognized as the most effective noninvasive screening test currently available for the early detection of cervical cancer in asymptomatic women. Named for Dr. George Papanicolaou who developed the test in 1943, the Pap smear consists of a sample of cells, scraped or aspirated from the cervix, which is affixed to a glass slide and then sent to a laboratory for evaluation.

Currently, section 1862(a) of the Social Security Act (the Act) lists items and services excluded from Medicare coverage. Paragraph (a)(7) of that section identifies routine physical checkups as excluded services, and it is on this basis that screening Pap smear services have been excluded from Medicare coverage. This policy is reflected in Medicare regulations at 42 CFR 411.15(a), which implement the statute by excluding coverage for routine physical checkups. In addition, current coverage instructions setting forth the routine physical checkup exclusion are found in the Medicare Carriers Manual (HCFA Pub. 14), the Part A Intermediary Manual (HCFA Pub. 13), the Hospital Manual (HCFA Pub. 10), the Skilled Nursing Facility Manual (HCFA Pub. 12), and the Home Health Agency Manual (HCFA Pub. 11). Current coverage instructions on payment for diagnostic Pap smears and related medically necessary services (as distinguished from screening Pap smears and related medically necessary services) are included in section 50–20 of the Medicare Coverage Issues Manual (HCFA Pub. 6). Under this policy, Pap tests have been covered when necessary to diagnose a specific complaint or identified medical problem. This coverage is based on section 1861(s)(3) of the Act, which provides Medicare coverage for diagnostic tests. In addition, it is distinct from coverage for routine, screening Pap smears for early detection of medical problems before symptoms appear, which has, prior to July 1, 1990, been excluded from coverage based on section 1862(a)(7) of the Act.

Section 6115 of Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended sections 1861, 1862, 1864, 1865, 1902, and 1915 of the Act to provide coverage of screening Pap smear services (including a physician's interpretation of the sample of cervical cells) effective July 1, 1990, subject to certain conditions and frequency limitations. Section 6115 of OBRA 89 added new paragraph (s)(14) to section 1861 of the Act, to include "screening Pap smears" in the term "medical and other health services". Section 6115 of OBRA 89, also added new paragraph (nn) to section 1861 of the Act to define the term "screening Pap smear".

A new section 50–20.1 has been added to the Medicare Coverage Issues Manual (effective for services performed on or after July 1, 1990) to implement section 6115 of OBRA 89 on a timely basis. We provided in section 50–20.1 that Medicare contractors are permitted to pay for a screening Pap smear performed for a woman (when ordered by a physician) once every 3 years or more frequently than every 3 years if certain conditions are met. Specifically, section 50–20.1 provides that coverage is available under the new benefit for a screening Pap smear performed for a woman more frequently than once every 3 years if there is evidence (on the basis of the woman's medical history or other findings) that she is at high risk of developing cervical cancer and her physician recommends that she have the test done. However, section 1861(nn) of the Act specifically provides that the screening Pap smear must be covered once every 3 years, or a shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical cancer (as determined in accordance with factors identified by the Secretary). Therefore, the new statute clearly contemplates that the Secretary would specify in regulations the high risk factors that might be used by physicians and Medicare contractors to determine, for Medicare coverage purposes, if certain women might be considered to be at high risk of developing cervical cancer. Accordingly, on the basis of recommendations received from the National Cancer Institute and the Center for Disease Control, we are proposing that three high risk factors be used in this regard. These risk factors are discussed later in this preamble.

II. Provisions of the Regulations

This proposed rule would implement section 6115 of OBRA 89 by establishing conditions and limitations for coverage of screening Pap smear services to ensure appropriate collection and preparation of Pap smear samples and interpretation of the test results. We are proposing that Medicare coverage of screening Pap smear services include services that relate to—(1) the collection of the Pap smear sample from the beneficiary and the preparation of the sample for submission for laboratory examination; and (2) examination of the sample by a laboratory and a physician's interpretation of it as appropriate.

Thus, we would specify an exception to the list of examples of routine physical checkups excluded from coverage at § 411.15(a). The exception would be for screening Pap smear services (including collection and preparation of the smear by or under the direct supervision of, a physician) as provided in the applicable Medicare laboratory rules as discussed below. Coverage of screening Pap smear services would be provided under Medicare Part B only; the procedures would not be separately covered in Part A settings.

A. Coverage Conditions

In accordance with sections 1832(a)(1) and 1861(s)(14) and (nn) of the Act, we would amend 42 CFR part 410, which pertains to the Medicare Part B Supplementary Medical Insurance Program, to provide Medicare coverage of screening Pap smears for early detection of cervical cancer.

In addition, as recommended in the Energy and Commerce Committee Report accompanying OBRA 89 (H.R.

Rep. No. 3299, 101st Cong., 1st Sess. 362 (1989)] on Medicare coverage of screening Pap smears, the Secretary has consulted the U.S. Preventive Services Task Force Report (Guide to Clinical Preventive Services, 1989) in implementing the new screening Pap smear benefit.

We would revise § 410.10, to add a new paragraph (u), "Screening Pap smear services". This would add screening Pap smear services to the list of "medical and other health services" covered under Medicare Part B.

We propose to add a new § 410.56 that would set forth conditions and limitations on coverage for screening Pap smear services. In developing the conditions of coverage for screening Pap smears, we have been guided by certain provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the final CLIA regulations, 57 FR 7002 (February 28, 1992), which are to be implemented on a phased-in basis. The microscopic examination of a screening Pap smear sample is a cytology test that is subject to CLIA and the final CLIA regulations. This is because CLIA regulates laboratory testing (including cytology tests) in virtually all laboratories, including all laboratories participating under Medicare. It is imperative that the final conditions on coverage for screening Pap smear services be consistent with the final CLIA rules pertinent to cytology tests.

Using language similar to that contained in section 1861(nn) of the Act, § 410.56(a)(1) would define "screening Pap smear services" to include a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the early detection of cervical cancer, including collection and preparation of the smear by, or under the direct supervision of, a physician or other qualified individual authorized under State law to perform these services, who is entitled to payment under Medicare law. Although section 1861(nn) of the Act does not explicitly refer to the collection and preparation of the smear for laboratory analysis, there is no question that without the performance of these services there would be no specimen to submit to the laboratory for microscopic examination. Since Medicare coverage is currently available for diagnostic Pap smears for both a physician's collection and preparation component (or physician's office visit) and a laboratory's examination component, we believe it is reasonable and appropriate to provide program coverage for both of these components under the screening Pap smear benefit as well.

We propose, in § 410.56(a)(2), to define the term "direct supervision" to mean that the supervising individual is present in the suite or office during the time in which the person being supervised is performing his or her service and that the supervisor is therefore immediately available in case help is needed. This is distinct from "general supervision", by which we mean that the supervising individual need not be present in the suite or office during the time in which the individual being supervised is performing his or her services.

Under new § 410.56(b)(1), we are proposing that the first condition of coverage for a screening Pap smear under the Medicare program would be that the test must be ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by a certified nurse midwife (as defined in section 1861(gg) of the Act), or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa) of the Act) who is authorized under State law to perform the smear, and who is entitled to payment under Medicare law. We are proposing this requirement for screening Pap smears to be consistent with the CLIA and with the final CLIA regulations that HHS published in the **Federal Register** on February 28, 1992 (57 FR 7002) that apply. Section 493.1105 of these latter regulations provides that "The laboratory must perform tests only at the written or electronic request of an authorized person." Further, § 493.2 of those regulations defines an "authorized person" to mean "an individual authorized under State law to order tests, or to receive test results, or both."

To reiterate, we are proposing to limit the categories of physicians and other practitioners who may order a screening Pap smear, as noted above, to doctors of medicine and doctors of osteopathy (as defined in section 1861(r)(1) of the Act), certified nurse midwives (as defined in section 1861(gg) of the Act), and physician assistants, nurse practitioners, and clinical nurse specialists (as defined in section 1861(aa)(5) of the Act). These are the only groups of physicians and other practitioners who are professionally recognized as being knowledgeable about the proper techniques for the collection and preparation of Pap smear samples, who see Medicare beneficiaries about their gynecological concerns, and who are entitled to payment under Medicare law. Thus, this proposed rule is more specific than the final CLIA regulations with respect to the types of physicians and other practitioners who may order a screening Pap smear, but we believe this greater specificity is reasonable and appropriate.

We are also proposing, in new § 410.56(b)(2), to limit coverage of screening Pap smears to beneficiaries who have not had a hysterectomy with total removal of the cervix. If a woman's cervix has been totally removed, cervical cancer of course cannot occur. Women who undergo a hysterectomy for pre-invasive cervical neoplasia do require post-operative follow-up, including frequent cervical cytology evaluations at the discretion of their physician, but these services would be covered under the program as medically necessary diagnostic tests.

The third condition of coverage is located at § 410.56(b)(3). It would provide that the screening Pap smear must be collected from the beneficiary and prepared for laboratory examination by or under the direct supervision of a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or a certified nurse midwife, physician assistant, nurse practitioner, or clinical nurse specialist who ordered the test. In addition, instructions pertaining to the collection and preparation of the sample set forth in § 493.1103 of the February 28, 1992, final CLIA regulations would also have to be followed. The language we propose for § 410.56(b)(3) is similar in certain aspects to that used in § 493.1103 of the final CLIA regulations, which sets forth a standard on procedures for specimen submission and handling that requires the laboratory to make available to physicians or other practitioners written instructions for specimen collection and preparation, etc., to ensure that specimens submitted are received in a condition acceptable for testing. The primary difference between our proposed § 410.56(b)(3) and § 493.1103 of the final CLIA regulation is that the proposed condition at § 410.56(b)(3) would require the ordering physician or other practitioner to follow the specimen submission procedure instructions provided by the CLIA laboratory while the CLIA regulation standard at § 493.1103 requires the laboratory to provide the specimen submission and handling procedure instructions to the ordering physician or other practitioner.

As a fourth condition of coverage, we propose, in § 410.56(b)(4), that Medicare Part B will cover only screening Pap smears that are evaluated by a laboratory that is certified under CLIA and therefore is entitled to payment under Medicare regulations, including

the technical supervisor requirements. This requirement is consistent with the final CLIA regulations pertinent to cytology tests such as screening Pap smears. Section 493.1257(c) of existing rules provides, for example, that all gynecological smears determined to be showing reactive or separative cellular changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant or malignant category, must be confirmed by a technical supervisor in cytology. Under § 493.1449, technical supervisors in cytology of laboratories must be physicians. We recognize the importance of ensuring the consistent classification and communication of screening Pap smear results between laboratories and physicians or other practitioners. In this regard, § 493.1257(e) requires that cytology laboratory reports clearly distinguish specimens or smears, or both, that are unsatisfactory for diagnostic interpretations; and contain narrative descriptive nomenclature for all results. All laboratories that perform cytology tests, including screening Pap smears, must submit laboratory reports in accordance with § 493.1257(e), which specifies the requirements for cytology reports. One possible uniform classification and reporting system for cytology test results that might be used to meet the requirements of § 493.1257(e) is "The Bethesda System," which was developed at a national conference in 1988 under the sponsorship of the National Cancer Institute. However, use of "The Bethesda System" is not required by us for this purpose. Other uniform classification and reporting systems for cytology test results are acceptable under the Medicare program as long as they use narrative, descriptive nomenclature for all the test results as provided in § 493.1257(e).

We recognize that it might be argued that section 1861(nn) of the Act should be interpreted to require performance (and Medicare coverage) of a physician's interpretation of a screening Pap smear in every case and not just those involving a preliminary finding by a laboratory cytotechnologist, in which the smear is determined to be showing reactive or separative cellular changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant or malignant category. However, we believe the long-standing operating practices among cytology laboratories limiting mandatory physician confirmation of Pap smears to those that indicate a possible abnormality, together with the final CLIA regulations that require extensive physician involvement and supervision of this testing to help assure a high quality examination, argue persuasively for the approach we have taken in this proposed rule.

With respect to matters affected by both this proposed rule and the February 28, 1992, CLIA regulations, it is important to emphasize that the CLIA regulations, although published in final, were subject to a 60-day public comment period. Analysis of the public comments received may result in further changes to the CLIA regulations. If such changes are made in the final rule, we will discuss their bearing on the positions taken in this proposed rule or on any other issues about which we receive public comment.

B. Recommendations Concerning High Risk Factors

The Task Force Report, referenced above, advises that screening Pap smear tests performed for the early diagnosis of cervical cancer should be performed as "recommended by the physician based on the presence of risk factors (for example, early onset of sexual intercourse, history of multiple sexual partners, or low socioeconomic status)."

In addition, the National Cancer Institute (NCI) and the Centers for Disease Control (CDC) both recommended the following high-risk factors as factors that might warrant coverage of screening Pap smear services more frequently than once every 3 years:

- Early onset of sexual activity (under 16 years of age).
- Multiple sexual partners (five or more during lifetime).
- History of a sexually transmitted disease.

NCI also included the following high-risk factors in their recommendations:

- Absence of three negative Pap smears within the previous 7 years.
- Extended interval since last Pap smear (for example, if a woman has not had a Pap test for 10 years, this would be considered an extended interval).
- Low socioeconomic status.

We have accepted three of these factors. However, for the reasons listed below, we are not proposing to adopt NCI's last three recommendations. The absence of three negative Pap smears within the previous 7 years and an extended interval as high-risk factors for patients do not appear necessary for Medicare coverage purposes given the fact that the new screening benefit provides for Medicare coverage of one screening Pap smear at the time of the woman's entitlement without regard to whether she is considered to be at high-risk of developing cervical cancer. That is, women in the first two categories would automatically be eligible for immediate coverage of one screening Pap smear under the new benefit, at the time of their entitlement, and they would not have to demonstrate that they have not had a screening Pap smear performed by Medicare within the past 3 years. We are not proposing to include the third recommendation "Low socioeconomic status" as a criterion because we believe it is too vague to constitute a condition of benefit eligibility. We are aware of articles that have recently been published regarding relationships between income and cervical-cancer incidence, and between income and education and use of Pap smear screening. However, we do not have medical evidence that relates any specific defined economic category (such as Medicaid-eligible persons) to a high risk of developing cervical cancer. However, if there is evidence specifically linking high risk with a more defined financial status, such as eligibility for the Medicaid or the Supplemental Security Income programs, we would be interested in receiving this information. In addition, we specifically invite comments on the appropriateness of including either one of these or other possible indicators of women who might be considered at high risk of developing cervical cancer. If we are unable to identify any further acceptable high-risk factors on the basis of the comments we receive, we do intend to revisit the question and possibly refine the high-risk categories and associated screening frequencies in the future as more detailed epidemiological evidence becomes available, particularly for elderly women.

NCI and CDC recommended that recent Pap smear screening history should be taken into account in determining whether an individual otherwise considered to be at high risk for developing cervical cancer should continue to remain in that category after one or more consecutive annual screening Pap smears have been performed for that patient with negative test results. For example, CDC indicated that while epidemiological studies clearly document the appropriateness of identifying "Early onset of sexual activity (under 16 years of age)" as a high-risk factor for developing cervical cancer, clinical studies also clearly demonstrate that recent negative Pap screening tests for patients in that category could result in a determination that these patients are no longer at high risk, at least for a limited period of time.

We agree that recent screening history should be taken into account in determining whether a woman is considered at high risk of developing cervical cancer. Therefore, we propose to establish a limitation on the frequency within which Medicare coverage of screening Pap smears would be available. Accordingly, for women who may be considered to be at high risk under any of the three factors listed below, coverage of a screening Pap smear would not be provided until 12 months after the end of the month in which the last Medicare-covered screening Pap test was performed and was later found to be normal. In those situations, we are proposing that the individual must wait at least 12 months until she can again be covered for a screening Pap smear. For example, a woman at high risk receives a covered screening Pap smear on January 5, 1991. She would be eligible for a subsequent screening Pap smear sooner than 36 months, but not before January 5, 1992.

The time interval of 12 months is consistent with the recommendations of national cancer organizations, such as the National Cancer Institute, the American Cancer Society, and other national professional organizations, such as the American Medical Association, that recommend that screening Pap smears be performed annually. It should be noted that a woman who has undertaken a Medicare screening Pap smear that was not found to be normal would be eligible to receive payment for a follow-up diagnostic Pap smear or other medically necessary services, such as those required in connection with a biopsy, within less than 12 months as determined by her physician. These latter services have always been covered under Medicare (and will continue to be covered under the program) as provided under the diagnostic testing benefit in section 1861(s)(3) of the Act.

C. Proposed High-Risk Factors

In § 410.56(c), we propose to set forth the limits on coverage of screening Pap smear services. We propose that a screening Pap smear performed on an asymptomatic woman would be covered under Part B if the individual has not had a Medicare-covered test during the preceding 35 months following the month in which her last Medicare-covered screening Pap smear was performed. In addition, we propose that screening Pap smears would be covered for an asymptomatic woman more frequently than once every 36 months if her physician or other qualified person recommends that she have the test performed and there is evidence (on the basis of her medical history or other findings) that she is at high risk of developing cervical cancer, as determined in accordance with the risk factors listed below:

- Early onset of sexual activity (under 16 years of age);
- Multiple sexual partners (five or more in a lifetime); or
- History of sexually transmitted disease (including HIV infection).

Women who might otherwise be considered to be at high risk on the basis of any of the above-listed factors would not be considered to be at high risk of developing cervical cancer under the regulation if they have undergone a Pap smear screening in the previous 11 months and have been found to be normal.

It is understood that the definition of high risk status might be modified in the future to reflect advances in science and knowledge about the efficacy and effectiveness of screening pap smears.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

IV. Information Collection Requirement

This proposed rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement and Flexibility Analysis

A. Introduction

This proposed rule would implement section 6115 of OBRA '89 to provide Medicare coverage of screening Pap smears. We would pay for the collection and preparation of the Pap smear if the conditions and limitations of § 410.56(b) of this proposed rule are met. We also would pay for Pap smear services under the proposed rule for the examination of the Pap smear by a laboratory if the conditions of § 410.56(b)(4) are met. We anticipate that Medicare coverage of screening Pap smear tests, including the cost of the collection of the Pap smear cultures, would result in the following costs:

TABLE I.—PROJECTED COSTS AS A RESULT OF MEDICARE COVERAGE OF SCREENING PAP SMEARS

[In millions] [1]

Fiscal years				
1994	1995	1996	1997	1998
$30	$35	$40	$45	$50

[1] Rounded to the nearest $5 million.

This proposed rule would not result in annual costs exceeding $100 million, therefore, a regulatory impact analysis is not provided.

B. Regulatory Flexibility Act

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 rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all doctors of medicine or osteopathy and other practitioners ordering Pap smear tests and laboratories examining Pap smears are considered to be small entities. Individuals are not considered small entities under the RFA.

Since the Medicare coverage of screening Pap smears represents an expansion of Medicare benefits, we are providing the following voluntary regulatory flexibility analysis.

1. Effects on Practitioners and Laboratories

We believe that most of the practitioners who order screening Pap smears, and collect or supervise the collection of the sample of cervical cells that is affixed to the glass slide before it is sent to a laboratory for analysis, are physicians. Other health practitioners, including certified nurse midwives, physician assistants, nurse practitioners, and clinical nurse specialists authorized under State law to perform such services, would also be affected by this proposed rule.

We believe that Medicare coverage of screening Pap smears would result in increased utilization of these services over current levels on the part of Medicare eligible women. A logical outgrowth of this increased utilization would be an increase in services by those practitioners who provide Pap test services and supplies, namely: Physicians, cytology laboratories and their pathologists, and other qualified practitioners and suppliers.

The effect of this proposed rule on an individual physician or other health care practitioner or supplier would depend on the percentage of his or her

practice that involves Medicare eligible women and the percent of his or her practice that involves the ordering, collection, and interpretation of screening Pap smears. Clearly, this would vary among practicing physicians and other health care practitioners and suppliers. Additionally, we believe that providers of laboratory supplies for screening Pap smears would experience an increased demand for their supplies.

Physicians who interpret screening Pap smears must meet the proposed Medicare qualification requirements or the applicable State licensure law or regulations as appropriate. The pathologist fee for interpreting screening Pap smears is incorporated into the laboratory fee. Laboratories would be paid 100 percent of the upper limit for a screening Pap smear test. In CY 1992, the average payment per test not requiring physician interpretation was approximately $8. The average payment for the test that required interpretation in CY 1992 was approximately $11.50.

2. Effect on Beneficiaries

We believe the effect of this proposed rule on beneficiaries would be a positive one. According to a study by the Congressional Office of Technology Assessment, one-quarter of the new cases of invasive cervical cancer occur in women aged 65 and older. Early detection of cervical cancer through screening Pap smears may prevent beneficiaries from enduring the suffering and expense of prolonged treatment or surgery for the more advanced stages of cervical cancer. A significant decrease in the death rate from cervical cancer in the last 40 years has been attributed to the performance of Pap smear tests ("The 1988 Bethesda System—National Cancer Institute Workshop", Journal of the American Medical Association, August 18, 1989).

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This 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 that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since screening Pap smears are usually taken in a physician's office rather than in a hospital setting. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 410

Medical and other health services, Medicare.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

We are proposing to amend 42 CFR chapter IV as set forth below:

I. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s) and (cc), 1861(aa), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x(r), (s) and (cc), 1395x(aa), 1395hh, and 1395rr).

Subpart B—Medical and Other Health Services

B. Subpart B is amended as follows:

1. In § 410.10, the introductory text is republished and a new paragraph (u) is added to read as follows:

§ 410.10 Medical and other health services: included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(u) Screening Pap smear services.

2. A new § 410.56 is added to read as follows:

§ 410.56 Screening Pap smears: Conditions and limitations.

(a) *Definitions.* As used in this section—

(1) *Screening Pap smear services* means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the early detection of cervical cancer, including collection and preparation of the smear by, or under the direct supervision of, a physician or other qualified individual authorized under State law to perform these services, who is entitled to payment under Medicare law.

(2) *Direct supervision* means that the supervising individual is present in the suite or office during the time in which the person being supervised is performing his or her service and that the supervisor is therefore immediately available in case help is needed. This is distinct from "general supervision," by which we mean that the supervising individual need not be present in the suite or office during the time in which the individual being supervised is performing his or her services.

(b) *Conditions.* Medicare Part B pays for screening Pap smear services subject to the following conditions and limitations:

(1) The Pap smear must be ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by a certified nurse midwife (as defined in section 1861(gg) of the Act), or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa) of the Act) who is authorized under State law to perform the smear, and who is entitled to payment under Medicare law.

(2) The beneficiary must not have had a hysterectomy with the total removal of the cervix.

(3) The Pap smear must be collected from the beneficiary and prepared for laboratory examination by or under the direct supervision of a physician or other practitioner who ordered the test as required in paragraph (b)(1) of this section, and the laboratory instructions for specimen collection and preparation must meet the requirements set forth at § 493.1103 of this chapter.

(4) The Pap smear must be evaluated by a laboratory that is certified under CLIA and therefore is entitled to payment under Medicare regulations, including the technical supervisor requirements set forth at §§ 493.1257(c) and 493.1449 of this chapter.

(c) *Limits on coverage of screening Pap smear services.* The following limitations apply to coverage of screening Pap smear services:

(1) *General rule.* Except as specified in paragraph (c)(2) of this section, payment may be made for a screening Pap smear performed on an asymptomatic woman only if the individual has not had a smear paid for by Medicare during the preceding 35 months following the month in which her last Medicare-covered screening Pap smear was performed.

(2) *More frequent screening based on high-risk factors.* Subject to the limitation as specified in paragraph (c)(3) of this section, payment may be made for an asymptomatic woman more frequently than once every 36 months since her last Medicare-covered screening Pap smear was performed if her physician recommends that she have the test performed and there is evidence (on the basis of her medical history or other findings) that she is at

high risk of developing cervical cancer. The physician must consider the following factors in making this determination:

(i) Early onset of sexual activity (under 16 years of age).

(ii) Multiple sexual partners (five or more in a lifetime).

(iii) History of a sexually transmitted disease (including HIV infection).

(3) *Limitation applicable to women at high risk.* Payment is not made for a screening Pap smear for women considered to be at high risk (under any of the criteria described in paragraph (c)(2) of this section) more frequently than once every 12 months after the last screening Pap smear covered by Medicare was performed and found to test normal.

II. Part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(1), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(1), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

Subpart A—General Exclusions and Exclusion of Particular Services

B. Subpart A is amended as follows:

1. In § 411.15, the introductory text is republished, paragraph (a)(1) is redesignated as paragraph (a)(1)(i), and a new paragraph (a)(1)(ii) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as*—(1)(i)

* * * * *

(ii) Screening Pap smear services (including collection and preparation of the smear by, or under the direct supervision of, a physician or other practitioner) except those that meet the conditions for coverage of screening Pap smear services specified at § 410.56 of this chapter.

* * * * *

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

Dated: June 4, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 11, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-28996 Filed 11-24-93; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-283, RM-8374]

Radio Broadcasting Services; Pillager, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by NorMin Broadcasting Co. proposing the allotment of Channel 240A to Pillager, Minnesota, as that community's first local aural transmission service. There is a site restriction 9.2 kilometers (5.7 miles) southeast of the community. Canadian concurrence will be requested at coordinates 46-14-59 and 94-26-33.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-283, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commissions copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28962 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-278, RM-8344]

Radio Broadcasting Services; Pequot Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Christian Broadcasters, Inc., proposing the allotment of Channel 261A to Pequot Lakes, Minnesota, as that community's second FM broadcast service. The channel can be allotted to the community without a site restriction at coordinates 46-36-11 and 94-18-33. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Reddy, Begley & Martin, 1001 22nd Street, NW., suite 350, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-278, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the

Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28961 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-285, RM-8376]

Radio Broadcasting Services; Alamo, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 228A to Alamo, Nevada, as the community's first local aural transmission service. Channel 228A can be allotted to Alamo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 37-21-54 and West Longitude 115-09-49.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-285, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28960 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-282, RM-8371]

Radio Broadcasting Services; Eureka, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 233A to Eureka, Nevada, as the community's first local aural transmission service. Channel 233A can be allotted to Eureka in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39-30-46 and West Longitude 115-57-35.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-282, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-28959 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-281, RM-8370]

Radio Broadcasting Services; Austin, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 259A to Austin, Nevada, as the community's first local FM service. Channel 259A can be allotted to Austin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39–29–36 and West Longitude 117–04–07.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–281, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–28963 Filed 11–24–93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93–280, RM–8369]

Radio Broadcasting Services; Lund, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 264A to Lund, Nevada, as the community's first local FM broadcast service. Channel 264A can be allotted to Lund in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 38–51–24 and West Longitude 115–00–25.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–280, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–28958 Filed 11–24–93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93–291; DA 93–1363]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by MFP, Inc. to amend the Commission's Rules to change the designation of the Boston-Cambridge-Worcester, Massachusetts television market to "Boston-Cambridge-Lawrence-Worcester, Massachusetts." This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before December 28, 1993, and reply comments are due on or before January 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–291, adopted November 8, 1993, and released November 18, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by MFP, Inc., licensee of WMFP (TV), Channel 63, Lawrence, Massachusetts, proposed to amend § 76.51 of the Rules to change the designation of the Boston-Cambridge-Worcester, Massachusetts, television market to "Boston-

Cambridge-Lawrence-Worcester, Massachusetts."

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station WMFP (TV) and stations licensed to communities in the Boston-Cambridge-Worcester television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

4. The Commission also recognize that the proposed major market adjustment under consideration involves a particularly large television market, the nation's sixth largest. In another proceeding, the Commission is considering several alternative possibilities other than market hyphenation to respond to competition issues that are raised with regard to stations operating in large markets under existing rules. See Notice of Proposed Rule Making in MM Docket No. 93-290 (Newton, New Jersey and Riverhead, New York), DA 93-1349 (released November 16, 1993. In this regard, the Commission stated that interested parties may wish to address the issues raised in that proceeding in connection with the instant proposal.

Initial Regulatory Flexibility Analysis

5. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 28, 1993, and reply comments on or before January 12, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-28929 Filed 11-24-93; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

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

Animal and Plant Health Inspection Service

[Docket No. 90-108-5]

Medfly Cooperative Eradication Program Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a final environmental impact statement for the Medfly Cooperative Eradication Program. This document analyzes potential environmental effects of a program to eradicate the Mediterranean fruit fly from the U.S. mainland.

ADDRESSES: Copies of the final environmental impact statement are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250;

USDA-APHIS Library, room G-180, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782;

* USDA-APHIS-PPQ, 9580 Micron Avenue, Suite I, Sacramento, CA 95827;
* USDA-APHIS-PPQ, 3505 Boca Chica Boulevard, suite 360, Brownsville, TX 78521-4065;
* USDA-APHIS-PPQ, 3505 25th Avenue, Building 1, North, Gulfport, MS 39501;
* USDA-APHIS-PPQ, Blason II, 1st Floor, 505 South Lenola, Moorestown, NJ 08057.

Interested persons may obtain a copy of the final environmental impact statement by writing to any of the addresses listed above with an asterisk, or to the address listed below under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mr. Harold T. Smith, Branch Chief, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8963.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), in cooperation with 12 other Federal and State organizations, has prepared a final environmental impact statement (EIS) for the Medfly Cooperative Eradication Program. Copies of this document were filed with the U.S. Environmental Protection Agency (EPA) on November 12, 1993, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)), and the EPA Notice of Availability is published in the Notices section of today's **Federal Register**.

On April 9, 1993, we published in the **Federal Register** (58 FR 18366, Docket No. 90-108-3) a notice advising the public that APHIS had prepared a draft EIS for the Medfly Cooperative Eradication Program. The notice also requested comments on or before May 24, 1993. On May 28, 1993, we published a notice reopening the comment period and extending it until June 18, 1993 (58 FR 31007, Docket No. 90-108-4).

By close of business June 18, 1993, we had received 255 comments on the draft EIS. We carefully reviewed and considered all of the comments. Based on suggestions and information offered in the comments, we have revised our draft EIS, and have produced a final EIS.

This notice is issued in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 19th day of November 1993.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-29008 Filed 11-24-93; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. This action is necessary to implement the Secretary of Agriculture's final rule amending the Forest Service administrative appeal procedures, which was signed on December 5, 1990 and was published in the **Federal Register** on February 6, 1991 (56 FR 4914). The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 31, 1993. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208-3623, phone: (503) 326-2322.

SUPPLEMENTARY INFORMATION: On December 5, 1990 the Deputy Secretary of Agriculture signed a final rule amending the administrative appeal procedures 36 CFR part 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of

notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors Decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Hearald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Burns Times Herald, Burns, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspapers providing additional notice of Powers decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport,

Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Unpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Baker City Herald, Baker City, Oregon
Baker District Ranger decisions:
Baker City Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decisions:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Baker City Herald, Baker City, Oregon
Unity District Ranger decisions:
Baker City Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa county Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of McKenzie decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Rigdon decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Home decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Klamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Satesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pichot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mount St. Helens National Volcanic Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington,
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions
Methow Valley News, Twisp, Washington

Olympic National Forest

Olumpic Forest Supervisor decisions:
The Olympian, Olympia, Washington

Newspapers providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilcene District Ranger decisions:
Pennisula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions;
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberden, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington.

Dated: November 19, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–28951 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–11–M

Sandy River Delta Master Plan, Columbia River Gorge National Scenic Area, Multnomah County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) and master plan which will describe the long term development, restoration, and management of the Sandy River Delta site, located in Oregon, Multnomah County, T.1N, R.3E, Sections 13, 14, 24, 25 and T.1N, R.3E, Sections 18, 19, 20, 29 and 30, Willamette Meridian.

The EIS and master plan will describe the location of the National Scenic Area's south-west orientation and information gateway facilities, approximately 4 miles of new trails, and landscape restoration opportunities, particularly wetlands. The master plan will include design guidelines, and will fulfill National Scenic Area requirements for an open space plan.

The project scope has been expanded and the schedule revised from the notice of intent printed in the February 23, 1993 **Federal Register** (58 FR 11023). The project has been expanded to include redesign of the Jordan Interchange (I–84 exit 18), with approximately 200 acres added to the project area. Since the notice of intent, extensive public scoping has identified issues and preliminary alternatives have been developed. Alternatives to be considered will include the location of gateway facilities and trails, and the type, location and degree of landscape restoration. The draft EIS will be completed July 1994. The final EIS is scheduled to be completed by December 1994.

DATES: Comments concerning the expanded project scope should be received by January 3, 1994.

ADDRESSES: Submit written comments and suggestions concerning the expanded project scope to Arthur J. Carroll, Area Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and EIS to Virginia Pugh, Planning Team Leader, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

Dated: November 18, 1993.

Arthur J. Carroll,

Area Manager.

[FR Doc. 93–29850 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Lick Creek Watershed, TN; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lick Creek Watershed, Greene and Washington Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Jerry S. Lee, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 736–5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jerry S. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Lick Creek Watershed, Tennessee

Notice of a Finding of No Significant Impact

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include animal waste systems, exclusion of cattle from streams, and treatment of pastureland erosion. Federal financial assistance

will be provided to accelerate financial and technical assistance for water quality improvement.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jerry S. Lee.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: November 17, 1993.

Jerry S. Lee,

State Conservationist.

[FR Doc. 93-28991 Filed 11-24-93; 8:45 am]

BILLING CODE 3410-16-M

Marshland Dike: Misich to Wallace, Snohomish County, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marshland Dike: Misich To Wallace, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower West, 316 Boone Avenue, suite 450, Spokane, Washington 99201, telephone (509) 353-2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and flood protection. The planned works of improvement include the reconstruction of 4,300 feet of dike of the final 15,312 feet planned in the Watershed work plan of 1958, recommended in the SCS Environmental Impact Statement of 1978, and the Snohomish River Comprehensive Flood Control Management Plan of 1991. The proposed construction will extend from the downstream end of the dike section that was completed in 1974, as part of the Marshland Watershed Project, on the John Misich farm to its junction with the Lowell-Snohomish road. The planned work will include the removal of the previous material from the landward side of the existing dike and replacing it with impervious fill material. The dike top will be built to the elevations agreed upon and outlined in the Levee and Dike System Coordination Agreement, signed March 13, 1991. The dike is designed to withstand out of bank flow and/or overtopping during high flows in the Snohomish River. All disturbed areas will be revegetated to sod farming grasses, forbs, and small trees to meet the stabilization objectives, maintain structural integrity, and incorporate the habitat and forage needs of wildlife.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 15, 1993.

Lynn A. Brown,

State Conservationist.

[FR Doc. 93-28988 Filed 11-24-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumpting or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than December 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping duty proceedings	Period
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A-351-602)	12/01/92-11/30/93
Canada: Elemental Sulphur (A-122-047)	12/01/92-11/30/93
Germany: Animal Glue and Inedible Gelatin (A-428-062)	12/01/92-11/30/93
Hong Kong: Photo Albums and Filler Pages (A-582-501)	12/01/92-11/30/93
Japan: Certain Small Business Telephone Systems and Subassemblies Thereof (A-588-809)	12/01/92-11/30/93
Japan: Cellular Mobile Telephones and Subassemblies (A-588-405)	12/01/92-11/30/93
Japan: Certain Electric Motors of 150-500 HP (A-588-091)	12/01/92-11/30/93
Japan: Drafting Machines and Parts Thereof (A-588-811)	12/01/92-11/30/93

Antidumping duty proceedings	Period
Japan: Polychloroprene Rubber (A–588–046)	12/01/92–11/30/93
Japan: Steel Wire Strand for Prestressed Concrete (A–588–068)	12/01/92–11/30/93
Japan: Tuners (of the Type Used in Consumer Electronic Products (A–588–014)	12/01/92–11/30/93
Mexico: Porcelain-on-Steel Cooking Ware (A–201–504)	12/01/92–11/30/93
New Zealand: Low-Fuming Brazing Copper Rod and Wire (A–614–502)	12/01/92–11/30/93
Sweden: Certain Carton-Closing Staples and Staple Machines (A–401–004)	12/01/92–11/30/93
Sweden: Seamless & Welded Stainless Steel Hollow Products (A–401–603)	12/01/92–11/30/93
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A–583–605)	12/01/92–11/30/93
Taiwan: Certain Small Business Telephone Systems and Subassemblies Thereof (A–583–806)	12/01/92–11/30/93
Taiwan: Certain Welded Stainless Steel Pipe (A–583–815)	03/01/92–11/30/93
Taiwan: Porcelain-On-Steel Cooking Ware (A–583–508)	12/01/92–11/30/93
The People's Republic of China: Ceiling Fans (A–570–807)	12/01/92–11/30/93
The People's Republic of China: Porcelain-On-Steel Cooking Ware (A–570–506)	12/01/92–11/30/93
The Republic of Korea: Certain Welded Stainless Steel Pipes (A–580–810)	06/22/92–11/30/93
The Republic of Korea: Photo Albums and Filler Pages (A–580–501)	12/01/92–11/30/93
Venezuela: Aluminum Sulfate (A–307–801)	12/01/92–11/30/93
Mexico: Porcelain-On-Steel Cookware (C–201–505)	01/01/93–12/31/93
Venezuela: Aluminum Sulfate (C–307–802)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country or origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce Building. Further, in accordance with §§ 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Departments's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by December 31, 1993.

If the Department does not receive, by December 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–29025 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 111893E]

North Pacific Fishery Management Council

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

ACTION: Notice of agenda revisions and additional meetings.

SUMMARY: An agenda for a public meeting of the North Pacific Fishery Management Council (Council) and its Advisory Committees, which are scheduled to meet during the week of December 6, 1993, was published in the **Federal Register** at 58 FR 58843 on November 4, 1993. The following changes have been made to the agenda, and two additional meetings have been scheduled. All other information originally published remains unchanged.

Agenda Revisions

(1) Under item #8 in the original notice, the discussion of "bycatch rate standards for the Vessel Incentive Program" has been deleted.

(2) Under item #9 in the original notice, the "review of proposed regulatory amendments for directed fishing standards for 1994" has been deleted.

Additional Meetings

The two additional meetings will be held at the Downtown Hilton Hotel, 6th and University Streets, Seattle, WA; and are open to the public.

On December 6 at 7 p.m., the National Marine Fisheries Service (NMFS), will hold an information meeting on implementation of the Council's Sablefish and Halibut Individual Fishing Quota program.

On December 8 at 7 p.m., staff from NMFS and the Council will meet with industry to discuss discards and full utilization in the groundfish fisheries off Alaska.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 10 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: November 19, 1993.

David S. Crestin,

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

[FR Doc. 93–28957 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–P

Endangered Species; Permits

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

ACTION: Notice of receipt of application for an incidental take permit (P503K).

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a permit to incidentally take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–227).

The applicant requests authorization to stock hatchery rainbow trout (*Oncorhynchus mykiss*) in waters where listed salmon occur. Releases of catchable (20–30 cm) rainbow trout are proposed for the Salmon River basin, and releases of subcatchable (13–18 cm) rainbow trout are proposed for the Salmon and Clearwater river basins. The requested duration of the permit is five years (1994–1998). IDFG also plans to release catchable trout in the Cape Horn Lake #2, Pettit, Perkins, Alturas, and Stanley Lakes, which are not currently used by listed salmon.

Rainbow trout may affect endangered Snake River sockeye salmon (*O. nerka*), threatened Snake River spring/summer chinook salmon (*O. tshawytsha*), and threatened Snake River fall chinook salmon (*O. tshawytscha*) through predation, competition, behavior modification, and transmission of disease.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Patricia Montanio,

Acting Director, Office of Protected Resources.

[FR Doc. 93–28919 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a modification to scientific research and enhancement Permit 747 (P45H).

Notice is hereby given that the U.S. Fish and Wildlife Service (FWS) has applied in due form for a modification to Permit 747 to take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–227).

Permit 747 was issued on August 8, 1991 (56 FR 40312) and modified on March 3, 1993 (58 FR 14202) as authorized by the ESA. The permit currently authorizes scientific research on and captive propagation of endangered Sacramento River winter-run chinook (*Oncorhynchus tshawytscha*), including the capture of up to 20 adults per year for broodstock purposes, the incubations of up to 35,000 of their eggs, and the rearing of the resulting juveniles for release into the upper Sacramento River. These activities are permitted through December 31, 1995.

FWS is requesting authorization to collect and sacrifice up to 450 coded-wire tagged and adipose fin clipped juvenile winter-run chinook salmon, released from the Coleman National Fish Hatchery, annually for the duration of the permit, through December 31, 1995. A similar take was authorized for 1993 through an emergency modification.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 908021–4213 (310–980–4016).

Dated: November 18, 1993.

Patricia A. Montanio,

Acting Director, Office of Protection Resources.

[FR Doc. 93–28995 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 8, 1993, the Governments of the United States and Jamaica agreed to amend and extend their current bilateral agreement. The term of the agreement will be extended for two consecutive one-year periods,

beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels (GALs) for the period January 1, 1994 and through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the availability of the 1994 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU dated November 8, 1993, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1993 between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	500,000 dozen pairs.
336/636	118,000 dozen.
338/339/638/639.	985,870 dozen.
340/640	461,018 dozen of which not more than 390,093 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	578,898 dozen.
342/642	175,000 dozen.
345/845	142,845 dozen.
347/348/647/648.	1,064,123 dozen.
352/652	1,590,000 dozen.
445/446	50,390 dozen.
447	10,000 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1994 and extends through December 31, 1994.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

Textile products in Category 632, produced or manufactured in Jamaica and exported to the United States on and after January 1, 1994 shall no longer be subject to the Special Access Program and are not subject to quota.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29049 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of the Coverage of Part-Categories for Certain Cotton Textile Products Produced or Manufactured in Various Countries

November 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate implementation of existing bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after November 8, 1993 for part-Categories 347–T, 348–T, 347–W and 348–W; and on and after January 1, 1994 for Categories 341–Y and 341–O, regardless of the date of export, certain HTS classification numbers are being

changed on all visa and certification arrangements and all import controls for countries with these part-categories. These changes in the tariff numbers are a result of statistical breakouts.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published at a later date.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton textile products in part-Categories 347–T, 348–T, 347–W, 348–W, 341–Y and 341–O, produced or manufactured in various countries and entered in the United States for consumption on and after November 8, 1993, in the case of Categories 347–T, 348–T, 347–W and 348–W; and January 1, 1994, in the case of Categories 341–Y and 341–O, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for part-Categories 347–T, 348–T, 347–W, 348–W, 341–Y and 341–O, for all countries for which visa arrangements are in place with the United States Government.

Effective on November 29, 1993, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after November 8, 1993 for Categories 347–T, 348–T, 347–W and 348–W; and on and after January 1, 1994 for Categories 341–Y and 341–O, regardless of the date of export:

Category	Obsolete number	New number
341–Y	—	6211.42.0054
341–O	6211.42.0050	6211.42.0056
347–T	6210.40.2035	6210.40.2033
348–T	6210.50.2035	6210.50.2033
347–W	6210.40.2035	6210.40.2033
348–W	6210.50.2035	6210.50.2033

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29048 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 93–1–92DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: On November 17, 1993, the Gospel Music Coalition ("GMC"), the Alliance of Artists and Recording Companies ("AARC"), Reachout Records International, Inc., and Copyright Management, Inc. ("CMI") ("Joint Parties") filed a joint motion to suspend commencement of the procedural schedule for the 1992 Sound Recordings Fund distribution proceeding. The Copyright Royalty Tribunal ("Tribunal") invites comments from the interested parties.

DATES: Comments are due by Monday, November 29, 1993.

ADDRESSES: An original and five copies of the comments shall be addressed to Chairman; Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Cindy Daub, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: By, Notice Establishing Procedural Schedule (58 FR 52478) (1993), the Tribunal established a procedural schedule for the 1992 Audio Home Recording Act ("AHRA") commencing with exchange of Direct Cases on December 1, 1993, and continuing through commencement of the evidentiary hearing on January 10, 1993. On November 3, 1993, claimants to the Musical Works Fund, including the GMC and CMI, filed a Motion to Consolidate the 1992 and 1993 DART Proceedings in the Musical Works Fund. The Tribunal invited comments on the November 3, 1993 motion by November 23, 1993. (58 FR 58220).

The Joint Parties request that because of significant uncertainty created by pending legislation and in the interest of justice and efficient administration the Tribunal suspend the 1993 DART Distribution proceedings in the Sound Recordings Fund. The Joint Parties note the following reasons for the suspension of the 1993 DART Distribution proceedings:

1. The first DART Distribution proceeding will have precedential effect that will result in significant legal costs, and therefore should not be held while significant uncertainty due to pending legislation exists.

Further given pending legislation concerning copyright royalty distribution proceedings which would transfer the Tribunal's operations to another forum effective January 1, 1994, interested copyright joint parties face significant uncertainty over whether the procedural schedule can be implemented. Additionally, in the meantime, the Joint Parties are faced with the prospect of incurring significant costs in preparing for a hearing that may not occur as scheduled.

2. Furthermore, the Joint Parties contend that the Tribunal's established procedural schedule of March 31, 1994 as the date for completion of the DART distribution proceeding is precatory, not mandatory, and should not outweigh the statutory interest in efficient distribution of royalties to claimants.

The Joint Parties contend that if the proceedings move forward as scheduled many interested parties, and particularly smaller parties, will be unable to participate due to the significant possibility that duplicate costs will be incurred if pending legislation passes. Therefore, the Joint Parties request that given the confluence of unique circumstances relevant to the DART proceedings, the best interests of all parties would be served if the procedural schedule were suspended until after the current pending legislation is resolved.

Dated: November 22, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–29094 Filed 11–23–93; 9:48 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 9 December 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research

Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group 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: November 19, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29904 Filed 11–24–93; 8:45 am]

BILLING CODE 5000-04-M

Defense Logistics Agency

Proposed DLA Guidance; Process Oriented Contract Administration Services (PROCAS)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Proposed change in agency operating guidance and request for comments.

SUMMARY: The Defense Logistics Agency proposes new guidance (in draft) for agency personnel performing contract administration services. The proposed change would direct agency employees to team with contractors and customers, focusing on improving the contractor processes that support contract performance. Contractor participation in voluntary. The proposed guidance is published in the **Federal Register** for informational purposes and to solicit public comment.

DATES: Comments should be submitted to the address below on or before 31 January 1994, to be considered prior to formal publication of the proposed guidance.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, ATTN: Mr. Sydney Pope, PROCAS Program Manager, AQCP, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Questions and requests for copies of draft policy documents may be directed to Mr. Sydney Pope, Defense Logistics Agency, AQCP (703) 274–7761.

SUPPLEMENTARY INFORMATION:

A. Background

DLA is committed to improving the efficiency and effectiveness of the contract administration services provided to their customers. The proposed guidance is intended to focus specifically on the contractor processes that support contract performance. The emphasis is on teaming with contractors and customers to achieve continuous improvement. It will also give DLA the facts and data necessary to make informed management decisions regarding the deployment of agency resources.

B. Regulatory Flexibility Act

The proposed guidance will not have a significant economic impact on small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it does not require any additional time or cost on the part of the contractor. Any contractor effort is voluntary.

C. Paperwork Reduction Act

The proposed guidance does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.* and, as such, the Paperwork Reduction Act does not apply.

Glenn Patrick Phillips,

Rear Admiral, USN, Acting Executive Director (Contract Management).

[FR Doc. 93–28949 Filed 11–24–93; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Station Puget Sound, Seattle, WA

Notice of Intent was published Friday, November 19, 1993, at 58 FR 61079, that a public scoping meeting was to have been held on December 9, 1993, begining at 7 p.m., at the National Oceanic and Atmospheric Administration facility, 7600 Sand Point Way NE., Building 9 Theater, Seattle, Washington. That Meeting has been rescheduled and will now be held on December 16, 1993. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 NW Anderson Hill Road, Silverdale, Washington, 98383-9130 (Attn: Mr. Don Morris, code 232DM), telephone (206) 396-5976.

November 19, 1993.

Saundra K. Melancon

Alternate Federal Register Liaison Officer.

[FR Doc. 93-28922 Filed 11-24-93; 8:45 am]

BILLING CODE 3810-AE-F

Navy Exchange System Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Navy Exchange System Advisory Committee will meet December 8, 1993, in the Navy Exchange Service Command (NEXCOM) Headquarters, Virginia Beach, Virginia. The meeting will commence at 9 a.m. and will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose confidential commercial or financial information; and may involve information which, if disclosed prematurely, would be likely to frustrate implementation of a proposed agency action. The Secretary of the Navy has therefore determined, in writing, that the public interest requires the meeting be closed to the public because it will concern matters listed in title 5, U.S.C. 552b(c)(2), (4), and (9)(B).

For further information concerning this meeting, please contact: Captain Roger J. Blood, SC, USN, Naval Supply Systems Command (SUP 09B), 1931

Jefferson Davis Highway, room 508, Arlington, VA 22241-5360, Telephone Number (703) 607-0072/73.

Dated: November 17, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93-28986 Filed 11-24-93; 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 8, 1993. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in City Hall, 10 East Church Street, Bethlehem, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include a National Park Service presentation on the Lower Delaware National Wild and Scenic River Study as well as status reports on Basinwide hydrologic conditions; compliance with DRBC's Special Protection Waters regulations and the Upper Delaware ice jam project.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1994, in the aggregate amount of $3,063,000 and a capital budget for the same period in the amount of $1,722,500 in revenue and $1,302,500 in expenditures. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore. This hearing continues that of October 27, 1993.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Myerstown Municipal Authority D-81-67 CP RENEWAL-2.* An application for the renewal of a ground water withdrawal project to supply up to 33 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 3, 5, 6 and 8. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 33 mg/30 days. The project is located in Jackson Township and Myerstown Borough, Lebanon County, Pennsylvania.

2. *Borough of Kutztown D-83-23 CP RENEWAL-2.* An application for the renewal of a ground water withdrawal project to supply up to 60 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3A, 4 and 5. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 60 mg/30 days. The project is located in Maxatawny Township, Berks County, Pennsylvania.

3. *Hansen Nurseries D-88-66 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 10.02 mg/30 days of water to the applicant's nursery from Well Nos. 1 and 33. Commission approval on December 14, 1988 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 10.02 mg/30 days. The project is located in Douglass Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Deer Lake Municipal Authority D-92-50 CP.* A sewage treatment plant (STP) expansion project to increase the capacity of the applicant's existing 0.153 mgd STP to 0.23 mgd. The expanded STP will continue to provide secondary treatment, serve the Borough of Deer Lake and discharge to Pine Creek, a tributary of the Schuylkill River in West Brunswick Township, Schuylkill County, Pennsylvania.

5. *City of Wilmington D-92-67 CP.* A project to modify the City of Wilmington's regional 90 mgd capacity sewage treatment plant (STP) to provide consistent reliable secondary treatment during periodic hydraulic overload conditions. The project will enable the STP to expand its peak treatment capacity from 200 mgd to 350 mgd. The STP serves most of northern New Castle County, Delaware and portions of Upper Chichester and Bethel Township in Delaware County, Pennsylvania. It is located just off East 12th Street and Hay Road in the City of Wilmington, New Castle County, Delaware, and will continue to discharge to Water Quality Zone 5 of the Delaware River.

6. *UNISYS Corporation D-92-82 (G).* A ground water remediation project consisting of the proposed withdrawal of up to 367,000 gallons per day (gpd) of ground water at the applicant's computer manufacturing plant site, to be accomplished by three wells (MW-6D at 7,200 gpd; MW-11D at 72,000 gpd; and MW-21 at 228,000 gpd). The project is situated in both East Whiteland and Tredyffrin Townships, Chester County, located in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Perdue Farms, Incorporated D-93-29.* An application for approval of a ground water withdrawal project to supply up to 25.9 mg/30 days of water to the applicant's poultry processing facility from new Well No. 4, and to increase the existing withdrawal limit of 35 mg/30 days from all wells to 66 mg/30 days. The project is located in the Town of Georgetown, Sussex County, Delaware.

8. *Filomina, Inc. D-93-47.* An application for approval of a ground water withdrawal project to supply up to 9.16 mg/30 days of water to the applicant's golf course irrigation system from new Well Nos. 1, 6 and 8, and to limit the withdrawal from all wells to 9.16 mg/30 days. The project is located in Polk Township, Monroe County, Pennsylvania.

9. *Pennsylvania Department of Environmental Resources D-93-55 CP.* An application from the Pennsylvania Department of Environmental Resources (PADER) for inclusion in the DRBC Comprehensive Plan of those portions of the Tulpehocken Creek which have been been designated as part of the Pennsylvania Scenic Rivers System. The designation of these components is to conserve and protect their pastoral, recreational, fishery, cultural, historical and geological uses and/or characteristics. The designated areas of Tulpehocken Creek include segments of the main stem in Lebanon and Berks Counties; and a small segment of Cacoosing Creek in Berks County as follows:

(1) Tulpehocken Creek: Headwaters of the Tulpehocken Creek near Kimmerlings Church in North Lebanon Township to Ramona Road (Township Route 560) in Jackson Township, 3.4 miles, Pastoral.

(2) Tulpehocken Creek: Western boundary of the Carl Sensenig property, now or formerly owned by Carl Sensenig and wife, to the bridge carrying S.R. 4010 over the Tulpehocken near the entrance to Heidelberg Country Club, 16.8 miles, Pastoral.

(3) Tulpehocken Creek: Base of the Blue Marsh Dam to the creek's confluence with the Schuylkill River at Reading, 6.6 miles, Recreational.

(4) Cacoosing Creek: State Hill Road bridge S.R. 3023 to the confluence with the Tulpehocken Creek, 2.0 miles, Recreational.

10. *Nancy Lee, Inc. (Harding Woods STP) D-93-66.* An application to modify the existing 0.05 mgd secondary treatment plant serving Harding Woods Mobile Home Park located just south of

U.S. Route 40, approximately 3700 feet east of State Route 553 in Pittsgrove Township, Salem County, New Jersey. The plant will continue to discharge at the same permitted capacity via proposed replacement Infiltration/Percolation lagoons in the Dry Branch watershed, a tributary of the Maurice River.

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D-78-71 CP Renewal 2	City of New Castle	City of New Castle	New Castle	DE	01/20/98	01/20/2003
D-79-08 CP Renewal 2	Jackson Twp Municipal Utilities Auth.	Jackson Twp	Ocean	NJ	01/16/96	01/16/2001
D-79-86 CP	Borough of Westville	Westville Boro	Gloucester	NJ	08/08/95	08/08/2000
D-79-88 CP Renewal 2	SPS Technologies	Abington Twp	Montgomery	PA	01/12/95	01/12/2000
D-80-05 Renewal 2	Totten Farms	North Hanover Twp	Burlington	NJ	05/23/95	05/23/2000
D-80-07 CP Renewal 2	PADER-Bureau of State Parks.	Union Twp	Berks	PA	06/27/95	06/27/2000
D-80-32 CP Renewal	Pennsylvania Fish & Boat Commission.	Mt. Pleasant Twp	Wayne	PA	01/25/94	01/25/1999
D-81-05 CP Renewal 2	Village of Monticello	Village of Monticello	Sullivan	NY	02/20/96	02/20/2001
D-81-10 Renewal 2	George A. Coombs & Sons.	Upper Pittsgrove Twp	Salem	NJ	08/14/96	08/14/2001
D-81-11 CP Renewal	New Jersey American Water Company.	City of Camden	Camden	NJ	10/24/95	10/24/2000
D-81-30 Renewal 2	Schuylkill Haven Bleach & Dye Works.	Schuylkill Haven Boro	Schuylkill	PA	01/20/98	01/20/2003
D-81-71 CP Renewal 2	Jim Thorpe Municipal Authority.	Jim Thorpe Boro	Carbon	PA	08/12/97	08/12/2002
D-82-05 Renewal 2	Cressona Aluminum Company.	Cressona Boro	Schuylkill	PA	04/22/97	04/22/2002
D-82-07 CP Renewal	Deptford Twp Municipal Utilities Auth.	Deptford Twp	Gloucester	NJ	12/12/95	12/12/2000
D-83-26 CP Renewal	Lawrenceville Water Company.	Lawrence Twp	Mercer	NJ	01/12/95	01/12/2000
D-84-02 Renewal	Alpo Petfoods, Inc.	South Whitehall Twp	Lehigh	PA	04/26/94	04/26/1999
D-84-86 Renewal	Occidental Chemical Corporation.	Burlington Twp	Burlington	NJ	01/25/94	01/25/1999
D-84-52 CP Renewal	Merchantville-Pennsauken Water Comm.	Pennsauken Twp	Camden	NJ	10/25/94	10/25/1999
D-84-63 CP Renewal	Borough of East Stroudsburg.	East Stroudsburg Boro	Monroe	PA	03/28/95	03/28/2000
D-85-05 Renewal	Sybron Chemicals, Inc.	Pemberton Twp	Burlington	NJ	04/22/97	04/22/2002
D-85-07 CP Renewal	Honey Brook Borough Authority.	Honey Brook Twp	Chester	PA	05/23/95	05/23/2000
D-85-09 CP	Mount Laurel Municipal Utilities Auth.	Mt. Laurel Twp	Burlington	NJ	06/24/97	06/24/2002
D-85-10 Renewal	Riverton Country Club	Riverton Boro	Burlington	NJ	04/26/94	04/26/1999
D-85-14 Renewal	Hoffman-LaRoche, Inc.	White Twp	Warren	NJ	08/14/96	08/14/2001
D-85-18 CP Renewal	Borough of Brooklawn Water Dept.	Brooklawn Boro	Camden	NJ	12/06/94	12/06/1999
D-85-32 Renewal	E.I. DuPont DeNemours & Company.	Greenwich Twp	Gloucester	NJ	12/06/94	12/06/1999
D-85-57 CP Renewal	Upper Saucon Township	Upper Saucon Twp	Lehigh	PA	05/22/96	05/22/2001
D-85-80 Renewal	Eastern Foundry Company.	Boyertown Boro	Berks	PA	01/16/96	01/16/2001
D-86-15 Renewal	Coastal Eagle Point Oil Company.	West Deptford Twp	Gloucester	NJ	08/12/97	08/12/2002
D-86-31 P.A. Renewal	Penn Engineering & Mfg Corporation.	Plumstead Twp	Bucks	PA	02/03/97	02/03/2002
D-86-54 CP Renewal	Douglassville Water Company.	Amity Twp	Berks	PA	03/25/97	03/25/2002
D-86-79 Renewal	AT&T Microelectronics	Muhlenberg Twp	Berks	PA	04/22/97	04/22/2002
D-86-83 Renewal	Mid-Atlantic Canners Association.	Hamburg Boro	Berks	PA	06/24/97	06/24/2002
D-87-02 P.A. Renewal	Highway Materials, Inc.	East Whiteland Twp	Chester	PA	02/03/97	02/03/2002
D-87-32 Renewal	Baldwin Hardware Corporation.	City of Reading	Berks	PA	12/09/97	12/09/2002
D-87-33 CP Renewal	Country Place Water Company.	Coolbaugh Twp	Monroe	PA	08/12/97	08/12/2002
D-87-40 CP	City of Vineland	City of Vineland	Cumberland	NJ	10/23/96	10/23/2001
D-87-57 CP	Department of the Army	Coolbaugh Twp	Monroe	PA	01/25/94	01/25/1999
D-87-58 CP Renewal	Muhlenberg Township Authority.	Muhlenberg Twp	Berks	PA	11/04/97	11/04/2002
D-87-60 CP Renewal	Borough of Catasauqua	Catasauqua Boro	Lehigh/Northampton.	PA	01/20/98	11/04/2002

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D-87-66 Revision 2	Panther Creek Partners	Nesquehoning Boro	Carbon	PA	06/27/95	06/27/2000
D-87-91 Renewal	Star Enterprise		New Castle	DE	02/17/98	02/17/2003
D-87-92 CP	Borough of Clementon	Clementon Boro	Camden	NJ	02/24/94	02/24/1998
D-87-93 P.A.	James D. Scully Company.	Douglas Twp	Montgomery	PA	09/22/93	09/22/1998
D-88-01 P.A.	Peter McClennen	East Rockhill Twp	Bucks	PA	09/13/93	09/13/1998
D-88-28	Moon Nurseries Contracting.	Lower Makefield Twp	Bucks	PA	04/26/94	04/26/1999
D-88-31	Valley Township Authority.	Valley Twp	Chester	PA	10/26/93	10/26/1998
D-88-38 CP	Garden State Water Company.	Gloucester Twp	Camden	NJ	05/22/96	05/22/2001
D-88-68 P.A.	Paletown Development Corp.	Richland Twp	Bucks	PA	10/19/94	10/19/1999
D-88-74	ICI Americans, Inc	City of New Castle	New Castle	DE	01/25/94	01/25/1999
D-88-81 CP	New Jersey American Water Co.	Gibbsboro, Cherry Hill Twp. Laurel Springs Boro.	Camden	NJ	10/24/95	10/25/2000
D-88-82	Moorestown Foursome Partnership.	Moorestown Twp	Burlington	NJ	08/02/94	08/02/1999
D-89-07	J.T. Baker, Inc	Town of Phillipsburg, Lopatcong Twp.	Warren	NJ	09/27/94	09/27/1999
D-89-08 P.A.	Rohm & Haas Company	Lower Gwynedd Twp	Montgomery	PA	05/03/94	05/03/1999
D-89-15 CP	Borough of Dublin	Dublin Boro	Bucks	PA	08/02/94	08/02/1999
D-89-17 CP	Southeastern Chester County Auth.	New Garden Twp	Chester	PA	01/12/95	01/12/2000
D-89-33 CP	Tamiment Water Company.	Lehman Twp	Pike	PA	10/25/94	10/25/1999
D-89-35 CP	Tennanah Lake Community Water Co.	Town of Fremont	Sullivan	NY	09/27/94	09/27/1999
D-89-43	Allen Family Foods, Inc.		Sussex	DE	09/27/94	09/27/1999
D-89-50 CP	Manwalamink Water Company.	Smithfield Twp	Monroe	PA	03/28/95	03/28/2000
D-89-59	Textile Chemical Company, Inc..	Ontelaunee Twp	Berks	PA	10/25/94	10/25/1999
D-89-66	Draper-King Cole, Inc.	Town of Milton	Sussex	DE	12/06/94	12/06/1999
D-89-75 P.A.	Gordon Eadie Associates, Inc..	East Vincent Twp	Chester	PA	01/19/95	01/19/2000
D-89-80	Peronic Enterprises	Upper Freehold Twp	Monmouth	NJ	01/12/97	01/12/2000
D-89-84 P.A.	S.A. Kele Associates	Richland Twp	Bucks	NJ	04/23/95	04/23/2000
D-89-85 CP	Cranberry Hill/Stroud Water Co..	Stroud Twp	Monroe	PA	01/12/95	01/12/2000
D-89-86 CP	Burlington Township	Burlington Twp	Burlington	NJ	06/24/97	06/24/2002
D-89-99 P.A.	Melody Lakes Properties	Richland Twp	Bucks	PA	05/15/96	05/15/2001
D-90-02 CP	A.C. Wagner Youth Corr Facility.	Chesterfield Twp	Burlington	NJ	04/25/96	04/25/2000
D-90-03 CP	Richland Twp Board of Supervisors.	Richland Twp	Bucks	PA	06/27/95	06/27/2000
D-90-06 CP	North Wales Water Authority.	Upper Gwynedd Twp, Lower Gwynedd Twp, Upper Dublin Twp.	Montgomery	PA	06/27/95	06/27/2000
D-90-109 (G)	Alco Industries	Upper Providence Twp	Montgomery	PA	04/24/96	04/24/2001
D-90-11 CP	New Jersey Dept of Corrections.	Maurice River Twp	Cumberland	NJ	12/12/95	12/12/2000
D-90-18	Baer Aggregates, Inc.	Pohatcong Twp	Warren	NJ	10/24/95	10/24/2000
D-90-19 CP	Warrington Twp Municipal Authority.	Warrington Twp	Bucks	PA	12/12/95	12/12/2000
D-90-23	Binney & Smith, Inc.	Forks Twp	Northampton	PA	06/27/95	06/27/2000
D-90-38	Wilmington Country Club	Town of Middletown	New Castle	DE	06/27/95	06/27/2000
D-90-40	Mobil Oil Corporation	Greenwich Twp	Gloucester	NJ	04/22/97	04/22/2002
D-90-44 CP	Horsham Water Authority.	Horsham Twp	Montgomery	PA	12/12/95	12/12/2000
D-90-50 CP	Philadelphia Suburban Water Co.	Upper Uwchlan Twp	Chester	PA	10/24/95	10/24/2000
D-90-70	Hatfield Quality Meats, Inc..	Hatfield Twp	Montgomery	PA	02/20/96	02/20/2001
D-90-71	Public Service Electric & Gas Co.	Lower Alloways Creek Twp.	Salem	NJ	09/26/95	09/26/2000
D-90-76	Moyer Packing Company.	Franconia Twp	Montgomery	PA	02/20/96	02/20/2001

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D-90-77 CP	Resorts USA, Inc	Middle Smithfield Twp	Monroe	PA	06/24/97	06/24/2002
D-90-85 CP	Milford Township Water Authority.	Milford Twp	Bucks	PA	05/22/96	05/22/2001
D-90-95	Elverson Water Company, Inc..	Elverson Boro	Chester	PA	03/27/96	03/27/2001
D-90-96	Standard Chlorine of Delaware, Inc..	Delaware City	New Castle	DE	03/27/96	03/27/2001
D-91-01 CP	Stroudsburg Municipal Authority.	Stroud Twp	Monroe	PA	02/20/96	02/20/2001
D-91-02 CP	Garden State Water Company.	Hamilton Twp	Mercer	NJ	10/23/96	10/23/2001
D-91-04 CP	North Penn Water Authority.	Franconia Twp, Skippack Twp, Lower Salford Twp, Souderton Boro, Montgomery, Towamencin Twp, Worcester Twp, Lansdale Boro, Upper Gwynedd Twp, Montgomery Twp, East Rockhill Twp, New Britain Twp, New Britain Boro, Hatfield Twp, Hatfield Boro, Hilltown Twp.	Bucks/	PA	02/26/97	02/26/2002
D-91-06	Green Hills Management Company.	Cumru Twp	Berks	PA	06/19/96	06/19/2001
D-91-18 CP	Resorts USA, Inc	Middle Smithfield Twp, Lehman Twp.	Monroe/Pike	PA	08/14/96	08/14/2001
D-91-21 CP	Borough of Clayton	Clayton Boro	Gloucester	NJ	02/26/97	02/26/2002
D-91-23	Resorts USA, Inc	Middle Smithfield Twp	Monroe	PA	08/14/96	08/14/2001
D-91-24 CP	South Jersey Water Supply Company.	Harrison Twp	Gloucester	NJ	10/23/96	10/23/2001
D-91-25 CP	Washington Twp Municipal Utilities Auth.	Washington Twp	Gloucester	NJ	02/26/97	02/26/2002
D-91-31	Connaught Laboratories, Inc.	Pocono Twp	Monroe	PA	09/25/96	09/25/2001
D-91-32 (G)	B.P. Oil Company	Paulsboro Boro	Gloucester	OH	08/14/96	08/14/2001
D-91-36 CP	County of Bucks	Doylestown Twp	Bucks	PA	01/22/97	01/22/2002
D-91-40 CP	Doylestown Twp Municipal Auth.	Doylestown Twp	Bucks	PA	11/04/97	11/04/2002
D-91-48 CP	Town of Felton	Town of Felton	Kent	DE	12/11/96	12/11/2001
D-91-53	Joseph Jackewicz, Sr	Town of Magnolia	Kent	DE	02/26/97	02/26/2002
D-91-55	McGinley Mills, Inc	Town of Phillipsburg	Warren	NJ	02/26/97	02/26/2002
D-91-58 CP	Maidencreek Twp Water Auth.	Maidencreek Twp	Berks	PA	01/22/97	01/22/2002
D-91-59 P.A	C&M Developers, Inc	Plumstead Twp	Bucks	PA	02/19/97	02/19/2002
D-91-61 P.A	Thomas & Betts Corporation.	East Rockhill Twp	Bucks	NJ	10/02/96	10/02/2001
D-91-83	Wagner Lighting Division	Weatherly Boro	Carbon	PA	05/20/97	05/20/2002
D-91-86 CP	Philadelphia Suburban Water Co.	Birmingham Twp, East Bradford, Twp, East Goshen Twp, West, Goshen Twp, Westtown Twp, West, Whiteland Twp.	Chester	PA	08/12/97	08/12/2002
D-92-87 CP	Buckingham Water Company.	Buckingham Twp	Bucks	PA	06/24/97	06/24/2002
D-92-02 CP	Township of Buckingham.	Buckingham Twp	Bucks	PA	08/12/97	08/12/2002
D-92-05 CP	Borough of Orwigsburg	Orwigsburg Boro	Schuykill	PA	11/04/97	11/04/2002
D-92-14	Wheaton Industries	Millville City	Cumberland	NJ	06/24/97	06/24/2002
D-92-20 CP	Hilltown Twp Water & Sewer Auth.	Hilltown Twp	Bucks	PA	11/04/97	11/04/2002
D-92-28 CP	Whitehall Township Authority.	Whitehall Twp	Lehigh	PA	05/20/97	05/20/2002
D-92-31 PA	Peddler's Village Partnership.	Buckingham Twp	Bucks	PA	10/22/97	10/22/2002
D-92-33	American Argo Corporation.	Schuylkill Haven Boro	Schuylkill	PA	11/04/97	11/04/2002

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D-92-35 CP	Womelsdorf-Robersonia Joint Auth.	Heidelberg Twp	Berks	PA	09/23/97	09/23/2002
D-92-37	Pedricktown Cogeneration L.P.	Oldsmans Twp	Salem	NJ	02/17/98	02/17/2003
D-92-52	Longwood Gardens, Inc	East Marlborough Twp	Chester	PA	11/04/97	11/04/2002
D-92-53	General Foods USA	City of Dover	Kent	DE	12/09/97	12/09/2002

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: November 19, 1993.

Susan M. Weisman,

Secretary.

[FR Doc. 93-29051 Filed 11-24-93; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 27, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) my call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recording burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the request are available from Cary Green at the address specified above.

Dated: November 19, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Reinstatement

Title: State Annual Performance Report for Dwight D. Eisenhower Mathematics and Science Act

Frequency: Annually

Affected Public: State or local governments; Federal agencies or employees

Reporting Burden:
Responses: 104
Burden Hours: 4,160

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Agencies for Higher Education and State educational agencies that have participated in programs under the Dwight D. Eisenhower Mathematics and Science Act are required to submit this report. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 93-28931 Filed 11-24-93; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.128B]

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With the Most Severe Disabilities and Technical Assistance Projects—Statewide Supported Employment Demonstration Projects; Correction

ACTION: Correction notice.

SUMMARY: On November 9, 1993, a notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1994 and clarifying eligible entities for this program was published in the **Federal Register** (58 FR 59453).

In the first paragraph, the extension of the transmittal deadline date should read "is extended from December 1, 1993, to December 22, 1993."

Program Authority: 29 U.S.C. 777a(c).

Dated: November 18, 1993.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-28929 Filed 11-24-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF83-161-002]

Calciner Industries, Inc. and Superior Graphite Co.; Notice of Amendment to Filing

November 19, 1993.

On November 15, 1993, Calciner Industries, Inc. and Superior Graphite Company filed an answer to Louisiana Power and Light Company's Motion for a hearing. Part of this filing has been considered a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by December 3, 1993, and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28939 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF93-127-001]

Pioneer Energy Partners, Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

November 19, 1993.

On November 15, 1993, Pioneer Energy Partners, Limited Partnership (Pioneer Energy) of Newberg Mill, Foot of Wynoski Street, Newberg, Oregon 97132, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located at the Smurfit Newsprint Corporation (Smurfit), Newberg Mill, in Newberg, Oregon. On July 1, 1993, in Docket No. QF93-127-000, the applicant filed a notice of self-certification. The instant request for recertification reflects supplementary firing of the boiler for the steam turbine generator, a slight increase in the maximum net electric power production capacity from 229 MW to 238 MW, a possible change in the initial date of commercial operation, now slated for 1996, and the negotiation of a separate equity option agreement between Pioneer Energy and Smurfit, in which Smurfit or an affiliate of Smurfit, has the option to purchase up to 50% limited partnership equity interest in Pioneer Energy, within a three month period after the date of the execution of an energy agreement between Pioneer Energy and Smurfit.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28940 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2142-017, et al.]

Hydroelectric Applications [Central Maine Power Co., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Project Recreation Plan.

b. *Project No:* 2142-017.

c. *Date Filed:* September 30, 1993.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Indian Pond Project.

f. *Location:* Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. William Campbell, Central Maine Power Company, Edison Drive, Augusta, ME 04336; (207) 626-9600.

i. *FERC Contact:* Dan Hayes, (202) 219-2660.

j. *Comment Date:* December 29, 1993.

k. *Description of Project:* Central Maine Power Company, licensee for the Indian Pond Project, has filed an application for a recreation plan for the project. The plan sets forth licensee's intentions toward recreation development and public access to the project for the remainder of the current license period (December 31, 2001).

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2a. *Type of Application:* New License.

b. *Project No.:* 2318-002.

c. *Date Filed:* December 16, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* E.J. West Project.

f. *Location:* On the Sacandaga River in Saratoga County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428-6215.

i. *FERC Contact:* Robert Bell (202) 219-2806.

j. *Comment Date:* January 14, 1994.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The proposed project consists of: 1. The E.J. West Project takes water from the downstream end of the spillway channel of the Conklingville dam which is owned and operated by the Hudson River-Black River Regulating District (HRBRRD or District). The water is discharged from the turbines directly into the upper end of the Stewarts Bridge Reservoir (FERC Project No. 2048).

2. *Impoundment:* The Great Sacandaga Lake supplies water to the project and is owned and operated by HRBRRD. The impoundment has a normal maximum surface area of 25,940 acres, a normal maximum surface elevation of 768 ft. (MSL), a gross

storage at normal maximum surface elevation of 792,000 acre feet, and 681,000 acre ft. of usable storage.

3. *Intake Structure:* The reinforced concrete substructure of the intake is 38.5 ft. wide by 96 ft. long and contains trash racks and six penstock openings. Four of the penstock openings are provided with 10.5 ft. wide by 19 ft. high steel gates for the two existing hydroelectric generating units. The upstream face of the intake structure contains steel bulkhead gates and a hoist mechanism. The brick and steel superstructure of the intake is 29.8 ft. wide by 91 ft. long and contains the trash rake and headgate hoist mechanism. The two remaining penstock openings, available for a possible future generating unit, are sealed by bulkheads.

4. *Water Conduits:* There are two concrete penstocks per unit, each approximately 31 ft. long varying in size from a rectangle 9 ft. wide by 18 ft. high to a semicircle 15.62 ft. in diameter. Also, there are two penstocks for potential future unit.

5. *Powerhouse:* The brick and steel powerhouse, which is supported by a concrete substructure, is 46 ft. wide by 88 ft. long and approximately 50 ft. high.

6. *Turbines and Generators:* There are two vertical Francis turbines, with rated heads of 71 ft., rated capacities of 17,150 hp and speeds of 112.5 rpm. Rated output for the two generators is 10,000 kVA each.

7. There are no project transmission lines in the applicant's project boundary.

8. Mechanical equipment is controlled by a cabinet actuator type governor. There is a common motor driven oil pump and sump tank for both units. Each generator has its own shaft mounted exciter, rated at 250/270 volts, 364 amps and 91 Kw. Each unit is conductored to a step-up transformer in the outdoor switchyard, which then ties into a Niagara Mohawk non-project 115kV bus.

9. and appurtenant facilities. The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $3,925,242.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 or by calling (315) 428–6215.

3a. *Type of Application:* Minor License.

b. *Project No.:* 11058–001.

c. *Date filed:* November 2, 1992.

d. *Applicant:* A.L.L. Natural Resources, Inc.

e. *Name of Project:* Fitchburg Paper Mill Dam #4.

f. *Location:* on the North Nashua River, in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James Lane. A.L.L. Natural Resources, Inc., 29 Westminster St., Fitchburg, MA 01420, (508) 342–4029.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of: (1) An existing granite block and concrete dam 200 feet long; (2) an existing reservoir with a surface area of 1 acre and a total storage volume of 3 acre-feet at the proposed normal maximum surface elevation of 525.6 feet NGVD; (3) a proposed powerhouse containing: (a) Two proposed 8-foot-diameter by 6-foot-wide overshot waterwheels, constructed of ship-grade steel, each with a maximum hydraulic capacity of 37.5 cfs (providing a combined maximum hydraulic capacity of 75 cfs) and rated at 25 kW, and (b) two proposed 25-kW generators (providing a total plant rating of 50 kW); and (4) existing and proposed appurtenant facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant or sold.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. James Lane, III, 29 Westminster St., Fitchburg, MA (508) 342–4029.

4a. *Type of Application:* New License for Major Project.

b. *Project No.:* 2069–003.

c. *Date filed:* December 18, 1992.

d. *Applicant:* Arizona Public Service Company.

e. *Name of Project:* Childs-Irving Hydroelectric Project.

f. *Location:* Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E; T11N, R7E; T12N, R6E; T12N, R7E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Fearl M. Parker, Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* Sixty days from the issuance date of this notice. (January 10, 1994).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed includes two existing developments. The Irving development consists of: (1) A 25-foot-high concrete diversion structure on Fossil Creek; (2) a 16,578-foot-long flume; (3) a 3,278-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 1,600 kW; (5) a tailrace returning water to the flume of the Childs development; (6) a 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and (7) appurtenant facilities.

The Childs development consists of: (1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse; (2) a 23,190-foot-long conduit discharging into the licensee's Stehr Lake; (3) the 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam; (4) a 6,281-foot-long pressure tunnel connecting the lake with a penstock; (5) the 4,800-foot-long penstock; (6) a powerhouse containing three generating units with a total installed capacity of 5,400 kW; (7) a tailrace discharging water into the Verde River; (8) two 200-foot-long transmission lines interconnecting with the Arizona Public Service Company transmission grid; and (9) appurtenant facilities.

m. *Purpose of Project:* All project energy would be distributed to the applicant's customers.

n. *This notice also consists of the following standard paragraphs:* D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Arizona Public Service Company referenced above.

5a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 11365–000.

c. *Date filed:* December 2, 1992.

d. *Applicant:* Swan Falls Corporation.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* on the Saco River in Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, Maine 04082–0040, (207) 892–4000.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing dam approximately 630 feet long and 10 feet high; (2) an existing impoundment with a surface area of 150 acres, a length of 4.1 miles, and a storage capacity of 450 acre-feet; (3) an existing powerhouse containing one operable and one inoperable turbine generator unit (both to be upgraded), thus increasing the installed capacity of the project from 350 to 820 kilowatts; (4) an existing 34.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 million kilowatthours.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE, room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, ME 04082–0040 (207) 892–4000.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11430–000.

c. *Date filed:* August 16, 1993.

d. *Applicant:* Northern Wasco County People's Utility District.

e. *Name of Project:* Dalles Dam JBS.

f. *Location:* On the Columbia River, at the Dalles Dam, in Klickitat County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harold E. Haake, Northern Wasco County People's Utility District, P.O. Box 621, The Dalles, OR 97058, (503) 296–2226.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 20, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' existing Dalles dam and consist of: (1) A 10-foot-diameter, 30-foot-long penstock within the dam which is part of the dam's fish passage facilities; and (2) a powerhouse containing a generating unit with a capacity of 4.0 MW and an average annual generation of 30.0 GWh.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $130,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11443–000.

c. *Date Filed:* October 21, 1993.

d. *Applicant:* Pike Island Hydro Associates.

e. *Name of Project:* Pike Island Hydro Project.

f. *Location:* On the Ohio River, in Belmont County, Ohio and Ohio County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. V. James Dunlevy, 185 Genesee Street, suite 1518, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* January 21, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Pike Island Lock and Dam and consists of the following new facilities: (1) A powerhouse containing three 13.3–MW generating units for a total installed capacity of 40 MW; (2) a 160-foot-wide, 350-foot-long tailrace; (3) an 8,600-foot-long, 138–Kv transmission line; and (5) appurtenant facilities. The average annual generation would be 181.34 Gwh. The applicant estimates that the cost of the studies under the terms of the permit would be $150,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Pittsburgh District, 1000 Liberty, Federal Building, room 1834, Pittsburgh, PA 15222, (412) 644–6872.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8a. *Type of Application:* Major License.

b. *Project No.:* 10854–002.

c. *Date Filed:* September 1, 1993.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Cataract Hydro Project.

f. *Location:* On the Middle Branch Escanaba River in Marquette County, near Gwinn, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Clarence R. Fisher, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* January 21, 1994.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) A concrete diversion dam about 265 feet long and 8 feet high (maximum) having (a) a spillway/weir section about 185.3 feet long with 19 bays (18 bays about 10 feet wide and one bay 5.3 feet wide), three bays with crest elevation at 1,166.5 feet (USGS), and sixteen bays with crest elevation at 1,170.4 feet; (b) wooden flashboards 7.4 feet and 3.5 feet high with top of flashboards elevation at 1,173.9 feet; (2) an intake structure 19.83 feet wide, 11.9 feet high and 42 feet long, with trashracks and stoplog type gate; (3) a vertical rectangular tunnel (excavated in rock) about 8 feet by 16 feet in size and about 30 feet long; (4) a horizontal tunnel (excavated in

rock) about 8.5–10 feet by 9.5–10 feet in size and about 500 feet long (upper section) and 900 feet long (lower section); (5) two steel pipes each 8 feet in diameter consisting of a mid section about 1,300 feet long, and a penstock section about 120 feet long; (6) a powerhouse 54 feet long, 34 feet wide and 34 feet high with one 2,000 kW turbine-generator unit; (7) an 860-acre-foot reservoir with normal maximum pool elevation at 1,173.9 feet; and (8) appurtenant electric and mechanical facilities. The applicant estimates the average annual generation for this project would be 8,413 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Upper Peninsula Power Company P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130 or by calling (906) 487–5000.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11442–000.

c. *Date filed:* October 18, 1993.

d. *Applicant:* Weeden's Hydro.

e. *Name of Project:* West Cady Creek.

f. *Location:* In the Snoqualmie—Mt. Baker National Forest, on West Cady Creek, in Snohomish County, Washington. Township 28 N Range 12 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Arthur Weeden; P.O. Box 40101; Bellevue, WA 98015; (206) 742–6442.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 21, 1994.

k. *Description of Project:* The proposed project would consist of: (1) A 10-foot-high concrete dam at elevation 2,360 feet (msl); (2) a 6-foot-diameter, 3.2-mile-long penstock; (3) a powerhouse containing one generating unit with a capacity of 10,500 kW and an estimated average annual generation of 92.3 GWh; (4) a 15-mile-long transmission line; and (5) a 4-mile-long access road to the powerhouse.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $200,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to

Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 10, 1994 for Project No. 2069–003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 23, 1994 for Project No. 2069–003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 18, 1994 for Project No. 11058–001 and January 10, 1994 for Project No. 11365–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 1, 1994 for Project No. 11058–001 and February 23, 1994 for Project No. 11365–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy

of any protest or motion to intervene must be served upon each representative of the applicant.

Dated: November 19, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28938 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-4-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 19, 1993.

Take notice that on November 15, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to tract (1) rate and fuel changes attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are include in the rates and charges payable under TGPL's Rate Schedule FT-NT, (2) rate changes attributable to the transportation service purchased from CBG Transmission Corporation (CNG) under its Rate Schedule X-74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT and (3) rate changes attributable to storage services purchased from CNG under its Rate Schedule GSS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS: The tracking filing is being made pursuant to section 4 of TGPL's Rate Schedule FT-NT and section 4 of TGPL's Rate Schedule LSS.

Included in Appendices B and C attached to the filing is an explanation of the rate and fuel changes and details regarding the computation of the revised Rate Schedules FT-NT and LSS rates, respectively.

TGPL states that copies of the filing are being mailed to each of its FT-NT and LSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28941 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations, § 101-6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Health and Environmental Research Advisory Committee has been renewed for a two-year period beginning in November 1993. The Committee will provide advice to the Director, Office of Energy Research, on the Biological and Environmental Research Program managed by the Office of Health and Environmental Research.

The renewal of the Health and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95-91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Ms. Rachel Murphy at (202) 586-3279.

Issued in Washington, DC on November 22, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93-29027 Filed 11-24-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket EA-97]

Application for Export Authorization by Portland General Electric Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: On October 15, 1993, the Portland General Electric Company (PGE), filed an application with the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. The exports proposed by this application would be non-firm energy to British Columbia Hydro and Power Authority (BC Hydro) from uncontrollable hydroelectric resources, controllable hydroelectric resources, thermal resources, or power purchased by PGE.

DATES: Comments, protests or requests to intervene must be submitted on or before December 27, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Docket Number EA-97 should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202-586-5883 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: On October 15, 1993, PGE filed an application with the Office of Fossil Energy (FE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, PGE has applied for authorization to transmit economy and firm surplus energy to BC Hydro. The electrical energy proposed for export would be delivered to BC Hydro over transmission facilities owned and operated by the Bonneville Power Administration (BPA) for which Presidential permits have been granted in Dockets PP-10, PP-36, and PP-46. These facilities consist of two 500-kilovolt (kV) lines between BPA's Custer Substation and the U.S.-Canadian border, and two 230-kV lines extending from BPA's Boundary Substation to the U.S.-Canadian border.

PGE, BPA, and BC Hydro are all parties to the Western Systems Power Pool Agreement. The Western Systems Power Pool (WSPP) is a diverse group

involving more than 40 privately-owned and publicly-owned utilities, including federal agencies, like BPA, that serve customers in more than twenty-two states and British Columbia. The WSPP's primary function is to provide an electronic bulletin board on which members may provide information on services or products currently available for purchase. The WSPP Agreement provides for sales of coordination power and transmission services among members so long as the price is below a cost-based ceiling.

PGE will deliver the power it sells to BC Hydro over BPA's transmission system. The portion of BPA's system used to transmit power to BC Hydro will be the Canadian (Northern) Intertie which consists of:

1. Two 500-kV lines between Custer Substation and the U.S.-Canadian border;
2. One 500-kV line between the Custer and Monroe Substations; and,
3. Two 230-kV lines from the Boundary Substation to the U.S.-Canadian border, including the associated substation facilities.

PGE states in its application that the power sold to BC Hydro can be transferred onto the BPA system at a number of interconnection points. PGE's 230-kV system interconnects with BPA's 500-kV system at the McLoughlin, Pearl, Keeler, and Allston Substations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the address provided above in accordance with Rules 211 and 214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE no later than December 27, 1993. Additional copies of such petitions to intervene or protests also should be filed directly with Ms. Melinda Horgan, Assistant General Counsel, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed transaction will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, State governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, DC on November 22, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office Fossil Energy.

[FR Doc. 93–29026 Filed 11–24–93; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Collections From Central Valley Project Power Contractors To Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures for the assessment and collection of restoration fund payments from the Central Valley Project power contractors.

SUMMARY: The Central Valley Project (CVP) Improvement Act of 1992 (Act) (Pub. L. 102–575, 106 Stat. 4726 et seq.) establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors (Restoration Fund payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining the CVP water contractors' share and the CVP power contractors' share of the Restoration Fund payments. Because Western Area Power Administration (Western) is responsible for the marketing of CVP power and maintains all CVP power contracts, Western has agreed to assess and collect the total power contractors' share of the Restoration Fund payments, as determined by Reclamation, from each power contractor. By implementing this process, Western will establish procedures to accomplish the assessment and collection of Restoration Fund payments from the CVP power contractors as required by the Act.

DATES: The comment period will begin with the publication of this notice in the **Federal Register** and will end the later of 30 days after publication or December 19, 1993. All written comments should be received by Western by the end of the comment period to be assured consideration. A public information forum will be held at 10 a.m. on December 16, 1993, and will be followed by a public comment forum at 1 p.m. The forums will be held at the Red Lion Hotel, 2001 Point West Way, Sacramento Room, Sacramento, CA 95815.

The final procedures are to become effective not less than 90 days after the publication of this notice in the **Federal**

Register or February 18, 1994, whichever occurs later.

ADDRESSES: All written comments should be mailed to James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097. All documentation made or retained by Western for the purpose of developing these procedures will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, suite 105, Sacramento, California 95825–1097.

FOR FURTHER INFORMATION CONTACT: Ms. Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097, (916) 649–4421.

SUPPLEMENTARY INFORMATION: Section 3407 of the Act establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors. The Secretary of the Interior, through Reclamation, is responsible for determining and collecting the CVP water contractors' share and the CVP power contractors' share of the annual Restoration Fund payments.

Because Western is responsible for the marketing of CVP power, Western has agreed to administer the assessment and collection of the Restoration Fund payments from the CVP power contractors. Western will enter into a letter agreement with Reclamation to establish procedures for depositing the collections from the CVP power contractors into the Restoration Fund.

The amount of the assessment against each CVP power contractor is proposed to be based upon a total power Restoration Fund payment obligation amount which will be determined by Reclamation. This total power Restoration Fund payment obligation will then be prorated among the CVP power contractors by Western. Every month each CVP power contractor will receive a supplemental bill reflecting this prorated amount. The CVP power contractor will pay that prorated amount to Western, who will deposit all amounts collected from the CVP power contractors into the Restoration Fund.

Proposed Procedures

Acronyms and Definitions

Assessment Month: The service month which is 2 months prior to the actual billing month. The data derived from this service month will serve as the basis for calculating the monthly supplemental bills.

Billing Month: The month each CVP power contractor will be billed for the Restoration Fund payment.

CVP: Central Valley Project.

CVP Power Contractor: Any entity purchasing firm capacity and energy from Western on a long-term basis.

CVP Power Contractor's Restoration Fund Payment: The amount recorded as payable on the CVP power contractor's supplemental bill.

FY: Fiscal year beginning October 1, 19XX, and ending September 30, 19XX+1.

Long-Term Basis: A period in excess of 1 year.

Reclamation: Bureau of Reclamation, United States Department of the Interior.

Restoration Fund: The Central Valley Project Restoration Fund created by section 3407 of Public Law 102–575, 106 Stat. 4726 *et seq.*

Total Power Restoration Fund Payment Obligation: The total annual Restoration Fund payment obligation calculated and assigned to the CVP power contractors by Reclamation.

Western: Western Area Power Administration, United States Department of Energy.

Procedures

Determination of the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for assigning the total power Restoration Fund payment obligation to the CVP power contractors. Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration Fund payment, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify each CVP power contractor of the total Power Restoration Fund payment obligation and the monthly amounts to be collected from all CVP power contractors.

Prorating the Total Power Restoration Fund Payment Obligation

Western will prorate the total power Restoration Fund payment obligation against all CVP power contractors each FY. The total power Restoration Fund payment for any FY will be divided by the number of months remaining in the FY, after notification by Reclamation, to determine a monthly obligation.

Each month, Western will prorate the total monthly obligation, based on the delivered or scheduled energy in kilowatthours (kWh) in the assessment month. The total amount assessed to the CVP power contractor will be equal to the ratio of the individual CVP power contractor's share of delivered or scheduled energy in kWh in the assessment month to the sum of all CVP power contractors' delivered or scheduled energy in kWh in the assessment month. Each CVP power contractor's ratio will then be applied to the total monthly obligation to determine the individual CVP power contractor's payment for that billing month.

Collection of CVP Power Contractor's Restoration Fund Payment

Each CVP power contractor will receive a supplemental bill on or about the 25th, but no later than the 30th, of each billing month designating the amount payable. Within 20 days of the billed date shown on the supplemental bill, the total amount payable as set forth on the supplemental bill will be due. Each FY, Western will begin issuing supplemental bills for Restoration Fund payments in the billing cycle which is at least 30 days after (1) October 1 or (2) written notification of the total power Restoration Fund payment obligation is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP power contractors' Restoration Fund payments are due and payable by the CVP power contractors before the close of business on the 20th calendar day after the date of issuance of each supplemental bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Interest Assessed to Delinquent Restoration Fund Payment

Western will calculate and assess interest charges on all CVP power Restoration Fund payment obligations which are not paid in full by the due date as specified above. Interest will accrue on all unpaid balances and be compounded quarterly at the average prime interest rate values published in the Federal Reserve Bulletin for each calendar quarter.

Deposit of CVP Power Contractor's Restoration Fund Payments Into the Restoration Fund

On or about the 21st day of the month following each billing month, Western will deposit all of the CVP power contractors' Restoration Fund payments, including late payment interest payments, into the Restoration Fund.

Interim Billing

Western plans to implement collections for the Restoration Fund, on an interim basis beginning with a November 24, 1993, supplemental billing.

FY 1994 Billing

The total power Restoration Fund payment obligation assigned by Reclamation to the CVP power contractors for FY 1994 is $7,092,800. Western will distribute the $7,092,800 due in FY 1994 over 10 months, which equals the total monthly obligation of $709,280 per month for FY 1994 from November 1993 to August 1994. The amounts payable to Western for the November billing will be based upon the September 1993 service month's actual delivered or scheduled energy in kWh. The total amount billed to each CVP power contractor in November will equal the individual CVP power contractor's actual September service month's delivered or scheduled energy in kWh divided by the total of all CVP power contractors' actual September service month's delivered or scheduled energy in kWh times the total monthly obligation of $709,280.

Adjustments Required as the Result of Final Procedures

Should the final procedures result in a change to Western's proposed allocations among the CVP power contractors, adjustments will be calculated retroactively to the date of the initial supplemental billing and adjusted in future FY 1994 supplemental bills.

Instructions for Mailing Public Comments

The comment period will begin with the publication of this notice in the **Federal Register** and will end the later of 30 days after publication or December 19, 1993. All written comments should be received by Western by the end of the comment period to be assured consideration. All written comments should be mailed to James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097.

Availability of Information

All documentation made or retained by Western for the purpose of developing these procedures is and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required to publish proposed procedures, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the procedures on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act and (2) the impacts of an assessment from Western would not cause a substantial adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Executive Order 12866

DOE has determined that this is not a significant regulatory action as defined in Executive Order 12866, 58 FR 51735, October 4, 1993. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this procedure by OMB is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); Reclamation is performing a Programmatic Environmental Impact Statement (PEIS) on the Central Valley Project Improvement Act of 1992 (Pub. L. 102–575, 106 Stat. 426 *et seq.*). Western is a cooperating agency in that PEIS. The proposed procedures for the Restoration Fund payments covered by this notice fall within Western's routine activities and operations categorical exclusion issued January 7, 1993, and will have no environmental impact.

Issued at Golden, Colorado, November 10, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–29028 Filed 11–24–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4705–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 15, 1993 Through November 19, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930497, Draft Supplement, SFW, Federal Aid in Sports Fish and Wildlife Restoration Programs Operation and Management Programmatic EIS, Updated Information, Implementation and Funding, Due: January 17, 1994, Contact: Columbus H. Brown (703) 358–2156.

EIS No. 930408, Draft Supplement, AFS, MT, Lewis and Clark National Forest 1986–90 Noxious Weed Control Program, Updated Information, Implementation, several Counties, MT, Due: January 10, 1994, Contact: Bob Casey (406) 791–7700.

EIS No. 930409, Draft EIS, AFS, MT, Berray Mountain Timber Sale, Harvesting Timber, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, Due: January 10, 1994, Contact: Dave Clay (406) 827–3533.

EIS No. 930410, Final EIS, APH, Medfly (Mediterranean Fruit Fly) Cooperative Eradication Program, Implementation AL, AZ, CA, FL, GA, LA, MS, SC and TX, Due: December 27, 1993, Contact: Harold T. Smith (301) 436–8963.

EIS No. 930411, Final EIS, FRC, CA, Lower Mokelumne River Hydroelectric Project Modifications, Licensing, (FERC. No. 29116–004), Parts of Pardee and Camanhe Dams, Mokelumne River, CA, Due: December 27, 1993, Contact: John A. Schnagl (202) 219–2661.

EIS No. 930412, Final EIS, USA, NM, AZ, UT, Woodbridge Research Facility (WRF) Electromagnetic Pulse Simulators Relocation Project, Construction and Operation, Sites Selected for Six potential locations, Dugway Proving Ground, UT; Yuma Proving Ground, AZ; and the remaining (4) in White Sands Missile

Range, NM, Due: December 27, 1993, Contact: Eugene Patrick (703) 490–2110.

EIS No. 930413, Draft Supplement, AFS, CA, Casa-Guard Timber Sale, Timber Harvesting, Updated Information concerning Impact on the California Spotted Owl and Fish Creek Watershed and Reforestation, Sequoia National Forest, Cannel Meadow Ranger District, Tulare County, CA, Due: January 10, 1994, Contact: Sandra Keys (209) 784–1500.

EIS No. 930414, Draft Supplement, AFS, CA, Cottonwood and Gulf Timber Sales, Timber Harvesting in the Breckenridge Compartment, Updated Information Concerning Withdrawal of the Golf Timber Sale and Impacts on the California Spotted Owl and Reforestation for the Cottonwood Timber Sale, Sequoia National Forest, Greenhorn Ranger District, Kern County, CA, Due: January 10, 1994, Contact: Sandra Kay (209) 784–1500.

EIS No. 930415, Draft EIS, NRC, LA, Claiborne Uranium Enrichment Center, Construction and Operation, (NUREG–1482), NPDES Permit and Licensing, Homer, Claiborne Parish, LA, Due: January 10, 1994, Contact: Merri Horn (301) 504–2606.

EIS No. 930416, Final Eis, IBR, CA, Los Vaqueros Water Quality and Reliability Project, Implementation, Section 10 and 404 Permits and Possible NPDES Permit, Contra Costa Water District, Contra Costa County, CA, Due: December 27, 1993, Contact: Doug Kleinsmith (916) 978–5129.

EIS No. 930417, Draft EIS, NPS, ID, City of Rocks National Reserve, Comprehensive Management Plan and Development Concept Plan, Implementation, Cassia County, ID, Due: February 1, 1994, Contact: Mary Magee (303) 969–2210.

EIS No. 930418, Draft EIS, AFS, CO, Illonis Creek Timber Sale, Harvesting Timber, Implementation, Amended Land and Resource Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Due: January 14, 1994, Contact: Jeff Ulrich (303) 874–6648.

EIS No. 930419, Draft EIS, AFS, NM, Diamond Bar Allotment Management Plan, Implementation, Gila National Forest, Mimbres Ranger District, Sierra and Catron Counties, NM, Due: February 28, 1994, Contact: Russell Ward (505) 536–2250.

Amended Notices

EIS No. 930395, Draft EIS, TVA, KY, TN, Land between the Lakes (LBL) Natural Resource Management Plan, Implementation, KY and TN, Due: January 10, 1994, Contact: Dale K. Fowler (614) 632–4223. Published FR—11–12–93—Due Date Correction.

Dated: November 22, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–29012 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–U–M

[OPPTS–00144; FRL–4745–7]

Biotechnology; Discussion of Agency's Current Thinking on Biotechnology Issues; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: EPA's Office of Prevention, Pesticides and Toxic Substances will hold a 1-day meeting to discuss biotechnology issues. This will be an information-gathering meeting wherein the views of individual participants at the meeting will be collected. EPA anticipates that during 1994, it will publish two proposals dealing with regulation of biotechnology products: A proposal addressing microorganisms under the Toxic Substances Control Act (TSCA), and a proposal dealing with pesticidal substances produced by plants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Agency staff will briefly outline EPA's current thinking on these two proposals during the first quarter of the meeting.

DATES: The meeting will be held on Thursday, December 16, 1993, starting at 2 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 401 M St., SW., Rm. 642 East Tower, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Creavery Lloyd, Science and Policy Staff (MC–7100), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. 627B East Tower, Washington, DC 20460, Telephone: (202) 260–6900.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. Persons interested in attending the meeting should contact Creavery Lloyd at 202–260–6900 or send a FAX to 202–260–0951 no later than Wednesday, December 8, 1993.

Dated: November 19, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–29016 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4807–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) *ad hoc* Industrial Excess Landfill (IEL) Advisory Panel will meet on December 14, 1993 at the Uniontown United Methodist Church, 13370 Cleveland Avenue, NW., Uniontown, Ohio 44685. The meeting will begin at 9 a.m. and adjourn no later than 5 p.m. This is the third meeting of the IEL Panel. Information relevant to the history of the request to the SAB and the charge to the Panel are contained in a previous **Federal Register** notice (58 FR (129):36686–36687, dated 8 July 1993). The primary purpose of this meeting is for the Panel to discuss the materials they have received concerning the IEL site and to formulate responses to the questions outlined in the Charge to the Panel. There will be a brief public comment period. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

FOR FURTHER INFORMATION CONTACT: For details concerning this review, including a draft meeting agenda and Panel roster, or the overall activities of this Panel or the Science Advisory Board, please contact the Designated Federal Official for this review: Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Panel must contact Mr. Flaak in writing (by letter or by fax) no later than 12 noon Eastern Time, Friday, December 10, 1993 in order to be included on the Agenda.

PROVIDING ORAL OR WRITTEN COMMENTS: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date may be mailed to the Panel prior to its meeting; comments received too close to the meeting date will normally be provided to the Panel at its meeting. Written comments may be provided to the Panel up until the time of the meeting.

Dated: November 18, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–29050 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–60049; FRL–4741–2]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your

affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Air Products and Chemicals	02847200009	Ethylene	Ethylene	10/8/93
Angus Chemical Corporation	01136400005	Sodium Hydroxide	Angus Hot Rod	10/8/93
Brooker Chemical Corporation	00828100001	Indole-3-Butyric Acid	Hormex Rooting Powder No. 8	10/8/93
	00828100002	Indole-3-Butyric Acid	Hormex Rooting Powder No. 16	10/8/93
	00828100003	Indole-3-Butyric Acid	Hormex Rooting Powder No. 3	10/8/93
	00828100004	Indole-3-Butyric Acid	Hormex Rooting Powder No. 30	10/8/93
	00828100005	Indole-3-Butyric Acid	Hormex Rooting Powder No. 45	10/8/93
	00828100006	Indole-3-Butyric Acid	Hormex Rooting Powder No. 1	10/8/93
	00828100007	Indole-3-Butyric Acid	Hormex	10/8/93
Cotey Chemical Company	00094290002	Sodium Hydroxide	Welgicide Cleaner	10/8/93
Earth Science Products Corporation	04390500001	Indole-3-Butyric Acid	Wood's Rooting Compound	10/8/93
Green Light Company	00086900060	Indole-3-Butyric Acid	Green Light Root Stimulator and Starter Solution	10/8/93

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hortus USA Corporation	06331000008	Indole-3-Butyric Acid	Rhizopon AA Water Soluble Tablets	10/8/93
Iron Out, Inc.	00099020001	Sodium Hydroxide	Klean Em All Root Destroyer	10/8/93
National Research & Chemical Company	04219800006	Indole-3-Butyric Acid	Grow More Rapid Root	10/8/93
Plantabbs Corp.	00533200010	Indole-3-Butyric Acid	Plantabbs Rooting Powder	10/8/93
Riverside/Terra Corporation	00977900313	Indole-3-Butyric Acid	Crop Booster Plus 12-8-8	10/8/93
	00977900321	Indole-3-Butyric Acid	Maxon II	10/8/93
Rockland Corporation	00057200333	Indole-3-Butyric Acid	Hormo-Root "B"	10/8/93
	00057200334	Indole-3-Butyric Acid	Hormo-Root "C"	10/8/93
	00057200335	Indole-3-Butyric Acid	Hormo-Root "A"	10/8/93
	00057200336	Indole-3-Butyric Acid	Hormo-Root 4	10/8/93
	00057200337	Indole-3-Butyric Acid	Hormo-Root 1	10/8/93
	00057200338	Indole-3-Butyric Acid	Hormo-Root 2; Hormo-Root 3	10/8/93
	00057200339	Indole-3-Butyric Acid	Hormo-Root 3	10/8/93
Rooto Corp.	00813200003	Sodium Hydroxide	Rooto No. 2	10/8/93
	00828100003	Indole-3-Butyric Acid	Hormex Rooting Powder No. 3	10/8/93
Syntex, S.A. DE C.V. Division Quimica	04247300001	Indole-3-Butyric Acid	Indole-3-Butyric Acid	10/8/93
Voluntary Purchasing Group, Inc.	00740100343	Indole-3-Butyric Acid	Ferti-Lome Rooting Powder	10/8/93

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
Indole-3-Butyric Acid	Riverside/Terra Corporation	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Green Light Company	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Plantabbs Corp.	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Brooker Chemical Corporation	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Rockland Corporation	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	National Research & Chemical Company	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Syntex, S.A. De C.V. Division Quimica	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
		Primary Dermal Irritation - Tier I	152-14	5/10/93
	Earth Science Products Corporation	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	Hortus USA Corporation	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	Voluntary Purchasing Group, Inc.	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
Sodium Hydroxide	Cotey Chemical Company	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Iron Out, Inc.	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61–1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Angus Chemical Corporation	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Rooto Corp.	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
Ethylene	Air Products and Chemicals, Inc.	Certification Form: Data Citation		5/28/93
		Certification Form: Offer to Cost Share		5/28/93
		Certification Form: Data Compensation		5/28/93
		Product Identity	151-10	5/28/93
		Manufacturing Process	151-11	5/28/93
		Discussion of Formation of Impurities	151-12	5/28/93
		Analysis of Samples	151-13	5/28/93
		Certification of Limits	151-15	5/28/93
		Analytical Methods	151-16	5/28/93
		Physical and Chemical Properties	151-17	5/28/93

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Ethylene

On September 30, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing ethylene to develop and submit certain data/information. These data/information were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Ethylene Phase 5 Reregistration Data Requirements Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. The Notice further required that data/information be submitted by deadlines noted for the subject data/information requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data/information to satisfy these data/information requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data/information requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Indole-3-Butyric Acid

On September 10, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing indole-3-butyric acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Indole-3-Butyric Acid Phase 5 Reregistration Data Requirements Notice dated September 10, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt

of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

C. Sodium Hydroxide

On September 30, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing sodium hydroxide to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Sodium Hydroxide Phase 5 Reregistration Data Requirements Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

List of Subjects

Environmental protection.

Dated: November 16, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–29018 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4806–4]

Beaunit/Circular Knit and Dying Plant Site, Notice of Proposed Settlement; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction of the notice of proposed settlement.

SUMMARY: In notice document 93–26427 beginning on page 57828 in the issue of Wednesday, October 27, 1993, make the following correction:

On page 57828 in the first column, the city and state of the Beaunit Circular Knit and Dying Plant Site was previously listed as Baldwin, Florida. This should be changed to read Fountain Inn, South Carolina.

EPA will consider public comments on the proposed settlement for thirty (30) days from the date of the publication of this Notice Correction.

Dated: November 10, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–29044 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4906–5]

Rock Hill Chemical Company Site, Rock Hill, SC; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to a partial, *de minimis* settlement with the First Union National Bank of South Carolina for claims of response costs at the Rock Hill Chemical Company Site. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: November 10, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–29043 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Revision to Systems of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed revision to systems of records maintained on individuals; request for comments.

SUMMARY: The Farm Credit Administration (FCA) intends to omit two systems of records (FCA–1 and FCA–2) from the list of FCA systems that appears in the **Federal Register**. The records are already included in a governmentwide system, which the Office of Personnel Management (OPM) has established and published in the **Federal Register** (OPM/GOVT–1). The FCA intends to adopt OPM/GOVT–1, and the OPM's **Federal Register** notice of OPM/GOVT–1. The FCA also intends to update the location of personnel records it maintains, and the identification of the FCA official to whom inquiries are addressed.

EFFECTIVE DATE: Comments must be received on or before December 27, 1993. Unless changes are made in response to comments received from the public, this action is effective December 27, 1993.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102–5090. Copies of all communications will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Frances A. Pedersen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the FCA intends to omit two systems of records entitled General Personnel Records—FCA" (FCA–1) and "Former Employee Records—FCA" (FCA–2) from the list of FCA systems that appears in the **Federal Register**. The personnel records in FCA–1 and FCA–2 are already included in a governmentwide system established by the OPM entitled "General Personnel

Records" (OPM/GOVT-1). The existence and character of OPM/GOVT-1 is published in the **Federal Register**.

The categories of records listed in FCA-1 are: (1) Official Personnel Folders (OPFs); and (2) Employee Service Record Cards, more commonly known as Standard Form 7B Cards (7B Cards). The OPFs are already included in OPM/GOVT-1. OPM considers 7B Cards to be obsolete and no longer requires agencies to use such records. Since the FCA published its notice in the **Federal Register** on the existence and character of FCA-1, the FCA has destroyed the 7B Cards in accordance with Federal statutory and regulatory requirements governing the disposition of Federal records.

The categories of records listed in FCA-2 are: (1) 7B Cards on former FCA employees; (2) photocopies of retirement records; and (3) cards showing the name, date of birth, social security number, and disposition of OPFs of separated employees. The photocopies of retirement records that the FCA maintains pertain to individuals employed by the FCA as of April 22, 1990. Such records are already included in OPM/GOVT-1. Since the FCA published its notice in the **Federal Register** on the existence and character of FCA-2, the FCA has destroyed the records in categories (1) and (3) in accordance with Federal statutory and regulatory requirements governing the disposition of Federal records.

Because the existing records in FCA-1 and FCA-2 are already included in OPM/GOVT-1, which is described in the OPM's **Federal Register** notice, it is unnecessarily duplicative for the FCA to include FCA-1 and FCA-2 in its **Federal Register** notice. Notice is hereby given that the FCA intends to adopt OPM/GOVT-1, and the OPM's **Federal Register** notice of OPM/GOVT-1, with respect to those personnel records that are maintained by the FCA and described in OPM/GOVT-1. Individuals are referred to the OPM's **Federal Register** notice on the existence and character of OPM/GOVT-1. The citation is 57 FR 35705-35709, August 10, 1992, as amended from time to time.

The OPM's **Federal Register** notice sets out the routine uses of records in OPM/GOVT-1. The uses are more expansive than those provided by the FCA in its **Federal Register** notice. Individuals interested in reviewing and commenting on such routine uses are referred to 57 FR 35706-35708, August 10, 1992, as amended from time to time.

This notice also reflects several administrative changes resulting from reorganizations and the relocation of the FCA offices. At the time that the FCA published its **Federal Register** notice on the existence and character of FCA-1 and FCA-2, the offices of the FCA were located in Washington, D.C. Since that time, the FCA has relocated to McLean, Virginia. As a result, the location of personnel records maintained by the FCA and described in OPM/GOVT-1 is hereby updated to: 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

The designated point of contact at the FCA for inquiries on OPM/GOVT-1 has also changed based on certain FCA reorganizations. Employee inquiries about OPM/GOVT-1 and employee requests for access or amendments to records described therein that are maintained by the FCA may be directed to: Chief, Human Resources Division, Office of Resources Management, FCA, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Dated: November 19, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93-28948 Filed 11-24-93; 8:45 am]

BILLING CODE 6705-01-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2561R	Fontana International, Inc., 2503B NW 72nd Avenue, Miami, FL 33122.	Oct. 22, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93-28966 Filed 11-24-93; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 308
Name: Geo. S. Bush & Co., Inc.
Address: 1400 Exchange Bldg., 821 Second Ave., Seattle, WA 98104
Date Revoked: June 3, 1993
Reason: Surrendered license voluntarily.

License Number: 3506
Name: Dirman Incorporated
Address: 97-11 63rd Dr., Rego Park, NY 11374
Date Revoked: October 13, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3308
Name: Simtex Ocean Services, Inc.
Address: 17524 Carriage Way Dr., Ste. 3, Hazel Crest, IL 60429
Date Revoked: October 20, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2456
Name: Export Forwarding Company
Address: 2213 Royal Lane, Dallas, TX 75229
Date Revoked: October 20, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 181
Name: Alexander Schor
Address: 2303 Lucaya La., N-4, Coconut Creek, FL 33066
Date Revoked: October 27, 1993
Reason: Surrendered license voluntarily.

License Number: 3376
Name: J. B. Daman (U.S.A.) Ltd.
Address: 2500A Broening Highway, Ste. 100, Baltimore, MD 21224
Date Revoked: October 27, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 1516
Name: C & S International Corporation
Address: 609 Lafayette Bldg., Philadelphia, PA 19106
Date Revoked: October 27, 1993
Reason: Surrendered license voluntarily.

License Number: 3562
Name: Transport Express Corporation
Address: 5613 Leesburg Pike #29, Falls Church, VA 22041
Date Revoked: October 29, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3169
Name: Air, Land, & Sea, Inc.
Address: 4195 Oneida St., Denver, CO 80216
Date Revoked: October 30, 1993

Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93-28965 Filed 11-24-93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93E-0214]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lovenox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lovenox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lovenox® (enoxaparin sodium injection). Lovenox® is indicated for the prevention of deep vein thrombosis, which may lead to pulmonary embolism, following hip replacement surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lovenox® (U.S. Patent No. 4,692,435) from Choay S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 15, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Lovenox® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lovenox® is 1,777 days. Of this time, 1,322 days occurred during the testing phase of the regulatory review period, while 455 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 19, 1988. FDA has verified the applicant's claim that May 19, 1988, was the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 31, 1991. The applicant claims December 31, 1991, as the new drug application (NDA) effective date "to determine the applicable regulatory review period," but claims July 26, 1991, as the "initially submitted" date in its actual calculation of the length of the extension. FDA records indicate that the NDA for Levenox® (NDA 20-164) submitted on July 26, 1991, was incomplete. FDA refused to file this incomplete application and notified the applicant of this fact by letter dated September 20, 1991. The completed NDA was then submitted on December 31, 1991, which is properly considered to be the NDA's initially submitted date.

3. *The date the application was approved:* March 29, 1993. FDA has verified the applicant's claim that NDA 20-164 was approved on March 29, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 887 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 25, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 25, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93-28999 Filed 11-24-93; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Disclosure of Ownership and Control Interest Statement; *Form No.:* HCFA–1513; *Use:* The information will be used by State agencies and HCFA regional offices to make eligibility determinations for provider participation in the Medicare and Medicaid programs and for grants under titles V and XX; *Frequency:* Annually; *Respondents:* Small businesses or organizations; *Estimated Number of Responses:* 40,000; *Average Hours Per Response:* .50; *Total Estimated Burden Hours:* 20,000.

2. *Type of Request:* Revision; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons With Related Conditions Survey Report Form; *Form No.:* HCFA–3070 G–I; *Use:* The survey report form is used to record providers' compliance with individual standards and report it to the Federal Government; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 6,701; *Average Hours Per Response:* 3; *Total Estimated Burden Hours:* 20,103.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: November 16, 1993.

Paul J. Fiore,

Deputy Director, Management Planning & Analysis Staff, Office of Budget and Administration, Health Care Financing Administration.

[FR Doc. 93–28918 Filed 11–24–93; 8:45 am]

BILLING CODE 4120–03–P

[OPA–010–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 13, 1993, from 8 a.m. until 5 p.m. e.s.t. (Additional meetings are tentatively scheduled for March 7, June 6, September 12, and December 12, 1994.)

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: John Lanigan, Acting Executive Director, Practicing Physicians Advisory Council, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms.

The current members are: Gary C. Dennis, M.D.; Harvey P. Hanlen, D.O.; Kenneth D. Hansen, M.D.; Isabel V. Hoverman, M.D.; Ramon L. Jimenez, M.D.; Jerilyn S. Kaibel, D.O.; William D. Kirsch, D.O.; Marie G. Kuffner, M.D.; David L. Massanari, M.D.; Kenton K. Moss, M.D.; Susan W. Owens, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; James C. Waites, M.D.; and Gary L. Yordy, M.D. The chairperson is Richard B. Tompkins, M.D.

The seventh meeting of the Council will be held on December 13, 1993. The following topics will be discussed at that meeting:

- Telemedicine.
- Medically unnecessary laboratory services.
- Authentication of medical records.
- Certificates of medical necessity and home health recertification.

Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Acting Executive Director to be scheduled. For the name, address, and telephone number of the Acting Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Acting Executive Director at the time of the presentation. The number of oral presentations may be limited by the time available.

Anyone who is not scheduled to speak may submit written comments to the Acting Executive Director. The meeting is open to the public but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11.

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

Dated: November 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–29052 Filed 11–24–93; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Nurse Education and Practice Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Education and Practice, room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Dated: November 19, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–29000 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1994.

Name: Graduate Training in Family Medicine Review Committee.

Date and Time: January 5–7, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 5, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 5, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Faculty Development Review Committee.

Date and Time: January 10–13, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 10, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 10, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Residency Training Review Committee.

Date and Time: January 25–27, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 25, 8:30 a.m.–11 a.m..

Closed for Remainder of Meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 26, 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Predoctoral Training Review Committee.

Date and Time: January 31–February 1, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 31, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Predoctoral Training Review Committee shall review applications that either assist in meeting the cost of planning, developing and operating, or participating in approved predoctoral training programs in the field of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 31, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public law 92–463.

Anyone requiring information regarding the above Councils should contact Mrs. Sherry Whipple, Executive Secretary, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Date: November 19, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–29001 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

HRSA Aids Advisory Committee, Subcommittee on Ryan White Care Act; Future Program Directions and Reauthorization

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of public meeting and opportunity to provide written comments.

SUMMARY: On October 6, 1993, the HRSA AIDS Advisory (HAAC) Committee established the Ryan White CARE Act Future Program Directions and Reauthorization Subcommittee. The Subcommittee is seeking public input about future HIV/AIDS care program directions including issues related to reauthorization of the Ryan White CARE Act. The HAAC will subsequently submit a set of formal recommendations relating to future program directions and reauthorization issues to the HRSA Administrator.

DATES: A public meeting will be held on December 15, 1993 from 9:30 a.m. to 5 p.m. to obtain public input into future

program directions and issues related to the reauthorization of the Ryan White CARE Act (Pub. L. 101–381). To be assured of consideration, written comments should be postmarked no later than December 31, 1993. The public meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C., (202) 234–0700.

ADDRESSES: Written comments should be sent to the HRSA AIDS Advisory Committee, c/o HRSA AIDS Program Office, Attention: Susan Thorner, 4350 East-West Highway, Room 9C–10C3, Bethesda, Maryland 20814.

Persons interested in providing oral comments at the meeting should notify, Professional and Scientific Associates, Inc. (PSAI) by phone, facsimile (fax) or letter no later than close of business December 10, 1993. PSAI may be contacted at 8180 Greensboro Drive, suite 1050, McLean, Virginia 22102, (703) 442–9824 or (703) 442–9826 by fax. All requests for making oral comments at the meeting must contain the name, address, telephone (day and evening) and fax numbers and any organizational affiliation of the persons requesting to give a public statement. Persons providing oral comments at the meeting must provide PSAI with two copies of their comments no later than December 15.

Depending on the number of requests to present oral comments, it may be necessary to limit the length of time for each presenter. Persons wishing to make a public statement will be notified by phone or fax regarding the length of time available for their comments and the time their comments are scheduled to begin.

SUPPLEMENTARY INFORMATION: We are particularly interested in comments which address new and/or changing service needs for people and populations with HIV and the extent to which the CARE Act addresses identified priorities, including:

1. The current Title structure;
2. The focus on the "emergency" nature of the epidemic;
3. Appropriateness of current funding formulas, and;
4. Effectiveness in strengthening coordination and joint planning by interested and affected entities and communities.

Comments would also be appreciated on issues related to the training needs for HIV/AIDS providers.

FOR FURTHER INFORMATION CONTACT: Susan Thorner, HRSA AIDS Program Office, (301) 594–4444.

Dated: November 19, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–29002 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Leonard Jakubczak (301) 594–7198
Date of Meeting: December 8, 1993
Place of Meeting: Westwood Bldg, Rm 325C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.
Scientific Review Administrator: Dr. Leonard Jakubczak (301) 594–7198
Date of Meeting: December 9, 1993
Place of Meeting: Westwood Bldg, Rm 325C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated : November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28937 Filed 11–24–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Clinical Investigation Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, on December 8, 1993, The Georgetown Inn, 1310 Wisconsin Avenue NW., Washington, DC 20007.

This meeting will be open to the public on December 8, 1993, from 8:30 a.m. to 9 a.m., to review administrative details and other cancer clinical investigation review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 8 from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708), will provide summaries of the meeting and rosters of committee members upon request.

Dr. John W. Abrell, Scientific Review Administrator, Cancer Clinical Investigation Review Committee, National Cancer Institute, Executive Plaza North, room 635B, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9767), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Abrell in advance of the meeting.

This notice is being published less than 15 days prior to the meeting date due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-28942 Filed 11-24-93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on November 12, 1993.

(Call PHS Reports Clearance Officer on (202) 690-7100 for copies of requests.)

1. 1994 National Employer Health Insurance Survey—(New)—The National Employer Health Insurance Survey will provide health insurance data from 51,250 employers (1000 per state and DC) to produce state level estimates of private health insurance for the National Health Accounts, monitoring the status of health insurance prior to the implementation of health care reform, and detailed national level analysis of private health insurance. A pilot study of 250 employers is included. *Respondents:* State or local governments; Businesses or other for-profit; Federal agencies or employees; small businesses or organizations; *Number of Respondents:* 51,250; *Number of Responses Per Respondent:* 1; *Average Burden Per Response;* 0.75 hours; *Estimated Annual Burden hours:* 38,438 hours.

2. Cancer Prevention Awareness: The Black College As A Resource—0925-0377—(Extension, No change). This collection of information will assist in the National Cancer Institute (NCI) efforts to effectively utilize these historically black institutions in health promotion activities, especially as it pertains to cancer prevention. The information will also provide the NCI with the foundation for planning and developing further cancer prevention intervention research (e.g., smoking, dietary habits, knowledge and attitudes, health behavior practices) that is appropriate for the target population. *Respondents:* Individuals or Households; *Number of Respondents:* 2,891; *Number of Respondents Per Respondent:* 1.6; *Average Burden Per Response;* .265 hours; *Estimated Annual Burden hours:* 765 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 19, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-28997 Filed 11-24-93; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-59]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this

Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: November 19, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/26/93

Suitable/Available Properties

Buildings (by State)

Kentucky

Bldg. 1502, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330429
Status: Underutilized
Comment: 4627 sq. ft., 1-story, most recent use—barber shop, needs repair, off-site use only.

Bldg. 2729, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330430
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, off-site use only.

Bldg. 2740, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330431
Status: Unutilized
Comment: 3150 sq. ft., 1-story, needs repair, off-site use only.

Bldg. 06644, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330432
Status: Unutilized
Comment: 8052 sq. ft., 1-story, most recent use—lodge, needs rehab, off-site use only.

Bldg. 07147, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330433
Status: Unutilized
Comment: 10034 sq. ft., 1-story, most recent use—open dining, needs rehab, off-site use only.

Maryland

Bldg. E4890
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1-story, needs rehab, presence of asbestos.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703—
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office.

Bldg. 2529, Fort Monmouth
Charles Wood Area
Ft. Monmouth Co: Monmouth NJ 07703—
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2-story, needs rehab, most recent use—admin.

New York

Bldg. 1848
U.S. Military Academy
Lake Frederick Road
Woodbury Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219330437
Status: Underutilized
Comment: 2866 sq. ft., 2-story, needs major repairs, presence of asbestos and lead base paint, most recent use—storage/office, off-site use only.

Texas

Bldg. P–293, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized
Comment: 442 sq. ft., 1-story brick, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–298, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1-story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–371, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2-story structural tile, most recent use—vehicle maintenance shop, off-site use only.

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. S–1164, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1-story metal, needs rehab, most recent use—classroom, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Unsuitable Properties

Buildings (by State)

Alabama

Bldgs. 516, 517—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340112
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 518—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340113
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 604—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340114
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 616—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340115
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 801—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340116
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 802—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340117
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1105—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340118
Status: Unutilized
Reason: Other

Comment: Extensive deterioration.

Bldgs. 1431, 1432—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340119
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3406—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340120
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 3408, 3409—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340121
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 3802, 3809—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340122
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3911—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340123
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 4107—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340124
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 8601–8605—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340125
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 9009–9011, 9013, 9016
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340126
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 9301—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340127
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 9302, 9304, 9305
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340128
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Arkansas

Bldg. 3612, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340023
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3613, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340024
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3614, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340025
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3615, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340026
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3616, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340027
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3617, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340028
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3618, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340029
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3619, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340030
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3620, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340031
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3621, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340032
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3622, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340033
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3624, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340034
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3625, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340035
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3626, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340036
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3627, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340037
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3628, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340038
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3629, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340039
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3630, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340040
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3631, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340041
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3632, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340042
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3633, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340043
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3635, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340044
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3636, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340045
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3637, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340046
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3638, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340047
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3640, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340048
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3641, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340049
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3642, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340050
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3643, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340051
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3644, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340052
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3645, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340053
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3658, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340054
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3659, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340055
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3662, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340056
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3664, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340057
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3667, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340058
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3669, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340059
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3670, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340060
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3671, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340061
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3707, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340062
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3713, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340063
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3714, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340064
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3715, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340065
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3716, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340066
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3717, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340067
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3718, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340068
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3719, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340069
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3720, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340070
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3721, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340071
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3722, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340072
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3723, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340073
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3725, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340074
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3726, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340075
Status: Unutilized

Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3750, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340076
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3751, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340077
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3752, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340078
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3754, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340079
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3755, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340080
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3756, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340081
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3758, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340082
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3759, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340083
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3760, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340084
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3761, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340085
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3764, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340086
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3765, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340087
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3771, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340088
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3773, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340089
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3775, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340090
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Iowa

Bldg. 679
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638—
Landholding Agency: Army
Property Number: 219340091
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Kentucky

Bldg. 477, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340132
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1011, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340133
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1012, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340134
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1013, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340135
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1014, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340136
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1015, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340137
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1016, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340138
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1017, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340139
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1018, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340140
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1019, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340141
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1020, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340142
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1021, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340143
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1023, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340144
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1025, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340145
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1026, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340146
Status: Unutilized
Reason: Other

Comment: Extensive deterioration.
Bldg. 1027, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340147
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1049, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340148
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1050, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340149
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1051, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340150
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1302, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340151
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1471, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340152
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1501, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340153
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 2387, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340154
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 2733, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340155
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5085, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340156
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5135, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340157
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5136, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340158
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6291, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340159
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6292, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340160
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6293, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340161
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6294, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340162
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6643, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340163
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6644, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340164
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6645, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340165
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6759, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340166
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6760, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340167
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6761, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340168
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 7743, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340169
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9020, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340170
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9021, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340171
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9022, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340172
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9480, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340173
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9481, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340174
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9482, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340175
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9483, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340176
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9484, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340177
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9493, Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 219340178

Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 9495, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340179
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00154, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340221
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00155, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340222
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00156, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340223
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00157, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340224
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00158, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340225
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00159, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340226
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00160, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340227
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00162, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340228
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00163, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340229
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00164, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340230
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00166, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340231
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00168, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340232
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 07166, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340233
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02611, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340242
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02613, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340243
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02615, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340244
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02617, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340245
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02625, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340246
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02627, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340247
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02630, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340248
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02634, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340249
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02636, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340250
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02638, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340251
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02640, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340252
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02642, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340253
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Louisiana

Bldg. 607, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340105
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 608, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340106
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 703, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340107
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 704, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340108
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8001, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340109
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8218, Fort Polk

Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340110
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8219, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340111
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Nebraska

Bldg. A0011
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340129
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A0012
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340130
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A0018
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340131
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

North Carolina

Bldg. N–3808, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340099
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. M–4957, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340100
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. M–5156, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340101
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A–6163, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340102
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 2–2134, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340103
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3–1931, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340104
Status: Unutilized
Reason: Secured Area.

Texas

Bldg. T–2431
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340095
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8239
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340096
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8263
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340097
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8268
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340098
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 56320, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340238
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56550, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340239
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56650, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340240
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56860, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340241
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Virginia

Bldg. T–3615
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340092
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. T–11002
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340093
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. T–11003
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340094
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

[FR Doc. 93–28914 Filed 11–24–93; 8:45 am]
BILLING CODE 4210–3–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–5791]

Termination of Recreation and Public Purposes Classification and Opening Order, Nevada

November 17, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes classification and opens the land to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785–6530.

SUMMARY: In the early 1970s, the land described below was classified as suitable for lease or sale pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4). The Proposed Classification Decision issued on December 6, 1971, segregated the land from appropriation under the public land laws and the general mining laws:

Mount Diablo Meridian, Nevada

T. 34 N., R. 56 E.,
Sec. 30, lots 13–16, inclusive, lots 18–24, inclusive, lots 28–33, inclusive, lots 37–40, inclusive, and lot 47.

Patent was subsequently issued to the Elko County Board of County Commissioners on July 17, 1972. By quitclaim deed dated September 7, 1983, the land was reconveyed to the United States; it had never been developed for recreation purposes. Title was accepted on October 5, 1983, and on that date the land returned to its former public land status.

Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, the aforementioned Recreation and Public Purposes classification is hereby terminated.

At 10 a.m. on December 27, 1993 the above described land will become open to the operation of the public land laws generally, subject to existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

At 10 a.m. on December 27, 1993 the above described land will become open to the location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to the operation of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4), and to leasing under the mineral leasing laws.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–28981 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–920–04–4210–04; AZA 20349A and AZA 23217A]

Arizona: Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: The following described lands were a portion of the mineral estate reconveyed to the United States pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., with the State of Arizona (AZA 20349A) and Santa Fe Railroad (AZA 23217A). This order will open these lands to location and entry under all mineral laws:

Gila and Salt River Meridian, Arizona

T. 15 N., R. 18 W.,
Sec. 29, all;
Sec. 31, lots 1 and 2, E½, E½NW¼;
Sec. 32, SW¼;
Sec. 33, all.
Containing 1,914.34 acres.

At 9 a.m. on December 27, 1993, the land described above, will be opened to entry under the United States mining laws. The reconveyed mineral estate will be open to applications and offers under all locatable, leasable and salable mineral laws, including the Geothermal Steam Act, subject to valid existing rights, and requirements of applicable laws. The surface estate of the lands in section 31, lot 2 E½NW¼, T. 15 N., R. 18 W., Gila and Salt River Meridian, Arizona, containing 117.22 acres, are in private ownership.

Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts. All applications and offers received prior to 9 a.m. on December 27, 1993, will be considered as simultaneously filed as of that time and date. Those applications and offers received thereafter shall be considered in the order of filing. A drawing will be held in accordance with 43 CFR 1821.2–3, if necessary.

The above described lands will remain closed to all other forms of appropriation.

Inquiries concerning the land should be addressed to Levi Deike, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86440.

Lois Carneal,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–28987 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–32–M

[MT–930–4410–02]

Notice To Comment on Area of Critical Environmental Concern; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 202(c) of the National Environmental Policy Act of 1969, a draft resource management plan and environmental impact statement was prepared for the Big Dry Resource Area planning area. During the public comment period on the draft, two new areas were proposed for areas of critical environmental concern designation. Smoky Butte and the Miles/Sitting Bull Cedar Creek Fight. In accordance with 43 CFR 1610.7–2, written comments on these proposed areas of critical environmental concern will be accepted for 60 days, beginning with the date of this **Federal Register** notice. Written comments pertaining to these areas of critical environmental concern and received during the comment period will be considered in preparation of the Final Big Dry Resource Management Plan and Environmental Impact Statement.

ADDRESSES: Written comments on the two proposed areas of critical environmental concern should be addressed to: Chuck Frost, District Manager, Bureau of land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Mary Bloom, Resource Management Plan and Environmental Impact Statement Team Leader, Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, 406–232–7000.

SUPPLEMENTARY INFORMATION: The Smoky Butte geologic feature (80 public surface areas) in Garfield County would be designated as an area of critical environmental concern. This area would be managed to protect its unique geologic values. Management actions affecting this area are: Off-road vehicle travel would be closed, locatable minerals would be withdrawn from entry subject to valid existing rights, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would be allowed, livestock grazing would be allowed, and rights-of-way construction would be excluded.

The Miles/Sitting Bull Cedar Creek Fight in Prairie County has no public surface. An area of critical environmental concern means "Areas within the public lands where special management attention is required * * *" (43 CFR 1601.5(a)). As these lands are not managed by BLM, special management attention cannot be recommended. This area will be considered and dropped from further analysis in the Final Big Dry Resource Management Plan and Environmental Impact Statement.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of areas of critical environmental concern.

Dated: November 17, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93-28989 Filed 11-24-93; 8:45 am]

BILLING CODE 4310-DN-M

[CA-019-04-4110-03]

Availability of Final Hollister Resource Management Plan Amendment and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1610.2(c), a final Resource Management Plan Amendment/ Environmental Impact Statement (RMP Amendment/EIS) has been prepared for the Hollister Resource Area. The final RMP Amendment/EIS describes and analyzes the impacts of oil and gas leasing on approximately 310,000 acres of public land and 385,000 additional acres of private lands with federal ownership of subsurface minerals. These lands are located in the central California counties of Monterey, San Benito, Fresno, Madera, and Merced.

Decisions relating to oil and gas leasing generated during this planning process will supersede those currently in the Hollister RMP. Copies of the final RMP Amendment/EIS can be obtained from the Hollister Resource Area Office, 20 Hamilton Court, Hollister CA 95023.

Copies are also available for review at public libraries in Salinas, Coalinga, Hollister, and Fresno and at the following BLM locations:

Office of Public Affairs, Main Interior Building rm. 5600, 18th and C Street NW., Washington, DC 20240.

California State Office, 2800 Cottage Way, Sacramento, CA 95825.

Bakersfield District Office, 800 Truxton Avenue, Bakersfield, CA 93301.

Background information and maps used in developing the final RMP Amendment/EIS can be reviewed at the Hollister Resource Area Office.

This RMP Amendment is subject to a 30-day protest period. Any part of this proposed decision can be protested by any person who has been an active participant in the planning process and has a significant interest that may be adversely affected by the approval of this RMP Amendment.

DATES: Protests must be postmarked within 30 days after the Environmental Protection Agency publishes the notice of availability of the Final EIS in the **Federal Register**. Protests must minimally contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest,

(2) A statement of the issue or issues being protested,

(3) A statement of the part or parts being protested citing pages, paragraphs, maps, etc of the RMP Amendment where practical,

(4) A copy of all documents addressing the issue(s) for the record, and

(5) A concise statement of why you believe the BLM State Director's decision in incorrect.

ADDRESSES: Protests must be sent to: Director (760), Bureau of Land Management, 1849 "C" Street NW. (406 L Street), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Steve Addington, RMP Team Leader, Hollister Resource Area; phone (408) 637-8183.

SUPPLEMENTARY INFORMATION: The final RMP Amendment/EIS analyzes five alternative management scenarios for the oil and gas leasing program to address the following issues: Air quality; threatened, endangered and other special status plants; threatened, endangered, and other special status animals; scenic values; ground water and surface water quality; and mineral exploration and development. Each alternative provides management direction for the issues being addressed. The alternatives can be summarized as: (1) No action or continuation of present management, (2) no leasing, (3) leasing with Endangered Species Stipulation on T&E Plant populations and No Surface Occupancy Stipulation (NSO) on Pinnacles National Monument viewshed, (4) leasing with Endangered Species Stipulation on T&E Plant Habitat and NSO Stipulation on Pinnacles National Monument viewshed, and (5) no leasing in T&E Animal Habitat. The Leasing with Endangered Species Stipulation on T&E Plant Habitat and NSO Stipulation on Pinnacles National Monument Viewshed Alternative has been identified as the BLM's Proposed Action.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in January 1990. The Notice of Availability of Planning Criteria was published in the **Federal Register** in June 1991. The Draft RMP Amendment and Draft EIS was released in August 1992. Copies of the draft document were distributed to all interested or affected parties. All substantive comments received in response to the draft were addressed and/or incorporated into the Final RMP Amendment and EIS.

Dated: November 19, 1993.

Robert E. Beehler,

Area Manager, Hollister Resource Area.

[FR Doc. 93-28985 Filed 11-25-93; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-04-4059-02]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 19, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 9 and 10, a metes-and-bounds survey in section 10 and a survey of Lot 4 in section 10, Township 14 South, Range 32 East, Boise Meridian, Idaho, Group No. 846, was accepted November 15, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: November 19, 1993.

Gary T Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-28992 Filed 11-24-93; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-930-4210-06; A-2680, A-6898, A-7131, A-13001, AR-05059, AR-07159, AR-018950]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comments, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years, the following withdrawal orders or portions thereof, as amended or modified;

EO–1417 (A–13001), SO–11/18/1907 (AR–07159), PLO–1176 (AR–05059), PLO–1845 (AR–018950), PLO–3263 (AR–07159), PLO–4704 (A–2680), PLO–5354 (A–7131), PLO–5384 (A–6898).

These Orders withdrew National Forest System lands in the Apache-Stigreaves National Forests for use by the Forest Service as lookouts, administrative sites, and ranger stations. All sites continue to be utilized for purposes withdrawn and the Forest Service does not anticipate any significant changes in land use in the near future. Most of the land has been and all will remain closed to operation of the mining law. A number of the sites will be reduced in size for more efficient management.

DATES: Comments on the proposed action should be received on or before February 24, 1994.

ADDRESSES: Comments should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona, 85104, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–650–0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Public Land Orders (PLO) 1176, 1845, 3265, 4704, 5354, 5384, Executive Order 1417 dated 10/2/1911, and Secretarial Order dated 11/18/1907 withdrawing lands for uses such as administrative sites, lookouts and ranger stations, be modified and generally continued for 20 years. Some of the same orders have been utilized to withdraw other sites for a variety of uses. These uses will be addressed in other withdrawal review reports. Portions of specific sites will be reduced in size to better meet present day needs. All sites, or portions thereof, remaining withdrawn will remain closed to operations under the mining laws; they will continue to be open to the mineral leasing laws and to other uses applicable to National Forest System lands. Continuation of the withdrawal as proposed in this notice is in conformance with the approved planning documents for the forests. All sites listed below, with one exception, are located within the boundaries of the Apache-Sitgreaves National Forests in Coconino, Navajo, Apache and Greenlee Counties, in Arizona. The individual sites are described as follows:

Gila and Salt River Meridian

Round Valley Administrative Site (A–13001)

T. 9 N., R. 29 E.,
Sec. 28, NE¼SW¼.
The area described totals 40.00 acres

Deer Springs Lookout and Administrative Site (A–05959)

T. 11 N., R. 18 E.,
Sec. 34, S½NW¼, Lots 1 and 4.
The areas described totals 147.55 acres.

Gentry Lookout and Administrative Site (AR–05059)

T. 11 N., R. 15 E.,
Sec. 35, NW¼NE¼.
The area described contains 40.00 acres.

Heber Administrative Site (AR–05059)

T. 12 N., R. 17 E.,
Sec. 32, SW¼, SW¼NW¼, Lots 4 and 6.
The areas described aggregate 259.85 acres.

Lakeside Administrative Site (AR–05059)

T. 9 N., R. 22 E.,
Sec. 23, portions of W½NW¼NE¼, SW¼NE¼, W½SE¼NE¼ and an irregular tract in the E½NW¼SE¼.
The areas described aggregate totals 68.83 acres.

Los Burros Administrative Site (AR–05059)

T. 9 N., R. 25 E.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 34, E½NE¼;
Sec. 35, W½NW¼.
The areas described aggregate 240.00 acres.

Pinedale Ranger Station (AR–05059)

T. 11 N., R. 20 E.,
Sec. 32, N½SE¼, NE¼SW¼, E½NE¼, SW¼NE¼.
The areas described aggregate 240.00 acres.

Promontory Lookout and Administrative Site (AR–05059)

T. 11 N., R. 13 E.,
Sec. 5, NW¼SW¼;
Sec. 6, NE¼SE¼.
The areas described aggregate 80.00 acres.

Juniper Ridge Lookout Administrative Site (AR–018950)

T. 10 N., R. 20 E.,
Sec. 14, E½NE¼NW¼.
The area described contains 20.00 acres

Alpine Ranger Station and Administrative Site #2 (AR–07159)

T. 5 N., R. 30 E.,
Sec. 12, SE¼NE¼SE¼.
T. 5 N., R. 31 E.,
Sec. 7, SW¼ lot 3 and lot 5.
The areas described aggregate 24.79 acres.

Hannagan Ranger Station Administrative Site (AR–07159)

T. 3 N., R. 29 E., Unsurveyed
Sec. 2, W½NW¼NW¼, W½SW¼NW¼, approximate location;
Sec. 3, E½NE¼NE¼, E½SE¼NE¼, approximate location.
The areas described aggregate 80.00 acres.

Bear Mountain Lookout (AR–07159)

T. 2 N., R. 29 E., Unsurveyed
Sec. 9, SE¼NW¼, approximate location.
The area described contains 40.00 acres.

Blue Lookout (AR–07159)

T. 3 N., R. 29 E., Unsurveyed.
Sec. 36, S½SW¼NE¼, approximate location.
The area described contains 20.00 acres.

Escudilla Lookout (AR–07159)

T. 6 N., R. 31 E.,
Sec. 6, SE¼ of lot 4.
The area described contains 10.25 acres.

Greer Administrative Site (AR–07159)

T. 7 N., R. 27 E.,
Sec. 12, N½SE¼NW¼.
The area described contains 20.00 acres.

Water Canyon Ranger Station Administrative Site (AR–07159)

T. 8 N., R. 29 E.,
Sec. 28, lot 3.
The area described contains 41.77 acres.

Strayhorse Administrative Site (A–2680)

T. 2 N., R. 29 E., (Unsurveyed)
Sec. 2, SE¼SW¼, except that part previously withdrawn by PLO 1583.
The area described contains approximately 40.00 acres.

Chevelon Ranger Station Administrative State (A–7131)

T. 13 N., R. 13 E.,
Sec. 1, SE¼NE¼, E½SW¼NE¼, N½SE¼, SE¼SE¼, N½SW¼SE¼.
T. 13 N., R. 14 E.,
Sec. 6, W½ of lot 5, and lot 7.
The areas described aggregate 276.71 acres.

O'haco Lookout and Administrative Site (A–6898)

T. 12 N., R. 12 E.,
Sec. 10, SE¼SE¼NW¼.
The area described contains approximately 10.00 acres.

Heber Job Corps Conservation Center Administrative Site (A–6898)

T., 12 N., R., 16 E.,
Sec. 20, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼.
The areas described aggregate 150.00 acres.

The areas described in this publication aggregates 1,849.75 acres. The purpose of these withdrawals is to protect U.S. Forest Service lookouts, administrative sites, and ranger stations from location and possible disturbances caused mining activity.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the

BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the Federal Register in the form of a Public Land Order. The existing withdrawals will continue in force pending the final determination on each action.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93-28984 Filed 11-24-93; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0022) Washington, DC 20503, telephone 202-395-7340.

Title: Federal Fish and Wildlife License/Permit Application and Related Reports.

OMB Approval Number: 1018-0022.

Abstract: The Federal Fish and Wildlife License/Permit application is a standard application to assist persons applying for Service permits issued under subchapter B of title 50 of the Code of Federal Regulations (CFR). In addition to the permit application, attachments are necessary to provide additional information required for each specific type of permit. The information on the application form will be used to review permit applications and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits.

Service Form Number: 3-200.

Frequency: On occasion.

Description of Respondents: Individuals and households, small businesses and educational institutions.

Estimated Completion Time: The reporting burden for the requirements for this application is estimated to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response.

Annual Responses: 20,907.

Annual Burden Hours: 24,463.

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: July 7, 1993.

David L. Olsen,

Assistant Director—Refuges and Wildlife.

[FR Doc. 93-28990 Filed 11-24-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Independence National Historical Park General Management Plan; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping

In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for Independence National Historical Park (INHP) which will be described in a general management plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities and operations. INHP consists of 52 historic and modern buildings and 44.85 acres of grounds within the City of Philadelphia, Philadelphia County, Pennsylvania.

Independence Hall is a World Heritage Site, designated by the World Heritage Convention of the United Nations. The entire park is on the National Register of Historic Places, and some buildings and grounds associated with the park have also been listed individually on the National Register or as National Historic Landmarks.

The National Park Service announces a public scoping period to invite public participation in the development of issues and alternatives to be considered in the Draft GMP/Draft EIS for INHP.

The GMP will set forth the basic management philosophy for the management of the park's cultural and natural resources, visitor use and services, and maintenance and administrative activities. The final GMP/EIS will guide the management, operation, and use of INHP for the next 10 to 15 years.

Preliminary information about the project was provided to the public through meetings and printed material in September and October, 1993. The scoping process will occur over the next 90 days and the public is encouraged to provide input on concerns and issues related to INHP.

Comments that were provided to the National Park Service during meetings held in September and October will be considered as part of the scoping process. Those who have supplied the NPS with comments may wish to provide additional comments during the next 60 days.

The NPS anticipates holding public meetings on the scope of alternatives in the next few months. Upcoming opportunities for public involvement will be announced through additional notices, press releases to the local media, and planning update documents. A draft GMP/EIS will be released for public review and comment followed by a final GMP/EIS.

Persons wishing to participate in the scoping process for the GMP/EIS should address comments to the Superintendent, Independence National Historical Park, 313 Walnut Street, Philadelphia, Pennsylvania 19106. Comments should be received no later than 90 days from the publication of this notice. Further information can be obtained from the Supertintendent.

The responsible official is the Regional Director, National Park Service, Mid-Atlantic Regional Office, 143 S. Third Street, Philadelphia, Pennsylvania 19106.

Dated: November 19, 1993.

Charles P. Clapper,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 93-29041 Filed 11-24-93; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, December 15, 1993, at the University of New Orleans, Lakefront, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve,

and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historical, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan update
—Update on the Atchafalaya Basin Study
—Update on the Jazz Study
—Chalmette Waterline and Beauregard House
—New facility openings
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, Telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: November 5, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–29042 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

In the Matter of: Certain Diltiazem Hydrochloride and Diltiazem Preparations. [Investigation No. 337–TA–349]

Notice

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on December 6, 1993, in Courtroom A (room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 19, 1993.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 93–28964 Filed 11–24–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 159X), Southern Pacific Transportation Company—Abandonment Exemption—In Sacramento and El Dorado Counties, California. EA available 11/15/93.

AB–290 (Sub-No.134X), Norfolk and Western Ry. Co.—Abandonment—Between Huff Creek Junction and Lynco, WV. EA available 11/19/93.

AB–No. 405 (Sub-No. 1X), LI Acquisition Corp., d/b/a Upper Merion & Plymouth Railroad—Abandonment Exemption—In Montgomery County, PA. EA available 11/19/93.

AB–12 (Sub-No. 168X), Southern Pacific Transportation Co.—Abandonment Exemption—In Merced and Fresno Counties, California. EA available 11/19/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29029 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32369]

Belt Railway Co. of Chicago—Trackage Rights Exemption—Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant The Belt Railway Company of Chicago (BRC) overhead trackage rights over a portion of IHB's Elsdon Branch railroad track lying on IHB's railroad right-of-way extending from Consolidated Rail Corporation's track connection (CP–518) south of 48th Place to a point of track connection with BRC's Single Track Elsdon Line at approximately 50th Street in Chicago, IL, a total distance of approximately .21 miles. The trackage rights exemption became effective November 15, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Woodward M. Cunningham, The Belt Railway Company of Chicago, 6900 South Central Avenue, Chicago, IL 60638.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29030 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32396]

Eastern Idaho Railroad, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Co.

Eastern Idaho Railroad, Inc. (EIRR), a noncarrier, has filed a notice of exemption: (1) To acquire and operate ten rail lines of the Union Pacific Railroad Company (UP) for a distance of 266.40 miles in the State of Idaho; and (2) to acquire incidental trackage rights over two rail lines of UP's in the State of Idaho for a distance of 70.25 miles. EIRR will become a class III rail carrier. The transaction was to be consummated on or after November 14, 1993.[1]

The 266.40 miles of rail line being acquired include: (1) UP's Yellowstone Branch extending 50.21 miles between milepost 1.39, at Idaho Falls, and

[1] This transaction is related to a notice of exemption concurrently filed in Finance Docket No. 32397, *Charles R. Webb—Continuance in Control Exemption—Eastern Idaho Railroad, Inc.*, under 49 CFR § 1180.2(d)(2) and 1180.4(g), to exempt Mr. Webbs' continuance in control of EIRR upon EIRR becoming a class III rail carrier. Mr. Webb currently controls the Southeast Kansas Railroad Company and Blue Mountain Railroad, Inc.

milepost 51.60, at Ashton; (2) UP's East Belt Branch extending 38.48 miles between milepost 0.07, at Orvin, and milepost 38.55, at Newdale; (3) UP's Goshen Industrial Lead extending 4.03 miles between milepost 21.56, at Lincoln Junction, and milepost 17.53, at Ammon; (4) UP's West Belt Branch extending 10.66 miles between milepost 0.06, at Ucon, and milepost 10.72, at Menan; (5) UP's St. Anthony Industrial Lead extending 8.65 miles between milepost 37.45, at St. Anthony, and milepost 28.80, at Elgin; (6) UP's Old Butte main line extending 3.63 miles between milepost 184.05 and milepost 187.68, at Idaho Falls; (7) UP's Twin Falls Branch extending 74.00 miles between milepost 0.20, at Minidoka, and milepost 74.20, at Buhl; (8) UP's Oakley Branch extending 11.19 miles between milepost 0.49, at Burley, and milepost 11.68, at Martin; (9) UP's Raft River Branch extending 8.69 miles between milepost 0.55, at Burley, and milepost 9.24, at Declo; and (10) UP's Northside Branch extending 56.86 miles between milepost 0.64, at Rupert, and milepost 57.50 at Wendell.[2]

The 70.25 miles of incidental trackage rights that EIRR will acquire will be over the following lines: (1) UP's line from milepost 181.5 to milepost 188.75 in Idaho Falls, a distance of 7.25 miles; and (2) UP's line from milepost 211.0, at Pocatello, to milepost 274.0, at Minidoka, a distance of 63 miles.

Any comments must be filed with the Commission and served on: Karl Morell, 919 Eighteenth Street, N.W., Suite 210, Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 18, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93–29032 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[2] EIRR will also lease on a non-exclusive basis from UP certain yard and side track in Idaho Falls. Under 49 U.S.C. 10907 the lease and operation of the yard and side track are not subject to the Commission's jurisdiction.

[Finance Docket No. 32381]

Soo Line Railroad Co.—Acquisition of Trackage Rights— Burlington Northern Railroad Co.

The Burlington Northern Railroad Company (BN) has agreed to grant non-exclusive bridge trackage rights to Soo Line Railroad Company (Soo Line) between BN milepost 13.27 at Lyndale Junction, MN to BN milepost 9.54 East leg of Wye and BN milepost 10.05 West leg of Wye at Minneapolis Junction, Minneapolis, MN. The trackage rights exemption became effective on November 12, 1993.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29033 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] The terms of the trackage rights agreement were scheduled to take effect upon commencement of operations over BN's trackage by Soo Line and/or Twin Cities & Western Railroad Company.

[Finance Docket No. 32325]

Three Rivers Railway Co.—Acquisition Exemption—Pittsburgh and Ohio Valley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the purchase by the Three Rivers Railway Company of all of the Pittsburgh and Ohio Valley Railroad Company's rail lines, totaling about 2 miles of main-line track and 7 miles of yard and other trackage in Neville Township, PA. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on December 27, 1993. Petitions to stay must be filed by December 13, 1993 and petitions to reopen must be filed by December 21, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32325 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) Charles M. Rosenberger and Nicholas S. Yovanovic, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202, (3) David W. Hagy and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, One James Center, Richmond, VA 23219, and (4) James E. Howard, Kirkpatrick & Lockhart, One International Place, Boston, MA 02110–2600.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: November 16, 1993.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29034 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–32 (Sub-No. 54X) and [Docket No. AB–355 (Sub-No. 6X)]

Boston and Maine Corp.—Abandonment—Hampden County, MA and Springfield Terminal Railway Co.—Discontinuance of Service—Hampden County, MA

Boston and Maine Corporation (BM) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over .75 miles of railroad known as the Chicopee Falls Branch, from milepost 0.00, to milepost 0.75, all in Chicopee, Hampden County, MA. BM seeks authority to abandon the line, and ST, which leases the line from BM, seeks authority to discontinue service over the line.

BM and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 6, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BM and ST have filed an environmental report which addresses the abandonment's and discontinuance's effect, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 29, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29031 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[Docket No. AB–167 (Sub 1117X)]

Consolidated Rail Corporation—Abandonment Exemption—In Elizabeth, Union County, NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Consolidated Rail Corporation (Conrail) of a 1.7±mile rail line between milepost 0.0± and milepost 1.7± in Elizabeth, in Union County, NJ. This exemption is subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 26, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by December 6, 1993, petitions to stay must be filed by December 13, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by December 16, 1993, and petitions to reopen must be filed by December 21, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–167 (Sub-No. 1117X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Robert S. Natalini, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

Decided: November 18, 1993.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29036 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[Finance Docket No. 32397]

Charles R. Webb—Continuance in Control Exemption—Eastern Idaho Railroad, Inc.

Charles R. Webb, a noncarrier individual, has filed a notice of exemption to continue in control of Eastern Idaho Railroad, Inc. (EIRR) upon EIRR becoming a carrier.

EIRR has concurrently filed a notice of exemption in Finance Docket No. 32396, Eastern Idaho Railroad, Inc.—Acquisition and Operation Exemption—Lines of the Union Pacific Railroad Company, to acquire and operate 266.40 miles of rail line from the Union Pacific Railroad Company (UP), and to acquire incidental trackage rights over 70.25 miles of rail line from UP, all in the State of Idaho.

Mr. Webb currently controls, through stock ownership and management, two class III rail carriers: (1) Southeast Kansas Railroad Company, which has acquired and leased approximately 171.7 miles of rail line in Missouri, Kansas, and Oklahoma; and (2) Blue Mountain Railroad, Inc., which owns and operates 207.1 miles of rail line in Washington, Oregon, and Idaho. Mr. Webb indicates that: (1) the properties operated by the affiliated railroads will not connect with each other; (2) the

continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleading must be filed with the Commission and served on: Karl Morell, 919 Eighteenth Street, NW, suite 210, Washington, DC 20006.

Decided: November 18, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-29035 Filed 11-24-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Michigan Materials and Processing Institute

Notice is hereby given that, on October 26, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following company was recently accepted as an Associate Member in MMPI: Nicholas Plastics, Inc., Allendale, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on July 2, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 1993, 58 FR 43655.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28917 Filed 11-24-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,731, etc.]

Cleveland Pneumatic Company, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA-W-28,731 Cleveland, OH; TA-W-28,731A Fayette City, PA; TA-W-28,731B Little Egg Harbor, NJ; TA-W-28,731C Anaheim Hills, CA; TA-W-28,732 Cleveland Plating Company, Cleveland, OH.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on August 25, 1993, applicable to all workers of the Cleveland Pneumatic Company, Cleveland, Ohio and the Cleveland Plating Company, Cleveland, Ohio. The notice was published in the **Federal Register** on September 3, 1993 (58 FR 46998).

At the request of the company the Department reviewed the subject certification. The findings show that a few workers of Cleveland Pneumatic were laid off in Pennsylvania, New Jersey and California. The workers were quality control representatives for aircraft landing gears. Therefore, the Department is amending the subject certification to include the other locations.

The intent of the Department's certification is to include all workers of Cleveland Pneumatic Company who were adversely affected by increased imports.

The amended notice applicable to TA-W-28,731 and TA-W-28,732 is hereby issued as follows:

All workers of the Cleveland Pneumatic Company, Cleveland, Ohio; Fayette City, Pennsylvania; Little Egg Harbor, New Jersey and Anaheim Hills, California and the Cleveland Plating Company, Cleveland, Ohio producing aircraft landing gears who became totally or partially separated from employment on or after May 21, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-29019 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of the Trade Adjustment Assistance, at the address shown below, not later than December 6, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of November, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Good Quality Sewing Company (Wkrs)	Honesdale, PA	11/08/93	10/28/93	29,198	Ladies' & Mens' Knitting Tops.
Robbins Company (The) (Wkrs)	Kent, WA	11/08/93	10/27/93	29,199	Underground Excavation Equipment.
Playtimer Industries Ltd (Wkrs)	Elizabethville, PA	11/08/93	10/26/93	29,200	Ladies', Mens' and Children's Slippers.
Essex Specialty Products (Co)	Sayreville, NJ	11/08/93	10/26/93	29,201	Automotive Sealants and Adhesives.
Sargent-Fletcher Co (Co)	El Monte, CA	11/08/93	10/26/93	29,202	In-Flight Refueling Systems.
Rockwell International Corp (Co)	Seal Beach, CA	11/08/93	10/19/93	29,203	Global Positioning Satellites.
Wean Industries, Inc (USWA)	Youngstown, OH	11/08/93	10/27/93	29,204	Steel Processing Machinery.
Dyna Turn of Oklahoma, Inc (Co)	Elk City, OK	11/08/93	10/27/93	29,205	Aluminun Discs.
Vought Aircraft Co (Co)	Dallas, TX	11/08/93	10/06/93	29,206	Aircraft Assemblies.
Kerr-McGee Refining (Wkrs)	Wynnewood, OK	11/08/93	10/25/93	29,207	Refinery Services.
Kerr-McGee Pipeline (Wkrs)	Wynnewood, OK	11/08/93	10/25/93	29,208	Pipeline Services.
Beaver Precision Products (UAW)	Troy, MI	11/08/93	10/06/93	29,209	Ball Screws for Aircraft Missiles.
Aluminun Co of America (Wkrs)	Lafayette, IN	11/08/93	10/04/93	29,210	Aluminum Ingots, Extrusions, Tubes.
Mallinckrodt Medical, Inc (Co)	New Haven, MO	11/08/93	11/01/93	29,211	Temperature Monitoring Devices.
Elastimold (Co)	Spring Lake, MI	11/08/93	10/21/93	29,212	
Smead Manufacturing (Wkrs)	Hastings, MN	11/08/93	11/01/93	29,213	Expandable Files.
Shenango, Inc (USWA)	Neville Island, PA	11/08/93	10/21/93	29,214	Coke.
Cooper Industries, Wagner Brake Div (IBEW).	Hilliard, OH	11/08/93	9/27/93	29,215	Vehicle Brake Parts.

[FR Doc. 93-29020 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,056, TA-W-29,057]

Neles-Jamesbury, Inc., Lincoln Street Plant, Worcester, MA; and Neles-Jamesbury, Inc., Glens Falls, NY; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 20, 1993, in response to a petition which was filed on September 20, 1993, on behalf of workers at Neles-Jamesbury, Inc., Lincoln Street Plant, Worcester, Massachusetts (TA-W-29,056) and Glens Falls, New York (TA-W-29,057).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-29021 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,909]

Parker Hannifin, Trumann, AR; Notice of Revised Determination on Reconsideration

On November 10, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers engaged in employment related to the production of air conditioning hoses for vehicles at the subject firm. This notice will soon be published in the **Federal Register**.

The company submitted new information on reconsideration showing that it lost most of its business of air conditioning hoses for the BOC Division of General Motors (GM) in August, 1993 and will lose the remainder by July, 1994. The workers producing the BOC air conditioning hoses are separately identifiable from other workers at the plant.

Reconsideration findings show worker separations occurred at the subject facility in July 1993 and will continue until July 1994.

Other findings on reconsideration show that the lost business was relocated to Mexico and that imports of BOC air conditioning hoses are currently occurring.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Parker Hannifin's workers in Trumann, Arkansas were adversely affected by increased imports of articles like or directly competitive with air conditioning hoses for the BOC Division of General Motors produced at Trumann, Arkansas. In accordance with the provisions of the Act, I make the following revised certification for the Parker Hannifin workers in Trumann, Arkansas.

All workers of Parker Hannifin, in Trumann, Arkansas producing air conditioning hoses for the BOC Division of GM and who became totally or partially separated from employment on or after July 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-29022 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,909]

Parker Hannifin, Trumann, AR; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 4, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 8, 1993 and published in the **Federal Register** on October 28, 1993 (58 FR 58187).

The company submitted new information showing decreased sales and employment in 1993.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-29023 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Maryland
MD930046 (Nov. 26, 1993)
MD930047 (Nov. 26, 1993)
Pennsylvania
PA930049 (Nov. 26, 1993)
PA930051 (Nov. 26, 1993)
PA930052 (Nov. 26, 1993)
PA930053 (Nov. 26, 1993)
PA930054 (Nov. 26, 1993)
Virginia
VA930103 (Nov. 26, 1993)

Volume II

Iowa
IA930031 (Nov. 26, 1993)
Kansas
KS930061 (Nov. 26, 1993)
Texas
TX930088 (Nov. 26, 1993)
TX930089 (Nov. 26, 1993)
TX930090 (Nov. 26, 1993)
Wisconsin
WI930029 (Nov. 26, 1993)
WI930030 (Nov. 26, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT930001 (Feb. 19, 1993)
CT930003 (Feb. 19, 1993)
CT930004 (Feb. 19, 1993)
Delaware
DE930009 (Feb. 12, 1993)
Kentucky
KY930025 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)
New York
NY930002 (Feb. 19, 1993)
Pennsylvania
PA930024 (Feb. 19, 1993)
PA930029 (Feb. 19, 1993)

Volume II

Iowa
IA930004 (Feb. 19, 1993)
Indiana
IN930017 (Feb. 19, 1993)
Kansas
KS930004 (Feb. 19, 1993)
KS930005 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
Louisiana
LA930001 (Feb. 19, 1993)
LA930004 (Feb. 19, 1993)
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Ohio
OH930001 (Feb. 19, 1993)
OH930002 (Feb. 19, 1993)
OH930003 (Feb. 19, 1993)
OH930012 (Feb. 19, 1993)
OH930028 (Feb. 19, 1993)
OH930029 (Feb. 19, 1993)
OH930035 (Feb. 19, 1993)
Texas
TX930006 (Feb. 19, 1993)
TX930008 (Feb. 19, 1993)
TX930012 (Feb. 19, 1993)
TX930063 (Feb. 19, 1993)
TX930067 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage

Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of November 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-28892 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Co.

[Docket No. M-93-302-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley-wires, trolley feeder wires, high-voltage cables and transformers) to its Camp No. 11 Mine (I.D. No. 15-08357) located in Union County, Kentucky. Due to the width of the coal panels and required production, the petitioner proposes to use high-voltage (2400 volt) longwall equipment in the No. 9 Seam inby the last open crosscut. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Red Brush Coal Company

[Docket No. M-93-303-C]

Red Brush Coal Company, 1668 Maple Avenue, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its 7 Vein Slope (I.D. No. 36-08246) located in Northumberland County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1993. Copies of these petitions are available for inspection at that address.

Dated: November 17, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93-29024 Filed 11-24-93; 8:45 am]

BILLING CODE 4510-43-P

Occupational Safety and Health Administration

OSHA Training Institute Education Centers

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for proposals.

SUMMARY: The Occupational Safety and Health Administration (OSHA) conducts short-term technical training in occupational safety and health through the OSHA Training Institute in Des Plaines, Illinois. In recent years, the number of private sector personnel and Federal personnel from agencies other than OSHA requesting training has increased beyond the capacity of the OSHA Training Institute to meet the demand. In October 1992, OSHA began a pilot project to test the feasibility of using other training or educational institutions to conduct OSHA Training Institute courses for private sector personnel and for Federal personnel from agencies other than OSHA. Based on the success to date of this pilot project, OSHA is expanding the program.

This notice announces the opportunity for interested organizations to submit applications to become OSHA Training Institute Education Centers. Applications will be rated on a competitive basis, and four organizations will be selected to participate in the project. Complete application instructions are contained in this notice.

Authority for this program may be found in sections 21(b) and (c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) (the OSH Act).

DATES: Applications must be received by January 21, 1994.

ADDRESSES: Applications must be submitted to the Division of Training and Educational Programs, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Zigmas Sadauskas, Director, OSHA Training Institute, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297-4810.

SUPPLEMENTARY INFORMATION:

Background

The OSHA Training Institute conducts 79 short-term technical training courses in OSHA standards, policies, and procedures for persons responsible for enforcing or directly supporting the OSH Act, private sector employers and employees, and Federal personnel from agencies other than OSHA. Its primary responsibility is to the first group: Federal and State compliance officers and State consultation program staff. Private sector and Federal personnel from agencies other than OSHA receive training on an "as available" basis.

In recent years the demand for training has increased from all three groups. Resources of the OSHA Training Institute have not increased at a rate that can keep up with the demand. As the number of Federal and State personnel engaged in enforcement or consultation being trained has increased, opportunities for training for private sector personnel and Federal personnel from agencies other than OSHA have remained static or have decreased.

In order to meet the increased demand for its courses, the OSHA

Training Institute selected four educational institutions to conduct OSHA Training Institute courses for private sector personnel and Federal personnel from agencies other than OSHA. These OSHA Training Institute Education Centers, which were selected through a nationwide competitive process are: Georgia Tech Research Institute, Atlanta, Georgia; Maple Woods Community College, Kansas City, Missouri; Red Rocks Community College, Lakewood, Colorado; and the University of California, San Diego, California.

The OSHA Training Institute now proposes to expand the number of OSHA Training Institute Education Centers from four to eight.

Scope

OSHA will enter into nonfinancial agreements with four colleges, universities or other nonprofit training organizations to conduct OSHA courses for private sector personnel and Federal personnel from agencies other than OSHA. The four new OSHA Training Institute Education Centers will be located in four OSHA Regions, one per region. The four OSHA Regions contain the following states.

1. Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
2. Region II. New Jersey and New York.
3. Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
4. Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

The new OSHA Training Institute Education Centers will be selected through a nationwide competitive process. This notice solicits applications from organizations interested in participating in the project.

Applicants selected to participate as OSHA Training Institute Education Centers will be expected to present five courses, consisting of four general industry OSHA courses: Course 204A, Machinery and Machine Guarding Standards; Course 501, A Guide to Voluntary Compliance in Safety and Health; Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area; and Course 600, Collateral Duty Course for Other Federal Agencies; and one construction industry course: Course 500, Basic Instructor Course in Occupational Safety and Health Standards for the Construction Industry. Additional information about each of these courses is in the appendix to this notice.

Applicants will be selected based upon their occupational safety and health experience, their nonacademic training background, the availability of classroom and lodging facilities, and access to nationwide transportation. OSHA will support the program by providing curriculum outlines, masters of student handouts, and orientation to OSHA course presentation. OSHA also will provide assistance in presenting and/or answering questions on OSHA policy.

The project will be 18 months in duration. OSHA will monitor each of the new OSHA Training Institute Education Centers to evaluate the effectiveness of their programs. If performance is satisfactory at the end of the 18-month period, OSHA will enter into a new agreement for a 2-year period. Continuation of this agreement will be dependent on continued satisfactory performance and mutual interest of the parties in continuing the OSHA Training Institute Education Center program. OSHA may initiate modifications to agreements to increase or decrease the number of different OSHA courses offered by the OSHA Training Institute Education Centers.

Eligibility

Any nonprofit public or private college or university is eligible to apply. Any other nonprofit organization that can demonstrate that training or education is part of its mission and that more than 50 percent of its staff and dollar resources is devoted to training or education is also eligible to apply.

In addition to meeting the eligibility criteria, applicants must have a physical presence in the Region for which they are applying. For example, an eligible national organization based in San Francisco that has a training facility in New York City would have a physical presence in Region II. On the other hand, a national organization based in Chicago that rents hotel space to provide training at multiple sites around the county would be considered to have a physical presence only in Illinois and would not be qualified to apply.

A training or educational institution may elect to apply for this program in partnership with a safety and health organization that is not primarily a training organization. For example, a university could enter into an agreement with a labor union that provides for the use of university classrooms and faculty supplemented by union safety and health professionals.

If two or more organizations wish to apply as a consortium, a training or educational member of the consortium must be designated as the lead organization. OSHA will only enter into a nonfinancial agreement with the lead organization.

Financial Considerations

Organizations selected as OSHA Training Institute Education Centers will not be provided funding by OSHA to support this effort. The Centers will be expected to support their OSHA training through their normal tuition and fee structures.

Length of Project

The project will start July 1, 1994, and will run for 18 months.

OSHA Training Institute Education Center Responsibilities

Each OSHA Training Institute Education Center will be responsible for the following:

1. Arranging to have instructors assigned to teach OSHA courses attend OSHA orientation.
2. Scheduling courses. Courses are to be scheduled on a year-round basis, with each course being offered more than once a year. For the initial period, July 1 to September 30, 1994, each OSHA Training Institute Education Center must schedule a minimum of three course sessions and train a minimum of 100 students.
3. Publicizing the availability of courses.
4. Registering students.
5. Purchasing, or otherwise obtaining, audiovisual materials for use in courses.
6. Reproducing handouts for students.
7. Conducting courses in accordance with materials and instruction provided by OSHA.
8. Monitoring courses to ensure that OSHA course outlines are being followed.
9. Collecting course evaluation data from students in accordance with OSHA procedures.
10. Maintaining student registration and attendance records.
11. Issuing course completion certificates to students. These certificates, which must be approved by OSHA, certify that a student has completed training in a particular course.
12. Providing the OSHA Training Institute with registers of successful course completers.
13. Providing the OSHA Training Institute with a schedule showing the dates, times, and locations of every OSHA course to be offered.
14. Maintaining clearly identifiable records of tuition and/or fees collected from OSHA course students.
15. Arranging for the availability of appropriate accommodations for students.

OSHA Training Institute Responsibilities

The OSHA Training Institute will be responsible for the following:

1. Providing OSHA Training Institute Education Center instructors with orientation on how the OSHA Training Institute teaches OSHA courses.
2. Providing a detailed course outline for each OSHA course to be presented by the OSHA Training Institute Education Center.
3. Providing a master copy of the student handouts for each course to be presented.
4. Providing answers for and technical assistance on questions of OSHA policy.
5. Monitoring the performance of OSHA Training Institute Education Centers through on-site visits, including unannounced attendance at courses, and examining records of registrations, course attendance, tuition collections and personnel records concerning qualifications of staff assigned as instructors.
6. Evaluating the effectiveness of the OSHA Training Institute Education Centers.

In addition to these responsibilities, which will be included in the agreement between OSHA and the OSHA Training Institute Education Center, OSHA will make every effort to have an OSHA staff member, usually from an OSHA Regional or Area Office, available for a portion of each OSHA Training Institute Education Center training session to answer questions of OSHA policy.

Application and Selection Procedures

Eligible organizations wishing to be considered for selection as an OSHA Training Institute Education Center should prepare an application in accordance with the instructions contained in this notice.

Applications are to be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 66018. The submission is to consist of one original and two copies of the application. Applications should not be bound or stapled and should only be printed on one side of the page. All applications must be received no later than 4:30 p.m. Central Standard Time, January 21, 1994.

OSHA will convene a panel of OSHA staff to review and rate the applications. Following the panel review, OSHA staff may conduct an on-site review of highly rated applicants before making a selection. The final selections will be made by the Assistant Secretary.

All applicants will be notified in writing of their selection or nonselection. it is anticipated that final selections will be made by May 1, 1994. OSHA will enter into a nonfinancial agreement with each successful applicant. The agreement will cover the responsibilities of both parties.

Appeals

There is no appeal procedure for unsuccessful applicants. Any applicant may request a copy of the documentation of its own review by writing to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

Content of Applications

Each application must address each of the following points:

1. *Identifying Information.* Provide the name and address of the applicant organization. If the mailing address is a post office box, also provide the street address. Provide the name, title, and telephone number of the contact person who can answer questions about the application.
2. *Authority to Apply.* Provide a copy of the resolution by the Board of Directors, Board of Regents, or other governing body of the applicant organization approving the submittal of an application to OSHA to become an OSHA Training Institute Education Center.
3. *Nonprofit Status.* Include evidence of the nonprofit status of the applicant organization. A letter from the Internal Revenue Service or a statement included in a recent audit report is preferred. In the absence of either of these, a copy of the articles of incorporation showing the nonprofit status will be accepted.
4. *Status as a Training Organization.* This section applies only to applicants that are not colleges or universities.

Show that training or education is a principal activity of the applicant organization. Through audit reports, annual reports, or other documentation, demonstrate that for the last 2 years more than 50 percent of the applicant's funds have been used for training and education activities and more than 50 percent of its staff resources have also been used for this purpose.

5. *Occupational Safety and Health Experience.* Describe the applicant's relevant course offerings for the last 2 years. Include copies of catalogs and other recruitment materials that provide descriptive material about courses. For each course, include the dates the course was offered and the number of students who completed the course. Also include descriptive material similar to the information contained in the appendix: course description, objectives, topic outline, number of hours, and laboratories or other practical hands-on exercises included in the course.
6. *Staff Qualifications.* Describe the qualifications of staff teaching occupational safety and health courses. Indicate the professional qualifications of each, such as Certified Safety Professional (CSP), Professional Engineer (PE), or Certified Industrial Hygienist (CIH). Also describe staff knowledge off and/or experience with Federal OSHA standards and their application to hazards and hazard abatement. Include resumés of current staff and position descriptions and minimum hiring qualifications for all positions, whether filled or vacant, that may be assigned to conduct OSHA classes.
7. *Classroom Facilities.* Describe classroom facilities available for presentations of the courses. Include number off students accommodated, desk arrangements, and availability of audiovisual equipment. Also describe appropriate laboratory facilities and other facilities available for hands-on exercises. Indicate provisions for accessibility for persons with disabilities.
8. *Recruitment and Registration.* Explain procedures for recruiting students from Federal agencies other than OSHA and from the private sector. Describe registration procedures including provisions for cancellation, furnishing enrollees with hotel information, and tuition or fee collection.
9. *Accommodations.* Provide a representative listing of hotels available for student accommodation and given sample room rates. Explain how students will be transported between the hotels and classes. Also describe the food service and restaurants available in both the area in which the classes will be held and the area where the hotels are located.
10. *Location.* Describe the accessibility of the training facility for students from all parts of the country. Include such items as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system. Also describe the proximity of the training facility to the nearest OSHA Regional or Area Office, including the distance, and give the approximate driving or other travel time.
11. *Tuition.* Provide a copy of the applicant organization's tuition and fee schedule. Explain how tuition and/or

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fees will be computed for each course, referencing the schedule.

12. *Nondiscrimination.* Provide copies of the applicant organization's nondiscrimination policies covering staff and students. In the absence of a written policy, explain how the applicant will ensure that staff and students are selected without regard to race, color, notional origin, sex, age, or disability.

13. *Off-site Courses.* Successful applicants will be expected to conduct courses at sites other than their own facilities at the request of organizations sponsoring training. Explain the procedures that will be used to assure that classroom facilities and accommodations, if appropriate, are adequate and that instructional staff, if different from those individuals included in item 6 above, Staff Qualifications, meet the hiring standards included in that item.

Review Criteria

A panel of OSHA staff will review the applications. It will consider each of the factors listed below:

1. Occupational Safety and Health Training Experience

a. Evidence that occupational safety and health training or education has been an ongoing program of the applicant organization. Reviewers will examine the number of different occupational safety and health courses offered by the applicant organization over the past 2 years, the length of the courses, the number of students completing each course, and the number of times each course was offered. Successful applicants will also include samples of course announcements.

b. Qualifications of personnel teaching occupational safety and health courses. These include academic training in occupational safety and health subjects, experience with the application of Federal OSHA standards to hazards and hazard abatement, professional certification, practical experience in the field of occupational safety and health, and training experience. Training experience is defined as experience in training workers or managers in nonacademic situations.

2. Adequacy of Training Facilities.

Potential for accommodating classes of 25 to 40 students on a year-round basis in settings comparable to those of the OSHA Training Institute. Items considered will include classroom layout, e.g. desks or tables for students, availability of audiovisual equipment, reproduction facilities for handouts, and availability of appropriate laboratory and/or hands-on facilities. Accessibility for persons with disabilities will also be considered.

3. Recruitment and Registration Procedures

Reasonableness of the applicant's procedures for recruiting and registering students. Methods of reaching potential students, ease of registration, provisions for cancellations, and system for informing students of available accommodations and materials necessary for the course, if any, are among the items that will be reviewed.

4. Accommodations and Location

Availability of lodging and restaurant facilities, access to nationwide transportation, and proximity to an OSHA Area or Regional Office. Accommodations, preferably national hotel/motel chains, and restaurants should be reasonably priced and should be within a few miles of the training facility. A major airport with regular service to all parts of the country should be within a reasonable driving time from the hotel and training locations. Interstate highways should also be within reasonable distance. The nearest OSHA Office should be within 1 hour's travel time of the principal training site to facilitate OSHA participation in training sessions.

5. Tuition

Conformance of proposed tuition and/or fees with the established policies of the applicant and reasonableness of the charges.

6. Nondiscrimination

Adherence of the applicant's policies with Federal requirements.

7. Off-site Courses

Experience and/or ability of the applicant to conduct courses at sites other than its own facility.

Proposal Conferences

The OSHA Office of Training and Education will hold two proposal conferences. These are intended to provide potential applicants with information about the OSHA Training Institute including a tour of the facility, OSHA Training Institute courses and methods of instruction, and administrative requirements for OSHA Training Institute Education Centers. They will also feature question and answer sessions about the documentation expected in applications.

The proposal conferences will be held from 9:30 a.m. to 12:30 p.m. on December 9 and December 14, 1993, at the OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018. Persons interested in attending one of these conferences should contact Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, at (708) 297–4810 to obtain information about local hotel accommodations and transportation. It is not necessary to register for the conferences.

Signed at Washington, DC, this 19th day of November, 1993.

Joseph A. Dear,

Assistant Secretary of Labor for Occupational Safety and Health.

Appendix

Course 204A, Machinery and Machine Guarding Standards

1. Course Description. The course provides the student with an overview of various types of common machinery and related safety standards. The course provides guidance in recognizing hazards such as those created by points of operation, ingoing nip points, rotating parts, and flying chips or sparks, and provides some options to achieve abatement. A field trip is provided to enhance students' knowledge of machine guarding standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Identify various machines and their functions;

b. Identify common machinery hazards;

c. Recommend selected abatement methods; and

d. Select the appropriate OSHA standard that applies to a hazard.

3. Course Topics. a. Introduction, pretest and pretest review, posttest and posttest review—2 hours.

b. Hazards and standards workshop and review—2 hours. In this workshop, written hazard conditions are researched, and standards are reviewed and referenced. Oral review also incorporates policy relating to specific conditions.

c. Inspection field trip to machine shop operations and inspection writeup—6 hours. The class is taken to facilities with extensive and varied metalworking and woodworking operations following the discussions of machinery, terminology, and 29 CFR 1910.211–1910.219. It exposes the students to operations including lathes, mills, boring machines, screw machines, woodworking machines, mechanical power presses, and power transmission apparatus. Students are given an opportunity to apply hazard recognition concepts on a site inspection at an operating facility with a variety of machine operations. They evaluate and document any machinery and machine guarding hazards, then return to the classroom to research the standards for citation references. They present an oral report on their findings.

d. Review of 29 CFR Part 1910, Subpart 0, machinery and machine guarding concepts—1 hour.

e. Review of 29 CFR 1910.211 and 29 CFR 1910.212, definitions, guarding and devices, general requirements—2 hours.

f. 29 CFR Subpart J, 1910.147, control of hazardous energy sources (lockout/tagout), and 29 CFR Subpart S, 1910.332–1910.335, electrical safety-related work practices—2 hours.

g. 29 CFR Subpart P, 1910.242–1910.244, portable powered tools—1 hour.

h. 29 CFR 1910.212 and section 5(a)(1) of the OSH Act, robotic safeguarding—1 hour.

i. 29 CFR 1910.213, woodworking machinery requirements—2 hours.

j. 29 CFR 1910.215, abrasive wheel machinery—1 hour.

k. 29 CFR 1910.216, mills and calenders—1 hour.

l. 29 CFR 1910.217, mechanical power presses—2 hours.

m. 29 CFR 1910.218, forging machines—1 hour.

n. 29 CFR 1910.219, power transmission apparatus—1 hour.

Course 500, Basic Instructor Course in Occupational Safety and Health Standards for the Construction Industry

1. Course Description. The course is designed for students in the private sector who are interested in developing safety and health programs in the construction industry. Special emphasis is placed upon those areas in construction that are the most hazardous, using OSHA standards as a guide. Course participants are briefed on effective instructional approaches and the effective use of visual aids and handouts. The course features demonstrations and hands-on use of various construction tools and equipment. Successful completion of this course qualifies the student to conduct both a 10-hour and a 30-hour construction safety and health course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. define construction terms found in OSHA standards;

b. present effective safety and health training programs in accordance with OSHA construction standards, regulations, and guidelines;

c. identify hazards and determine appropriate standards;

d. prepare reports citing the conditions found; and

e. identify methods to abate hazards.

3. Course Topics. a. Introduction, pretest and pretest review, overview of the OSH Act and OSHA, introduction to OSHA standards, posttest and posttest review—4 hours.

b. Safety programs, inspections, targeting and penalties—1 hour.

c. Training techniques—2 hours.

d. 29 CFR Part 1904, recordkeeping—1 hour.

e. 29 CFR Part 1926, Subpart D, hazard communication—1 hour.

f. 29 CFR Part 1926, Subpart E, health hazards in construction and personal protective equipment—3 hours.

g. 29 CFR Part 1926, Subpart F, fire protection and prevention—1 hour.

h. 29 CFR Part 1926, Subparts G, O and W, motor vehicles—1 hour.

i. 29 CFR Part 1926, Subpart H, rigging—1 hour.

j. 29 CFR Part 1926, Subpart I, tools—1 hour.

k. 29 CFR Part 1926, Subpart K, electrical—2 hours.

l. 29 CFR Part 1926, Subpart L, scaffolds—2 hours.

m. 29 CFR Part 1926, Subparts M and X, walking and working surfaces and ladders—1 hour.

n. 29 CFR Part 1926, Subpart N, cranes—1 hour.

o. 29 CFR Part 1926, Subpart P, trenching—2 hours.

p. 29 CFR Part 1926, Subpart Q, concrete—1 hour.

Course 501, A Guide to Voluntary Compliance in Safety and Health

1. Course Description. This course is intended for private sector personnel from all types of industries. It presents detailed information on how the provisions of the OSH Act may be implemented in the workplace. The primary focus is on the basics of the Act. The course includes an introduction to general industry standards and provides an overview of the requirements of the more frequently referenced standards. Segments of the course cover rights and responsibilities under the Act, contested citations, recordkeeping, and Voluntary Protection Programs. Successful completion of the course qualifies the student to conduct both a 10-hour and a 30-hour voluntary compliance course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Locate OSHA safety and health standards, policies, and procedures;

b. Describe the use of OSHA standards and regulations to supplement an on-going safety and health program;

c. Identify common violations of OSHA standards;

d. Describe appropriate abatement procedures for selected safety hazards; and

e. Describe how to conduct internal training on OSHA regulations.

3. Course topics. a. Pretest and review, posttest and review, and overview of the training outreach program—2 hours.

b. Introduction to OSHA standards and hazard violation workshop—2 hours. The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

c. Overview of the OSH Act and 29 CFR Part 1903, inspections, citations and proposed penalties—2 hours.

d. 29 CFR Part 1904—recordkeeping—1 hour.

e. 29 CFR Part 1910, Subpart D, walking and working surfaces—2 hours.

f. 29 CFR Part 1910, Subparts E and L, means of egress and fire protection—2 hours.

g. 29 CFR Part 1910, Subpart H, hazardous materials—2 hours.

h. 29 CFR Part 1910, Subpart I, personal protective equipment—1 hour.

i. 29 CFR Part 1910, Subpart J, lockout/tagout—½ hour.

j. 29 CFR Part 1910, Subpart N, material handling—1 hour.

k. 29 CFR Part 1910, Subpart O, machine guarding—2 hours.

l. 29 CFR Part 1910, Subpart Q, welding—2 hours.

m. 29 CFR Part 1910, Subpart S, electrical standards and work practices—2½ hours.

n. 29 CFR Part 1910, Subpart Z, hazard communication—1½ hours.

o. 29 CFR Part 1910, Subpart Z, introduction to industrial hygiene—1½ hours.

Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area

1. Course Description. This course is designed for private sector personnel who are interested in increasing their knowledge of industrial hygiene practices and related OSHA regulations and procedures. Topics covered include permissible exposure limits, OSHA health standards, respiratory protection, engineering controls, hazard communication, sampling instrumentation, and workplace health program elements. There are workshops in health hazard recognition, safety and health program elements, and the use of OSHA standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Interpret requirements of OSHA health standards;

b. Recognize potential health hazards in the workplace;

c. Perform basic health hazard evaluation using OSHA sampling procedures;

d. Recommend acceptable strategies for controlling hazardous conditions; and

e. Describe the elements required for an effective workplace health protection program.

3. Course Topics. a. Course opening and course closing—1 hour.

b. Air contaminant sampling—2 hours.

c. Compliance with air contaminant standards—2 hours.

d. Compliance with hazard communication—1½ hours.

e. Compliance with hazardous waste standards—2 hours.

f. Compliance with the asbestos standard—1 hour.

g. Compliance with the bloodborne disease standard—1 hour.

h. Compliance with the confined space standard—1 hour.

i. Compliance with the noise standard—2 hours.

j. Compliance with the respirator standard—2 hours.

k. Compliance with ventilation standards—2 hours.

l. Detector tube sampling—1 hour.

m. Elements of a workplace health program and safety and health program workshop—1½ hours. Students are presented with the elements of a workplace health program and

draft a safety and health program for their own workplaces.

n. Hazard violation workshop—1 hour. Students are presented written workplace scenarios describing hazards and are to determine which OSHA health standards apply and why.

o. Health hazard recognization—1 hour.

p. Health hazard slide workshop—1 hour. Students are shown slides depicting health hazards and asked to identify the hazards.

q. OSHA ergonomic guidelines—1 hour.

r. OSHA recordkeeping for health—1 hour.

Course 600, Collateral Duty Course for Other Federal Agencies

1. Course Description. This course introduces Federal agency collateral duty (part-time) safety and health personnel to the OSH Act, Executive Order 12196, 29 CFR part 1960, and 29 CFR part 1910. It enables them to recognize basic safety and health hazards in their own workplaces, and to effectively assist agency safety and health officers with inspection and abatement efforts. A mock workplace inspection is conducted and student findings are reviewed. The OSHA Training Institute awards 2.2 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Describe the OSH Act, 29 CFR part 1960, and 29 CFR part 1910;

b. Describe major provisions of Executive Order 12196;

c. Identify selected safety and health hazards and the corresponding OSHA standards;

d. Describe abatement methods for selected safety and health hazards; and

e. Explain and apply workplace inspection procedures consistent with established OSHA policies, procedure, and directives.

3. Course Topics. a. Course opening and course closing—1 hour.

b. Hazard communication—1 hour.

c. Inspection field trip, writeup and review—5 hours. Students are introduced to the process of site inspection, i.e., what hazardous conditions or activities may be observed in the work environment. They are taken to an active government facility, and evaluate and document any observed hazards. After returning to the classroom, they research and select the standards applicable to the observed hazards. Presentations of findings are made to the class.

d. Introduction to accident investigation—1 hour.

e. Introduction to the OSH Act, Executive Order 12196, and 29 CFR part 1960—2 hours.

f. Introduction to OSHA standards and hazard violation workshop and review—2 hours. The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

g. Office safety—1 hour.

h. 29 CFR part 1910, Subpart D, walking and working surfaces—1 hour.

i. 29 CFR part 1910, Subparts E and L, means of egress and fire protection—1 hour.

j. 29 CFR part 1910, Subpart H, hazardous materials—1 hour.

k. 29 CFR part 1910, Subpart I, personal protective equipment—1 hour.

l. 29 CFR part 1910, Subpart N, material handling—1 hour.

m. 29 CFR part 1910, Subpart O, machine guarding and portable tools—1 hour.

n. 29 CFR part 1910, Subpart Q, welding, cutting and brazing—1 hour.

o. 29 CFR part 1910, Subpart S, electrical standards—1 hour.

p. 29 CFR part 1910, Subpart Z, introduction to industrial hygiene—1 hour.

[FR Doc. 93-28915 Filed 11-24-93; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

November 22, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 19, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking import into USA-Port of Entry Hulnimi and enter specially protected area, was issued to Gerald L. Kooyman on November 20, 1993.

Guy G. Guthridge,

Acting Permit Officer, Office of Polar Programs.

[FR Doc. 93-29007 Filed 11-24-93; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-133]

General Electric Co., Humboldt Bay Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Pacific Gas and Electric Company (the licensee) for the Humboldt Bay Power Plant (HBPP), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 28, 1993, the licensee identified the specical conditions that exist at the HBPP as the basis for this exemption request.

The Need for the Proposed Action

HBPP is a boiling water reactor that permanently ceased power operations in 1984. The fuel was removed from the reactor and placed in the spent fuel pool. A possession-only licensee was issued in 1985. HBPP is currently in SAFSTOR. This exemption would relieve the licensee from the training requirements of 10 CFR 50.120, that are not applicable for a reactor that has been defueled and in SAFSTOR. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accidents previously analyzed in the Safety Evaluation Report (SER) for decommissioning HBPP. The licensee stated that the nuclear fuel is stored in the spent fuel pool. In addition, there are no credible accident scenarios that could result in offsite doses that would exceed a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines" as evaluated in the SER.

The proposed action would not change the types of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered for HBPP.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 28, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC 20037, and at Humboldt County Library, 421 I Street, Eureka, CA 95501.

Dated at Rockville, Maryland, this 19th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-29015 Filed 11-24-93; 8:45 am]

BILLING CODE 7590-01-P

Decommissioning of Shieldalloy Metallurgical Corporation's Facility in Cambridge, OH; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), to conduct a scoping process for the EIS, and to conduct a scoping meeting.

SUMMARY: The NRC intends to prepare an Environmental Impact Statement for decommissioning Shieldalloy Metallurgical Corporation's (Shieldalloy) facility located in Cambridge, Ohio. Shieldalloy and predecessor companies at the Cambridge location have been licensed by the NRC to process ores and mineral concentrates containing the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of processing the ores, the facility concentrated the radioactive materials in high temperature slag. Shieldalloy no longer actively processes source material at the Cambridge site and is, therefore, decommissioning the site in preparation for requesting the NRC to terminate the license controlling the possession of source material at the site. This notice indicates NRC's intent to prepare an Environmental Impact Statement in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

DATES: Written comments on matters covered by this notice received by January 15, 1994, will be considered in developing the scope of the EIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

A public scoping meeting will be held at the Meadowbrook High School in Byesville, Ohio, on December 13, 1993 from 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the scoping meeting should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held in the auditorium of the Meadowbrook High School, 58615 Marietta Road, Byesville, Ohio 43723, on December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Weber, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–1298, or Chad Glenn, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–2546.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of public health and safety and the environment related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in the NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

Need for Proposed Action

Shieldalloy Metallurgical Corporation (Shieldalloy) is licensed by the NRC (License Number SMB–1507) to possess and store the radioactive materials uranium and thorium (source material) at a site located south of Cambridge, Guernsey County, Ohio. Under NRC license, previous owners of the site processed niobium ore containing licensable quantities of the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of the processing of the ore to produce metal alloys, the radioactive materials were incorporated into waste slag and are currently stored in two separate piles (west and east) at the site. Shieldalloy previously remediated portions of the site by removing contamination and consolidating the radioactive materials into the two piles: the west pile with a mass of about 400,000 metric tons (440,000 tons) and a volume of 160,000 cubic meters (about 5,700,000 cubic feet), and the east pile with a mass of about 81,600 metric tons (90,000 tons) and a volume of 32,600 cubic meters (about 1,200,000 cubic feet). The principal radionuclides in the waste are thorium-232 (and decay products) and uranium-238 (and decay products).

Processing at the site no longer involves source material. Consequently, Shieldalloy has been engaged in

decommissioning the site for the last several years in preparation for requesting the NRC to terminate the license and release the site for unrestricted use in accordance with NRC's requirements. Because the Cambridge site has inactive waste piles containing a large volume of radioactively contaminated soil and slag (up to a total of 10 million cubic feet), NRC included the Cambridge site in the Site Decommissioning Management Plan (SDMP) [1] and has been devoting special attention to the site to ensure timely and effective decommissioning.

In September 1993, Shieldalloy and its parent company, Metallurg Inc., filed for protection from creditors under Chapter 11 of the Bankruptcy Code. Decommissioning the Cambridge facility, and another licensed site in Newfield, New Jersey, represent two of Shieldalloy's largest and unquantified liabilities, which must be resolved as part of the company's restructuring activities under Chapter 11. To complete restructuring in a timely manner, Shieldalloy has requested NRC to determine whether onsite stabilization and disposal of radioactive waste is acceptable for completing the decommissioning of the Cambridge facility.

The NRC has determined that approval of onsite stabilization and disposal of the radioactive waste constitutes a major federal action and, therefore, warrants preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. Concentrations of uranium, thorium, and their radioactive decay products in the waste piles exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP Sites (57 FR 13389; April 16, 1992). As described in the Action Plan, the criteria are applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA).

Consequently, if NRC approved on-site stabilization of the radioactive material, land use restrictions or other institutional controls may be necessary to ensure long-term protection of the public and the environment. NRC expects that Shieldalloy would have to apply for and obtain an exemption from NRC's present requirements because NRC's current requirements for decommissioning do not allow for land use restrictions.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with decommissioning the Cambridge site that are regulated by other State and Federal agencies, including the U.S. Environmental Protection Agency (USEPA) and the Ohio Environmental Protection Agency (OHEPA). The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of the Cambridge site, but should also be useful to these other agencies in discharging their respective duties.

Description of Proposed Action

The proposed action is onsite stabilization and disposal of radioactive waste containing elevated concentrations of thorium and uranium and their radioactive decay products at the Shieldalloy facility in Cambridge, Ohio. Because radioactive contamination at the site has been consolidated into two waste piles, the proposed action principally focuses on the disposal of the radioactive materials within those waste piles.

Preparation of an Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and the costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action, including the "no action" alternative, will be analyzed. The scope of the EIS includes consideration of both radiological and non-radiological impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences that will be available to the Agency's decision makers in reviewing the licensee's decommissioning plan for the Cambridge site.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared by NRC in connection with a proposed action, NRC will publish a notice of intent in the **Federal Register** stating that an EIS will be prepared and conduct an appropriate scoping process. In addition, this scoping process may include the holding of a public scoping meeting.

NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice describe the proposed action and also, to the extent that sufficient information is available, possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with §§ 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at the public scoping meeting at Meadowbrook High School auditorium, Byesville, Ohio, on December 13, 1993, from 7 to 10 p.m.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public. Written comments should be submitted by January 15, 1994, and should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the EIS.* The proposed action is the onsite stabilization and disposal of radioactive waste in the form

[1] The Site Decommissioning Management Plan, U.S. Nuclear Regulatory Commission, NUREG-1444, 1993, is available from the U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328.

of slag and contaminated soil at the Shieldalloy facility in Cambridge, Ohio.

(b) *Determine the scope of the EIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with the proposed action and alternative decommissioning approaches. The following proposed outline for the EIS reflects the current NRC staff view on the scope and major topics to be dealt with in the EIS:

Proposed Outline: Environmental Impact Statement

Abstract

Executive Summary.

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   - 4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
   - 4.2 Alternatives Considered—each of the alternatives represent alternate decommissioning approaches.
     - (a) Alternative 1, *Onsite Stabilization and Disposal* [Licensee's Proposed Action]—radioactive contamination would be consolidated and stabilized in a single pile that would be covered and graded in a manner to provide long-term protection against wind and water erosion and to minimize groundwater contamination. This alternative would also likely include land use restrictions and/or other institutional controls to prevent or reduce potential intrusion into the waste and to monitor the long-term effectiveness of the disposal and take mitigative measures as necessary to protect the public and environment.
     - (b) Alternative 2, *Offsite Disposal*—radioactive contamination would be exhumed from the site and disposed offsite at a licensed low-level waste disposal facility. The disposal facility may either be located in the vicinity of Cambridge, Ohio (e.g., within 50 km) or in another State. This alternative could also consider disposal of the contamination along with other wastes of similar physical, chemical, and radiological characteristics, such as mill tailings, or in a dedicated disposal facility that would provide enhanced barriers against human intrusion into the waste for thousands of years, such as a deep mine. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 picoCuries per gram (pCi/g) total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations);
     - (c) Alternative 3, *Onsite Separation Processing with Offsite Disposal*—radioactive contamination would be processed using physical or chemical methods to separate more highly concentrated contamination from lower concentrations that could be stabilized onsite. Higher concentration wastes would be sent offsite to a licensed disposal facility. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations);
     - (d) Alternative 4, *Onsite Dilution Processing and Disposal*—existing radioactive contamination would be blended with clean fill to reduce average concentrations of uranium and thorium to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations). Diluted contamination would then be graded onsite and released for unrestricted use; and
     - (e) Alternative 5, *No Action*—radioactive contamination would be abandoned in its present configuration without any additional processing or stabilization. This alternative does not consider any protective measures, such as land use restrictions or other institutional controls, that might mitigate or prevent intrusion into the waste or long-term release and transport of contamination in the environment.
   - 4.3 Method of Analysis of Regulatory Alternatives
     - (a) Define a range of alternative decommissioning approaches;
     - (b) Evaluate the alternative decommissioning approaches with respect to: (1) the incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative, and (2) the costs associated with each regulatory alternative. Evaluations of impacts and costs are contained in Sections 5 and 6 below;
     - (c) Perform a comparative evaluation of the decommissioning approaches based on the impacts and costs of each alternative from 4.3(b).
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   - 5.1 Construction and Remediation Consequences
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9. References

Appendix A—Reserved for Comments on DEIS

Appendix B—Results of Scoping Process

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering

elimination of the following issues from the scope of this EIS because they have been previously analyzed in a previous Generic Environmental Impact Statement (GEIS) (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR Parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

(d) *Identify any Environmental Assessments or EISs which are being or will be prepared that are related but are not part of the scope of this EIS.* A draft Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized. NRC is presently developing a Generic EIS to support a rulemaking to establish generic radiological criteria for decommissioning. In addition, NRC is presently developing an EIS for decommissioning the waste piles at Shieldalloy's facility in Newfield, New Jersey.

(e) *Identify other environmental review or consultation requirements related to the proposed action.* NRC will consult with other Federal, State, and local agencies that have jurisdiction over the Cambridge site decommissioning. For example, NRC has already been coordinating its reviews of decommissioning actions at the Cambridge site with the USEPA, OEPA, and the Ohio Department of Health. NRC anticipates continued consultation with these and other agencies, as appropriate, during the development of the EIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* NRC intends to prepare and issue for public comment a draft EIS in October 1994. The comment period would be for 90 days. The final EIS is scheduled for publication in June 1995. Subsequent to completion of the final EIS, the NRC would review and act on a license amendment from the licensee requesting authorization for decommissioning the site, including the decommissioning plan as required in 10 CFR 40.42(c)(2). Depending on the resolution of the licensee's financial restructuring under Chapter 11 of the bankruptcy code, the NRC may terminate or postpone development of the EIS.

(g) *Describe the means by which the EIS will be prepared.* NRC will prepare the draft EIS according to the requirements in 10 CFR part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical, and other benefits of the proposed action.

The EIS will be prepared by the NRC staff and an NRC contractor. NRC is arranging a project with Oak Ridge National Laboratory to provide technical assistance in the preparation of the EIS. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS. Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29013 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–P

Decommissioning of Shieldalloy Metallurgical Corporation's Facility in Newfield, NJ; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), to conduct a scoping process for the EIS, and to conduct a scoping meeting.

SUMMARY: The NRC intends to prepare an EIS for decommissioning Shieldalloy Metallurgical Corporation's (Shieldalloy) facility located in Newfield, New Jersey. Shieldalloy and predecessor companies at the Newfield location have been licensed by the NRC to process ores and mineral concentrates containing the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of processing the ores to produce metal alloys, Shieldalloy concentrated the radioactive materials in high temperature slag and in baghouse dust. Shieldalloy continues to process the source material. Although Shieldalloy has no intent to close down the Newfield facility in the foreseeable future, plans for stabilizing or disposing of the slag and dust need to be established as part of a process for renewing the NRC license at the site. This notice indicates the NRC's intent to prepare an EIS in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

DATES: Written comments on matters covered by this notice received by January 15, 1994, will be considered in developing the scope of the EIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

A public scoping meeting will be held at Delsea Regional High School in Franklinville, New Jersey, on December 16, 1993, from 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the scoping meeting should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held at Delsea Regional High School, Blackwoodtown Road (County Highway

655), Franklinville, New Jersey, on December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Weber, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–1298, or Gary Comfort, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–2667.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

In accordance with NRC requirements promulgated in 1988, licensees are also required to provide financial assurance for decommissioning, including submission of a decommissioning funding plan [10 CFR 40.36(c)]. In accordance with 10 CFR 40.36(d), the decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method for assuring funds for decommissioning using one of several methods, including prepayment; surety, insurance, or other guarantee; external sinking fund coupled with a surety method; or statement of intent (for government licensees only). Based on NRC's definition of decommission, the cost estimate would be based on the assumption that residual radioactivity would be reduced to a level that permits release of the property for unrestricted use and termination of the license.

Need for Proposed Action

Shieldalloy Metallurgical Corporation (Shieldalloy) is licensed by the NRC (License Number SMB–743) to possess and store the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material) at a site located near Newfield, Gloucester County, New Jersey. As a result of processing ores and mineral concentrates to produce metal alloys, the radioactive materials have been concentrated in high temperature slag and baghouse dust.

Since 1955, Shieldalloy has operated a manufacturing facility in Newfield and produced specialty steel and super alloy additives, including aluminum master alloys, metal carbides, powdered metals, and optical surfacing products. Raw materials used at the facility include ores and concentrates of niobium, vanadium, zirconium, titanium, and other metals and materials. NRC licenses activities at the site related to processing a mineral concentrate (pyrochlore) to recover niobium. The pyrochlore contains more than 0.05 percent (by weight) of the radioactive materials uranium and thorium, which are source materials and require a license under 10 CFR part 40.

During the manufacturing process, the radioactive materials are concentrated in a high temperature slag and in baghouse dust. The slag has been placed into two piles with a total mass of about 45,000 metric tons (about 50,000 tons) and a volume of about 18,000 cubic meters (about 630,000 cubic feet); the baghouse dust is located in a third pile of about 12,000 metric tons (13,400 tons) and a volume of about 15,000 cubic meters (530,000 cubic feet). In addition to these piles, radioactive materials have also been dispersed in soil around the piles and at numerous other locations at the facility. The concentrations of radioactive materials in the piles vary with maximum thorium-232 concentrations up to 1,500 picocuries per gram (pCi/g) and average thorium-232 concentrations ranging from several tens to hundreds of pCi/g. Because the Newfield site has large waste piles that may be difficult to dispose of at the time of decommissioning, NRC included the Newfield site in the Site Decommissioning Management Plan (SDMP)[1] and has been devoting special attention to the site to ensure planning continues to achieve timely and effective decommissioning.

Shieldalloy's license for the Newfield facility has been in timely renewal since Shieldalloy filed its request for renewal with the NRC in 1985. As a condition of acting on the renewal request, the NRC identified the need for Shieldalloy to submit an adequate decommissioning funding plan in accordance with 10 CFR 40.36(c)(2). In addition, the NRC raised a concern in 1992 that Shieldalloy's plan for eventual decommissioning of the Newfield site may not satisfy NRC's requirements because it contemplated stabilization of the contaminated waste onsite and may require land use restrictions to ensure continued long-term protection of the public and environment. This approach is inconsistent with NRC's requirements for decommissioning, which require that residual radioactivity be reduced to a level that permits release of the property for unrestricted use.

In September 1993, Shieldalloy and its parent company, Metallurg Inc., filed for protection from creditors under Chapter 11 of the Bankruptcy Code. Decommissioning the Newfield facility, and another licensed site in Cambridge, Ohio, represent two of Shieldalloy's largest and unquantified liabilities, which must be resolved as part of the company's restructuring activities under Chapter 11. To complete restructuring in a timely manner, Shieldalloy has requested NRC to determine whether onsite stabilization and disposal of radioactive waste is acceptable for decommissioning the Newfield facility.

NRC has determined that approval of onsite stabilization and disposal of the radioactive waste is a major Federal action and, therefore, warrants preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. Concentrations of uranium, thorium, and their radioactive decay products in the waste piles exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP

[1] The Site Decommissioning Management Plan, U.S. Nuclear Regulatory Commission, NUREG–1444, 1993, is available from the U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328.

Sites (57 FR 13389; April 16, 1992). As described in the Action Plan, the criteria are applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA).

Consequently, if NRC approved on-site stabilization of the radioactive material, land use restrictions or other institutional controls may be necessary to ensure long-term protection of the public and the environment. NRC expects that Shieldalloy would have to apply for and obtain an exemption from NRC's present requirements because NRC's current requirements for decommissioning do not allow for land use restrictions.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with decommissioning the Newfield site that are regulated by other State and Federal agencies, including the U.S. Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection and Energy (NJDEPE). For example, the Newfield site is listed on the National Priorities List and is being remediated under the Comprehensive Environmental Response Compensation and Liability Act to mitigate groundwater contamination caused by non-licensed activities at the site. These activities are administered by EPA and NJDEPE. The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of the Newfield site, but should also be useful to these other agencies in discharging their respective duties.

Description of Proposed Action

The proposed action is onsite stabilization and disposal of radioactive waste containing elevated concentrations of thorium and uranium and their decay products at the Shieldalloy facility in Newfield, New Jersey. Because most of the radioactive contamination at the site exists in three waste piles, the proposed action principally focuses on the disposal of the radioactive materials within those waste piles.

Preparation of an Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action, including the "no action" alternative, will be analyzed. The scope of the EIS will include both radiological and non-radiological impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences that will be available to the Agency's decision makers in reviewing the licensee's decommissioning plan for the Newfield site.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared by NRC in connection with a proposed action, NRC will publish a notice of intent in the **Federal Register** stating that an EIS will be prepared and conduct an appropriate scoping process. In addition, this scoping process may include the holding of a public scoping meeting.

NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice include the proposed action and, to the extent that sufficient information is available, also describe possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with §§ 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at the public scoping meeting at Delsea Regional High School in Franklinville, New Jersey, on December 16, 1993, from 7 to 10 p.m.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public. Written comments should be submitted by January 15, 1994, and should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the EIS.* The proposed action is consideration of onsite stabilization and disposal of radioactive waste at the Shieldalloy facility in Newfield, New Jersey.

(b) *Determine the scope of the EIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with the proposed action and alternative decommissioning approaches. The following proposed outline for the EIS reflects the current NRC staff view on the scope and major topics to be dealt with in the EIS:

Proposed Outline: Environmental Impact Statement.

Abstract.

Executive Summary.

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   - 1.1 Background
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4. Decommissioning Alternatives Analyzed and Method of Approach for the Analysis
   4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
   4.2 Alternatives Considered—each of the alternatives represent alternate decommissioning approaches.
   (a) Alternative 1, *Onsite Stabilization and Disposal* [Licensee's Proposed Action]—radioactive contamination would be consolidated and stabilized in a single pile that would be covered and graded in a manner to provide long-term protection against wind and water erosion and to minimize groundwater contamination. This alternative would also likely include land use restrictions and/or other institutional controls to prevent or reduce potential intrusion into the waste and to monitor the long-term effectiveness of the disposal and take mitigative measures as necessary to protect the public and environment.
   (b) Alternative 2, *Offsite Disposal*—radioactive contamination would be exhumed from the site and disposed offsite at a licensed low-level waste disposal facility. The disposal facility may either be located in the near vicinity of Newfield (e.g., within 50 km) or in another State. This alternative could also consider disposal of the contamination along with other wastes of similar physical, chemical, and radiological characteristics, such as mill tailings, or in a dedicated disposal facility that would provide enhanced barriers against human intrusion into the waste for thousands of years, such as a deep mine. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 picoCuries per gram (pCi/g) total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air);
   (c) Alternative 3, *Onsite Separation Processing with Offsite Disposal*—radioactive contamination would be processed using physical or chemical methods to separate more highly concentrated contamination from lower concentrations that could be stabilized onsite. Higher concentration wastes would be sent offsite to a licensed disposal facility. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air);
   (d) Alternative 4, *Onsite Dilution Processing and Disposal*—existing radioactive contamination would be blended with clean fill to reduce average concentrations of uranium and thorium to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air). Diluted contamination would then be graded onsite and released for unrestricted use; and
   (e) Alternative 5, *No Action*—radioactive contamination would be abandoned in its present configuration without any additional processing or stabilization. This alternative does not consider any protective measures, such as land use restrictions or other institutional controls, that might mitigate or prevent intrusion into the waste or long-term release and transport of contamination in the environment.
   4.3 Method of Analysis of Regulatory Alternatives
   (a) Define a range of alternative decommissioning approaches;
   (b) Evaluate the alternative decommissioning approaches with respect to: (1) the incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative; and (2) the costs associated with each regulatory alternative. Evaluations of impacts and costs are contained in Sections 5 and 6 below;
   (c) Perform a comparative evaluation of the decommissioning approaches based on the impacts and costs of each alternative from 4.3(b).
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7. List of Preparers
8. List of Agencies, Organizations, and Persons Receiving Copies of the Draft EIS
9. References

Appendix A—Reserved for Comments on DIES

Appendix B—Results of Scoping Process

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this EIS because they have been previously analyzed in a previous Generic Environmental Impact Statement (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

(d) *Identify any Environmental Assessments or EISs which are being or will be prepared that are related but are not part of the scope of this EIS.* A draft Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized. NRC is presently developing a Generic Environmental Impact Statement to support a rulemaking to establish generic radiological criteria for decommissioning. In addition, NRC is presently developing an EIS for decommissioning the waste piles at Shieldalloy's facility in Cambridge, Ohio.

(e) *Identify other environmental review or consultation requirements*

related to the proposed action. NRC will consult with other Federal, State, and local agencies that have jurisdiction over the Newfield site. For example, NRC has already been coordinating its reviews of decommissioning actions at the Newfield site with the USEPA and the NJDEPE. NRC anticipates continued consultation with these and other agencies, as appropriate, during the development of the EIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* NRC intends to prepare and issue for public comment a draft EIS in October 1994. The comment period would be for 90 days. The final EIS is scheduled for publication in June 1995. Subsequent to completion of the final EIS, the NRC would review and act on a supplemented license renewal request from the licensee requesting continued authorization for possession and storage of source material at the site, including the decommissioning funding plan as required in 10 CFR 40.36(c)(2). Depending on the resolution of the licensee's financial restructuring under Chapter 11 of the bankruptcy code, the NRC may terminate or postpone development of the EIS.

(g) *Describe the means by which the EIS will be prepared.* NRC will prepare the draft EIS according to the requirements in 10 CFR part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical, and other benefits of the proposed action.

The EIS will be prepared by the NRC staff and an NRC contractor. NRC is arranging a project with Oak Ridge National Laboratory to provide technical assistance in the preparation of the EIS. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS. Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process.

Dated at Rockville, Maryland, this 18th day of November 1993.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-29014 Filed 11-24-93; 8:45 am]

BILLING CODE 7590-01-p

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 8, 1993, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 8, 1993—4 p.m. Until 6 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

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 therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 18, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-28998 Filed 11-24-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District (SMUD or the licensee) is the holder of Facility Operating License No. DPR-54. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee site in Sacramento County, California, and is currently defueled with fuel stored in the spent fuel pool. Additionally, a confirmatory order prevents the movement of the fuel into the reactor building without NRC approval.

II

The Rancho Seco Nuclear Generating Station (Rancho Seco) was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. The NRC in Amendment No. 117, dated Mach 17, 1992, modified Facility Operating License No. DPR-54 to a Possession Only License (POL). The license is conditioned so that SMUD is not authorized to operate or place fuel in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations.

By letter dated November 14, 1990, and supplemented by letter dated October 15, 1992, the licensee requested a reduction in primary financial coverage and an exemption from participation in the industry

retrospective rating plan requiring secondary level coverage requirements in 10 CFR 140.11(a)(4), 10 CFR 140.21, 10 CFR 140.92 Appendix B, 10 CFR 140.109 Appendix I, and an application pursuant to 10 CFR 140.92, Article II, Section 7.

III

The justification presented by the licensee for the exemption request is that because of the defueled condition of the reactor, there are no longer any credible design basis accidents except the loss of offsite power and a fuel handling accident. The licensee contends that, with the reactor in its permanently defueled condition combined with administrative controls which minimize fuel movement, the possibility of an accident, an extraordinary nuclear occurrence, or a nuclear accident is further reduced. The licensee also noted that a confirmatory order was issued on May 2, 1990, which prohibited movement of fuel from the spent fuel pool into the reactor building without prior Commission approval.

Because this confirmatory order prohibits the SMUD from resuming power operation without explicit approval by the NRC, the licensee contended that Rancho Seco fell outside the ambit of 10 CFR 140.11(a)(4). Other factors supporting the non-operating status of Rancho Seco included: Cessation of operation of Rancho Seco, the NRC approval of the Possession Only License, and the licensee analysis that the consequences of any postulated accident cannot exceed the primary financial protection requirements in the current defueled condition.

In its request, the licensee indicated that it believed that reduced financial protection was warranted. The licensee analysis indicated that coverage of $50 million provides adequate coverage for liability stemming from any alleged radiation exposure. SMUD also cited a previous NRC exemption which concluded that there were no credible basis accidents associated with Rancho Seco that are comparable, in consequence or severity, to the design basis accidents of an operating facility. SMUD further concluded that there were no postulated accidents that could result in an extraordinary nuclear occurrence or a nuclear incident that could exceed the requested $50 million primary financial protection insurance coverage.

SMUD also indicated that since power operations had permanently ceased and revenues were no longer received from operations, literal compliance with the regulatory requirements for full financial coverage and mandatory participation in the industry retrospective rating plan would result in undue financial hardship to the licensee and its ratepayers. SMUD indicated that the following conditions constituted "extreme and undue financial hardship:"

- Payment of the retrospective assessments under the secondary plan, and
- Payment of insurance premiums under the primary plan.

On October 15, 1992, the licensee reiterated its request for relief and exemption under 10 CFR 140.8 and provided a legal opinion from retained counsel. This additional information focused on legal interpretations of the Price-Anderson Act, statements of consideration, comments made by members of Congress during consideration of the 1988 Amendments to the Price-Anderson Act, and past NRC actions with respect to the relief granted to the Consolidated Edison facility, Indian Point 1. The licensee concluded that the NRC has the requisite authority to grant the requested relief on the grounds that removal of the operating authority, that is, granting of a "Possession Only License," was tantamount to termination of the "operating license." The licensee asks the NRC to exercise that authority by reducing the financial protection requirements in accordance with the reduction in risk posed by the Rancho Seco facility as recognized by American Nuclear Insurers. The licensee concludes that because Rancho Seco is no longer authorized to operate, the potential for hazards for which Price-Anderson coverage is to provide financial protection are greatly reduced, and SMUD is entitled to a corresponding reduction in the financial protection requirements for the plant.

The licensee determined that the requirement to maintain primary financial coverage of $200,000,000 is excessive, and requested a reduction from the full amount of $200,000,000 to an amount of $50,000,000. SMUD requested a total exemption from the requirement for secondary liability coverage as required by the industry retrospective rating plan, exemption from the 10 CFR 140.21 requirements to provide an annual certified financial statement, and made application pursuant to 10 CFR 140.92, Article II, Section 7, to enter into an agreement with the Commission to maintain an equitable amount of financial protection commensurate with the current plant condition.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shut down reactors in SECY-93-127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the Commission has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Depending on the plant-specific configuration and the time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shut down reactors for which financial protection is warranted. Lastly, the staff concluded that accidents and hazards insured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR part 100 and cases interpreting the application of that regulation. The Commission issued a Staff Requirements Memorandum (SMR) on SECY-93-127 on July 13, 1993. In the SMR, the Commission approved the staff recommendation to permit reduction of primary level coverage to $100 million through the exemption process after the appropriate spent fuel cooling period and after allowing withdrawal from participation in the secondary financial protection layer.

In the exercise of its discretionary authority, the Commission may, so long as a potential hazard existed at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time that the hazard was determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shut down. The staff concluded that in view of the time that has elapsed since plant shutdown, aside from the handling, storage, and transportation of spent fuel and radioactive materials, no reasonably conceivable potential accident exists that could cause significant offsite damage.

A severe transportation accident potentially result in local contamination

requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance. The liabilities and indemnification requirements associated with the transfer of spent fuel from the license to the Department of Energy will be evaluated on a case-by-case basis at a future time when spent fuel is shipped to a repository.

The most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light water reactor spent fuel pool. This beyond-design-basis accident sequence could result in a zirconium fuel cladding fire that could propagate through the spent fuel storage pool and result in significant offsite consequences. The potential consequences of such an accident could range up to several billion dollars. Although such an accident is beyond the design bases, it may be considered "reasonably conceivably" and could warrant requiring substantial financial protection. Such an accident is possible during the first year after reactor shutdown for a low density spent fuel storage configuration and during the first two years after shutdown for spent fuel stored in certain high density configurations.

Concerns for adequacy of heat removal mechanisms as well as uncertainties in the spent fuel storage studies indicate a need for an additional year of cooling for the high density storage configurations. Accident scenarios involving blockage of coolant channels in conjunction with loss of spent fuel pool water could hypothetically extend further the time within which a zirconium fuel cladding fire could occur. However, in addition to being less likely than loss of water, air flow to react with the zirconium and to disperse fission products would likely to inhibited by such blockage. The staff believes that this sequence approaches the strictly hypothetical.

Once the requisite cooling period after reactor shutdown has elapsed, the zirconium fuel cladding fire sequence after a postulated loss of water is no longer a concern since the fuel would air cool sufficiently to avoid zirconium fuel cladding combustion. Possible accident scenarios, after these cooling periods have elapsed, have greatly reduced consequences, but could result in small releases or precautionary evacuations which could result in offsite liability.

With respect to the Rancho Seco plant-specific evaluation, the NRC staff independently evaluated the legal and technical justifications for the exemption presented by the license. The NRC recognizes the current Rancho Seco condition, that is, permanently shut down and defueled, licensed to authorize "possession only," and under a confirmatory order that prohibits fuel movement from the spent fuel pool into the reactor building without Commission approval. The staff concurred with the licensee evaluation of credible design basis accidents, loss of offsite power and fuel handling accidents, and their minimal associated offsite consequences. Although the licensee presented substantive legal views and opinions regarding the application of the Price-Anderson Act and 10 CFR part 140 to permanently shut down reactors, the staff did not concur with these licensee views and opinions.

The licensee evaluation of potential hazards and liability coverage needs was less than comprehensive. The licensee-identified need for continuing liability coverage, $50,000,000, was limited to liability stemming from any alleged radiation exposure. Coverage needs associated with decommissioning activities and transportation of radioactive materials or precautionary evacuations were not identified. Beyond design basis accidents, such as the zircalloy spent fuel pool fire sequence, that could be applicable to the currently defueled and permanently shutdown condition of Rancho Seco were likewise not considered.

The license also contended that compliance with existing regulations would result in potential payment of retrospective assessments under the secondary indemnity plan and payments of insurance premiums under the primary financial protection plan. These payments would allegedly constitute an "extreme and undue financial hardship" to the licensee and its ratepayers. Although the staff recognizes that the potential hazards and consequences associated with a permanently shutdown reactor are greatly reduced, the state of greatly reduced risk does not exist until a minimum cooling period for the spent fuel has elapsed. Thereafter, the permanently shutdown reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor and relief from financial protection requirements would then be warranted.

Although the licensee justification for this exemption was not conclusive, the staff, on its own initiative, did consider liability coverage needs associated with decommissioning activities, transportation of radioactive materials, design basis accidents, and the beyond-design-basis accidents noted above. The results of our evaluation, as embodied in the July 13, 1993 SRM on SECY-93-127 and in SECY-93-127, allow, after the requisite minimum spent fuel cooling period has elapsed, a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shutdown. Unless the licensee provides an analysis to determine the appropriate cooling period for a site-specific spent fuel configuration, for a pressurized water reactor, such as Rancho Seco, with a high density spent fuel pool storage configuration, a generic minimum cooling period of three years after permanent reactor shutdown is required before a reduction in financial protection requirements would be permitted. The Rancho Seco Nuclear Generating Station was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. Approximately four years and three months have elapsed since the permanent shutdown of Rancho Seco. This meets the criterion established in SECY-93-127 for relief from financial protection requirements.

Although the licensee requested a new primary financial protection coverage level of $50,000,000, the staff has also concluded that the Three Mile Island Unit 2 (TMI-2) claims settlement experience (an accident which did not result in a significant release of radioactivity) provides a reasonable basis for establishing the appropriate level of primary insurance coverage. Because TMI-2 claims have reached $60,000,000 and a large number of TMI-2 claims are still unsettled, the staff concluded that a level of $100,000,000 for primary financial protection coverage is warranted. This level of primary insurance coverage is consistent with the Staff Requirements Memorandum dated July 13, 1993 on SECY-93-127 for relief from financial protection requirements.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993 Staff Requirements Memorandum on SECY-93-127 and in SECY-93-127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the Rancho Seco Nuclear Generating Station. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences

of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the Commission has determined, that pursuant to 10 CFR 140.8, that this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for the Rancho Seco Nuclear Generating Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 60883, dated November 18, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93-29006 Filed 11-24-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SPECIAL COUNSEL

Privacy Act; System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of transfer of Privacy Act system of records.

SUMMARY: The purpose of this document is to notify all interested parties that pursuant to the Privacy Act, (5 U.S.C. 552a), the U.S. Office of Special Counsel ("OSC") hereby transfers the Privacy Act system of records, "MSPB/OSC-1, OSC Complaint, Litigation and Political Activity Files," to OSC's own system of records. The system was published at 52 FR 29906 (August 12, 1987) and in the Privacy Act Issuances 1991 Compilation, Volume V, at pages 132 and 133. The system of records is redesignated as "OSC/GOVT-1, OSC Complaint, Litigation and Political Activity Files." Also, the revised citation of authority for maintenance of the system, the system location and the system manager are provided.

EFFECTIVE DATE: November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Cathleen M. Sadlo, Attorney, Prosecution Division, U.S. Office of Special Counsel, 1730 M Street NW., Suite 300, Washington, DC 20036-4505. Telephone No. (202) 653-6005.

SUPPLEMENTARY INFORMATION: The U.S. Office of Special Counsel ("OSC") was created by Reorganization Plan No. 2 of 1978 (43 FR 36037, May 23, 1978), Executive Order No. 12,107 (December 28, 1978) and the Civil Service Reform Act of 1978, Pub. L. 95-454, as an independent investigative and prosecutive arm of the U.S. Merit Systems Protection Board ("MSPB"). Pursuant to the Whistleblower Protection Act of 1989, Pub. L. 101-12 (5 U.S.C. 1211-1219), OSC became an independent agency. The OSC has the authority to investigate allegations of prohibited personnel practices under 5 U.S.C. 2302(b), prohibited political activity by Federal and District of Columbia employees under 5 U.S.C. 7321-7328 and prohibited political activity by certain State and local officers and employees under 5 U.S.C. 1501-1508 (known as the "Hatch Act"), and certain other matters under 5 U.S.C. 1216. The OSC has the authority to prosecute these matters before the MSPB to obtain corrective and disciplinary action. Also under 5 U.S.C. 1213, the OSC provides federal employees or former federal employees with the opportunity to make confidential whistleblower disclosures.

While OSC was an office of the MSPB, OSC published a Privacy Act system notice, "MSPB/OSC-1, OSC Complaint, Litigation and Political Activity Files." This system of records contains the documents necessary to assist the OSC in carrying out its responsibilities under the statues listed above. The OSC hereby transfers the Privacy Act system of records, "MSPB/OSC-1," which is published at 52 FR 29906 (August 12, 1987) and in the Privacy Act Issuances, 1991 Compilation, Volume V, at pages 132 and 133, to OSC's own system of records. The system of records is redesignated as "OSC/GOVT-1, OSC Complaint, Litigation and Political Activity Files."

The following administrative changes have been made to OSC/GOVT-1:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1211-1221, 1501-1508 and 7321-7328.

SYSTEM LOCATION:

Management Division, U.S. Office of Special Counsel, 1730 M Street, NW., Washington, DC 20036-4505.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Management, U.S. Office of Special Counsel, 1730 M Street, NW., Washington, DC 20036-4505.

Signed this 17th day of November 1993.

William E. Reukauf,

Associate Special Counsel for Prosecution.

[FR Doc. 93-28916 Filed 11-24-93; 8:45 am]

BILLING CODE 7405-01-M

POSTAL RATE COMMISSION

Notice of Commission Visit

November 19, 1993.

Notice is hereby given that members of the Commission and certain advisory staff will visit Business Mail Express, Inc., in Reston, Virginia, on December 3, 1993.

A report of the visit will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202-789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93-28945 Filed 11-24-93; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

November 19, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Alliance World Dollar Government Fund
Common Stock, $1.00 Par Value (File No. 7-11539)

Ballard Medical Products
Common Stock, $.10 Par Value (File No. 7-11540)

Barnes & Noble, Inc.
Common Stock, $.01 Par Value (File No. 7-11541)

Belden, Inc.
Common Stock, $.01 Par Value (File No. 7-11542)

Boise Cascade Corp.
$1.58 Depositary Shares (rep. 1/10 sh. of Conv. Pfd. Stock Ser. G) (File No. 7-11543)

Boyd Gaming Corp.
Common Stock, $.01 Par Value (File No. 7-11544)

Capital Guaranty Corp.
Common Stock, $.10 Par Value (File No. 7-11545)

Colonial Properties Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-11546)

Corrpro Co.'s

Common Shares, No Par Value (File No. 7-11547)
Detroit Diesel Corp.
Common Stock, $.01 Par Value (File No. 7-11548)
Gerrity Oil & Gas Corp.
Common Stock, $/01 Par Value (File No. 7-11549)
Global High Income Dollar Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-11550)
Grupo Tribasa, S.A. de C.V.
American Depository Shares (rep. 2 sh. Common Stock, No Par Value (File No. 7-11551)
Integrated Health Services, Inc.
Common Stock, $.001 Par Value (File No. 7-11552)
Intercapital California Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-11553)
Intercapital New York Quality Municipal Securities
Common Shares Beneficial Interest, $.01 Par Value (File No. 7-11554)
Intercapital Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-11555)
Margaretten Financial Corp.
Depository Shares (rep. ¼ sh. Cum. Pfd. Stock, Ser. A) (File No. 7-11556)
Material Sciences Corp.
Common Stock, $.01 Par Value (File No. 7-11557)
Nations Government Income Term Trust 2003, Inc.,
Common Stock, $.001 Par Value (File No. 7-11558)
Newscorp Overseas Ltd.
8 5/8% Cum. Gtd. Pref. Shrs., Ser. A, $25.00 Par Value (File No. 7-11559)
Northern Border Partners, L.P.
Common Units (rep. L.P. Ints.) $.001 Par Value (File No. 7-11560)
Protective Life Corp.
Common Stock, $.50 Par Value (File No. 7-11561)
Sphere Drake Holdings Ltd.
Common Stock, $.01 Par Value (File No. 7-11562)
Templeton Emerging Markets Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-11563)
Tucker Properties
Common Stock, $.001 Par Value (File No. 7-11564)
Urban Shopping Center, Inc.
Common Stock, $.01 Par Value (File No. 7-11565)
ACM Managed Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-11566)
Amerco
Ser. A. Pfd. Stock, No Par Value (File No. 7-11567)
Aquila Gas Pipeline Corp.
Common Stock, $.01 Par Value (File No. 7-11568)
CBL & Associates Properties, Inc.
Common Stock, $.01 Par Value (File No. 7-11569)
Chelsea GCA Realty, Inc.
Common Stock, $.01 Par Value (File No. 7-11570)
Enersis S.A.
American Depositary Shares (rep. 50 sh. Common Stock, No Par Value (File No. 7-11571)
Lexington Corporate Properties, Inc.
Common Stock, $.001 Par Value (File No. 7-11572)
New Age Media Fund, Inc.
Common Stock, $.0001 Par Value (File No. 7-11573)
Paul Revere Corp.
Common Stock, $1.00 Par Value (File No. 7-11574)
Regency Realty Corp.
Common Stock, $.01 Par Value (File No. 7-11575)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-28933 Filed 11-24-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19886; 812-7521]

Daily Money Fund, et al.; Notice of Application

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Money Fund II; Daily Tax-Exempt Money Fund; Fidelity Advisor Series I (formerly Equity Portfolio: Growth); Fidelity Advisor Series II (formerly Plymouth Fund); Fidelity Advisor Series III (formerly Equity Portfolio: Income); Fidelity Advisor Series IV (formerly Income Portfolios); Fidelity Advisor Series V (formerly Plymouth Investment Series); Fidelity Advisor Series VI (formerly Tax-Exempt Portfolios); Fidelity Advisor Series VII (formerly Plymouth Securities Trust); Fidelity Advisor Series VIII (formerly Fidelity Special Situations Fund); Fidelity Beacon Street Trust (formerly Fidelity Tax-Exempt Money Market Trust); Fidelity California Municipal Trust (formerly Fidelity California Tax-Free Fund); Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Charles Street Trust; Fidelity Commonwealth Trust (formerly Fidelity Intermediate Bond Fund); Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Court Street Trust; Fidelity Court Street Trust II; Fidelity Destiny Portfolios; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Government Securities Fund; Fidelity Hastings Street Trust (formerly Fidelity Fund); Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Investors Trust (formerly Income Portfolios II); Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Investors (formerly Income Portfolios II); Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust (formerly Fidelity Massachusetts Tax-Free Fund); Fidelity Money Market Trust; Fidelity Money Market Trust II; Fidelity Mt. Vernon Street Trust (formerly Fidelity Growth Company Fund); Fidelity Municipal Trust (formerly Fidelity Municipal Bond Fund); Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Phillips Street Trust (formerly Fidelity Cash Reserves); Fidelity Puritan Trust; Fidelity School Street Trust (formerly Fidelity Limited Term Municipals); Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments-Bond Fund, L.P.; Fidelity U.S. Investments-Government Securities Fund, L.P.; Fidelity Yen Performance Portfolio, L.P.; Spartan U.S. Treasury Money Market Fund (formerly Fidelity U.S. Treasury Money Market Fund, L.P.); The North Carolina Cash Management Trust; Variable Insurance Products Fund; and Variable Insurance Products Fund II (collectively, the "Funds"); Fidelity Management & Research Company ("FMR"); Fidelity Distributors Corporation ("Distributors"); and National Financial Services Corporation ("NFSC").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to sections 6(c) and 17(b) of the Act to permit the Funds and other investment companies for which FMR or any company controlled by, under common control with, or controlling FMR may act in the future as investment adviser, or for which Distributors or NFSC or any company controlled by, under common control with, or controlling Distributors or NFSC may act in the future as distributor: (1) To engage in short-term current transactions with certain banks; and (2) to borrow money on a short-term basis from such banks.

FILING DATE: The application was filed on May 21, 1990, and amended on August 6, 1990, March 26, 1991, August 17, 1992, and July 23, 1993. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1993 and should be accompanied by proof of service on applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Fidelity Management & Research Company, 82 Devonshire Street (N4A), Boston, Massachusetts 02109, Attention: Stanley N. Griffith, Esq.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund currently is organized as a business trust under the laws of the Commonwealth of Massachusetts or Delaware, or as a partnership under the laws of the State of Delaware, and is registered as an open-end management investment company. Each of the Funds (on behalf of its series in some cases) has entered into a management or advisory and service contract with FMR. NFSC is the principal underwriter for three of the Funds, and Distributors is the principal underwriter for the remainder of the Funds.

2. In 1982, the Commission issued a conditional order under sections 6(c) and 17(b) exempting the funds from sections 17(a)(1), 17(a)(2) and 17(e)(1) to permit them to engage in certain securities transactions with "Affiliated Banks" ("1982 Order").[1] The 1982 Order defined "Affiliated Banks" as banks, bank holding companies or affiliates thereof that directly or indirectly own, control or hold 5 percent or more of the outstanding voting securities of any of the Funds. The 1982 Order permits the Funds to buy and sell the following specific types of instruments from or to "Affiliated Banks": (a) Short-term obligations of an "Affiliated Bank" which is one of the 50 largest U.S. banks (as measured by deposits), their bank holding companies or affiliates thereof; (b) repurchase agreements with an "Affiliated Bank" that also serves as a custodian to one or more of the Funds; and (c) tax-exempt obligations. The 1982 Order also permits an Affiliated Bank to accept compensation within the limits of section 17(e)(2) when it acts as agent for any Fund in connection with a permitted transaction.

3. In 1989, the Commission amended the 1982 Order by granting further exemptions pursuant to sections 6(c) and 17(b) of the Act from sections 17(a)(1), 17(a)(2) and 17(e)(1) of the Act ("1989 Order"). The 1989 Order expanded the definition of the term "Affiliated Banks" as stated in the 1982 Order to include banks, bank holding companies or affiliates thereof which directly or indirectly act as investment adviser to any of the Funds. The 1989 Order permits the Funds: (a) To engage in purchase and sale transactions of both long-term and short-term United States government securities with "Affiliated Banks" which are primary dealers in these securities; (b) to permit such affiliated dealers to accept compensation within the limits of section 17(e)(2) for acting as agent for any Fund in connection with the purchase or sale of such United States government securities; and (c) to enter into repurchase agreement transactions with an "Affiliated Bank" if such bank is one of the 50 largest United States banks, as measured by deposits.[2]

4. Applicants now seek an order to supplement the 1982 Order and the 1989 Order to permit the Funds to engage in short-term currency transactions with, and to borrow money on a short-term basis from, "Affiliated Banks," defined in accordance with the 1989 Order to include banks, bank holding companies or affiliates thereof which directly or indirectly (1) own, control or hold 5 percent or more of the outstanding voting securities of any of the Funds, or (2) act as investment adviser to any one of the Funds. The term "Affiliated Banks" does not include any entity that is an affiliated person of a Fund, or an affiliated person of an affiliated person of a Fund, except by virtue of being a non-controlling shareholder of a Fund or an investment adviser to another Fund. Currently, no bank serves as an investment adviser to a Fund, and none of the Funds' custodian banks are Affiliated Banks.

5. To avoid inadvertent violation of section 17, FMR currently has internal operating procedures in place designed to identify situations where a bank is record owner of five percent or more of a Fund's outstanding voting securities. As soon as a bank is so identified, FMR tries to resolve the situation promptly, including, if necessary, prohibiting FMR from engaging in any currency transaction with, or secured borrowing from, such bank on behalf of any of the Funds, until the bank's record ownership of the shares is reduced below the five percent limit or it is established that the bank holds shares without the ability to vote on behalf of its customers or the ability to make investment decisions with respect to such shares, *i.e.*, as agent or custodian without beneficial ownership of the shares. Such procedures may bar the Funds from engaging in currency and secured borrowing transactions that otherwise would be advantageous to the Funds.

6. Under applicants' proposal, the Funds would enter into short-term forward currency exchange contracts with Affiliated Banks as a means of facilitating the Funds' investment in

[1] In the Matter of Fidelity Fund, Investment Company Act Release Nos. 12851 (Nov. 24, 1982) (notice) and 12912 (Dec. 21, 1982) (order).

[2] In the Matter of Daily Money Fund, Investment Company Act Release Nos. 16996 (June 9, 1989) (notice) and 17057 (July 7, 1989) (order).

securities of non-United States issuers.[3] In addition, the Funds would negotiate short-term loan agreements with Affiliated Banks.[4] Such loan agreements will enable the Funds to satisfy redemption requests on those occasions when the Funds receive an unexpectedly high volume of such requests.

7. The Funds' short-term borrowings are effected pursuant to previously negotiated lending agreements which permit short-term loans. These agreements provide for interest to be fixed according to a certain benchmark, such as the federal funds rate, or according to a rate negotiated at the time of the borrowing. Currently, the Funds have loan agreements with eight banks, although no Fund expects to have agreements with all eight banks. Under these agreements, certain banks may require security. The agreements provide for extensions of credit of between $30 million and $2.0 billion and total more than $3.5 billion. The lending banks are large banks of national standing and include some of the custodian banks of the Funds.

8. Daily quotes of loan rates usually are obtained from each bank with which the Funds have loan agreements. On any given business day, most such banks will be willing to lend money to one or more of the Funds. If quotes are solicited from less than all of the lending banks, FMR will solicit quotes from those banks which, on the basis of the facts and circumstances known at the time, it believes will offer loan interest rates as favorable to the borrowing Funds as interest on comparable loans from the other banks with which one or more Funds have borrowing agreements. Applicants contend that these procedures provide a high level of assurance that quoted rates will be representative of the prevailing available bank loan rates.

9. There is no, and will not be any, express or implied understanding between the Fund or FMR, Distributors or NFSC and any bank which is (or may become) an Affiliated Bank of a Fund that FMR will cause any of the Funds to enter into currency or secured borrowing transactions with any such bank in consideration of the bank's purchase of Fund shares. No reciprocal practices have existed or will exist among any Fund and an Affiliated Bank involving currency or secured borrowing transactions, and no favorable treatment will be given to any Affiliated Bank in short-term currency or secured borrowing transactions because of the bank's affiliation with a Fund. Moreover, the Funds are not requesting an order under the Act to permit allocation of currency or borrowing transactions to banks based upon investment in any of the Funds by such banks or their clients and customers.

Applicants' Legal Analysis

1. Section 2(a)(3)(A) provides that "any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centrum or more of the outstanding voting securities" of any other person is an affiliated person of that other person. Applicants represent that the Affiliated Banks may be deemed affiliated persons of one or more Funds, and that if a bank is an affiliated person of one of the Funds, that bank arguably may be deemed to be an affiliated person of an affiliated person of all the other Funds under the Act.

2. Sections 17(a)(1) and 17(a)(2) prohibit affiliated persons of the Funds, or affiliated persons of affiliated persons of the Funds, from knowingly selling to or purchasing from the Funds "any security or other property." The proposed transactions may involve a sale or purchase which would be prohibited by section 17. Currency transactions involve the sale and purchase of currency, which arguably constitutes "property." The pledging of securities by a Fund as collateral in a secured borrowing transaction also may constitute the sale of such securities.[5]

3. Under section 17(b), the Commission may issue an order of exemption from one or more of the provisions of Section 17(a) if evidence establishes that: (a) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the Act. The proposed transaction meets the standards set forth in section 17(b). The proposed transactions also qualify for relief under section 6(c) because the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the procedures to be implemented if the order is issued not only ensure fairness but that such transactions will be the same as arm's-length transactions.

4. The requested relief for short-term currency transactions is appropriate to facilitate the settlement of Fund transactions in foreign equity and debt securities. These transactions generally are effected in the currency of the country of the issuer or the country in which the securities are traded. Thus, the Funds buy foreign currency to settle purchase transactions within foreign markets and sell foreign currency that they received in the settlement of sale transactions within foreign markets. In addition, some of the Funds may enter into forward currency exchange contracts as a means of managing exchange rate risks. A Fund may enter into a foreign currency contract covering foreign securities held in the Fund in order to reduce or eliminate foreign currency exposure; such technique is know as currency hedging, and is a means of reducing portfolio risk.

5. Currency transactions are entered into by telephone or computer. There is no centralized trading floor. Commercial banks act as the core of this market, quoting bid/asked prices and acting as principals. The spread between the bid and the asked price in the foreign exchange markets represents the potential profit to the market maker and the compensation for its perceived risk in quoting the price and selling or holding the currency. At any one time there usually are ten or twelve commercial banks that will provide price indications for a particular currency. Foreign exchange rates generally are obtained through automated quotation systems. The Reuters Monitor Money Rates Service ("Reuters") is the money rate quote service that currently is recognized in the currency markets as the most reliable.

6. Short-term "odd lot" currency transactions, established by industry practice as those involving a United States dollar value of less than $1 million, are of particular importance to the Funds. Currency dealer generally do not make an active market in odd lot currency transactions and indications for such transactions are not reported on Reuters. The exchange rate that can be obtained for an odd lot currency transaction generally varies directly with the size of the transaction and the type of currency.

7. The Funds' custodian banks (including foreign subcustodians), some of which may be Affiliated Banks, are

[3] A forward currency exchange contract is an agreement to exchange one currency for another at an agreed on price at a future date. Applicants define a short-term currency transaction as one in which no more than 45 days elapse between the entry of an order to buy or sell a security and settlement of the transaction.

[4] Applicants define short-term loan agreements as loans with maturities of 14 days or less. However, applicants represent that borrowings ordinarily are for one day only.

[5] See *Rubin v. United States*, 449 U.S. 424 (1981).

among the banks that deal in foreign currencies. Those custodian banks ordinarily will accommodate any short-term odd lot currency transaction required for securities settlement. These transactions with a custodian bank are advantageous to the Funds because settlement procedures for such transactions are simpler and more easily coordinated, resulting in a lower trade settlement failure rate. Custodian banks are a major factor in the foreign currency markets available to the Funds for short-term transactions. Also, there is a reduction in efficiency of executing and settling transactions when dealing with currency dealers other than one of the Fund's custodian banks which cannot be readily quantified.

8. The Funds currently attempt to engage in currency transactions with banks not affiliated with the Funds or with non-bank currency dealers. The requested relief is appropriate because the statutory prohibitions have a particularly adverse impact with respect to the currency transactions. Over time, the number of banks using the Funds has grown, thereby increasing the restrictive impact of the statutory prohibitions to the point where a Fund's ability to obtain competitive currency prices, particularly with respect to small transactions, is adversely affected. For short-term odd lot currency transactions in particular, an Affiliated Bank may offer the most favorable price and execution as against the other banks. If the Funds cannot trade with one or more Affiliated Banks, the Funds may be deprived of the most favorable price and execution on the occasions when those banks have the best overall offer for the transaction. The shareholders' return from their investment in the Funds may be reduced if the Funds' access to Affiliated Banks is restricted. Access to the markets in particular foreign securities depends on access to currency dealers, and this access can only be obtained in some cases by being a participating customer of the Affiliated Banks.

9. The problem of limited access to Affiliated Banks is exacerbated when not all currency dealers make markets in a particular currency. When a currency dealer does not, it is not likely to quote prices for the currency within the prevailing market range. Thus, when there are a small number of competitive currency dealers in a currency, which includes one or more Affiliated Banks, the Funds' ability to obtain the most favorable price or prompt execution is even more restricted.

10. The risk of insolvency of Affiliated Banks engaging in short-term currency transactions is minimal. The creditworthiness of such counterparties is monitored by FMR and would be subject to the creditworthiness standard set forth in Condition 4 below.[6] If the counterparty on a currency forward fails to perform, a Fund can almost always resort to a highly liquid spot market, where the risk would be limited to the same currency value fluctuations as if the Fund purchased a foreign security without entering into a forward currency contract.

11. The purpose of sections 17(a)(1) and 17(a)(2) is to prevent a party with strong potential adverse interests and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in transactions which unfairly inure to the benefit of that party and which are detrimental to the best interests of the investment company and its shareholders. Applicants note that under no circumstances may an entity that is a controlling person of a Fund enter into a short-term currency transaction with such Fund. The Funds believe that they can best serve the interests of their shareholders by obtaining the most favorable price and execution in short-term currency transactions, regardless of whether the bank is affiliated, directly or indirectly, with one of the Funds.

12. Applicants also request relief with respect to short-term borrowing transactions to provide the Funds with a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days (or longer for certain foreign transactions). However, redemption requests normally are settled within one day. By borrowing, a Fund also can attempt to avoid selling securities into an unsettled market.

13. If collateral is required, loan transactions with a Fund's custodian are desirable because the administrative problems of transferring assets to a third party when a pledge is involved do not arise. Furthermore, some extensions of credit occur so late in the day that it is difficult, if not impossible, to secure an extension of credit from a non-custodian. The Funds' inability to borrow from all of the banks with which they have loan agreements necessarily decreases to some degree their ability to compete for the best interest rates and other terms. In addition, applicants contend that there is a reduction in efficiency in arranging secured borrowing transactions when dealing with banks other than the relevant Fund's custodian which cannot be readily quantified.

14. Permitting the Funds to enter into short-term borrowing transactions with Affiliated Banks will not implicate the concerns behind section 17(a). Applicants note that under no circumstances may an entity that is a controlling person of a Fund enter into a short-term secured borrowing transaction with such Fund. The Funds believe that they can best serve the interests of their shareholders by obtaining the most favorable interest rate and other terms in a secured borrowing transaction, regardless of whether the bank is affiliated, directly or indirectly, with one of the Funds. Further, there are occasions when an Affiliated Bank offers the most favorable interest rate and other terms compared to other lending banks, especially for small overdraft loans. If a Fund cannot borrow from one or more Affiliated Banks, the Fund may be deprived of entering into the most advantageous loan transaction. As a result, the shareholders' return from their investment in the Funds may be reduced in the Funds' access to Affiliated Banks is restricted.

15. The Funds believe that they can best safeguard their investors from any remote possibility of abuse by concentrating their attention directly on the inherent fairness of transactions by any Fund with Affiliated Banks. Thus, the Funds propose to create internal control procedures for the careful monitoring of currency and borrowing transactions with Affiliated Banks and to place responsibility for monitoring the reasonableness and fairness of those transactions on the Funds' Trustees and Managing General Partners. Currency and borrowing transactions subject to the order would be scrutinized to determine essentially that: (a) Any transaction by a Fund is consistent with the investment policy and objectives of that Fund and with the interests of its shareholders and is comparable to other similar transactions in which the Fund is authorized to engage and in which the Fund currently engage; (b) the terms of any proposed transactions are reasonable and fair to the shareholders of that Fund and do not involve overreaching on the part of any person concerned; and (3) any proposed

[6] In the 1989 Order, the Funds were permitted to enter into repurchase agreement transactions with an Affiliated Bank if the bank had sufficiently large deposits. The current proposal is not similarly restricted. See *supra* n.2. The staff of the Division of Investment Management believes that the creditworthiness standard described in Condition 4 is more appropriate for assessing the insolvency risk of an Affiliated Bank.

transaction is consistent with the general purposes of the Act. The Funds further believe that when the remote potential harm to shareholders from overreaching by Affiliated Banks in currency and borrowing transactions with the Funds is weighed against the benefits to the Funds' shareholders, the benefit to shareholders significantly outweighs the likelihood of harm. The interests of the Funds' shareholders will be served best by permitting the Funds to deal with all banks in currency and borrowing transactions, regardless of whether a bank also is affiliated with one or more Funds. The order would permit transactions that would have been made in the ordinary course of business on their own merit, without regard to the affiliated status of the counterparty.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. The Board of Trustees or General Partner of each of the Funds, including a majority of the noninterested Trustees or General Partners, as the case may be, (i) will adopt procedures, pursuant to which transactions may be effected for the Funds, which are reasonably designed to provide that the conditions in paragraphs 2 through 5 below have been complied with, (ii) will review no less frequently than annually such procedures for their continuing appropriateness, and (iii) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. The investment adviser of each Fund will implement these procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Board of Trustee or General Partners of each Fund.

2. No Fund will engage in currency or secured borrowing transactions with a bank that is an investment adviser to such Fund. No Fund will enter into currency transactions with an Affiliated Bank if, as a result, the net value of all currency contracts with such Affiliated Bank would exceed five percent of such Fund's total assets. No Fund will enter into secured borrowing transactions with an Affiliated Bank if, as a result, five percent of its total assets would be involved in the consummation of such transactions with such bank.

3. The Funds (i) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, and (ii) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each currency and secured borrowing transaction setting forth a description of such transaction, including without limitation the closing date and time of the transaction, the identity of the person on the other side of the transaction, the material terms and price of the purchase or sale of currency or the material terms and interest rate of the loan transaction, the identity of the other sources offering a similar transaction, the material terms and prices or material terms and interest rates offered by other sources, the closing date and time of the transaction, and all other information or materials upon which the determinations described below were made. With respect to information obtained from other sources about similar transactions, the written record will set forth the date and time that this information was obtained and received from these sources. To the extent that the information required about similar transactions is not available with respect to short-term odd lot currency transactions, records pertaining to such transaction will be kept consistent with the requirements of Condition 5.

4. The currency and secured borrowing transactions entered into will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement (including any creditworthiness standards), and will be consistent with the interests of that Fund and its shareholders.

In addition, the Funds will only engage in short-term currency transactions with Affiliated Banks of the following creditworthiness: those with short-term debt instruments rated high quality by at least one nationally recognized statistical rating organization ("NRSRO") (*e.g.*, A–1 or A–2 by Standard & Poor's Corporation), unless the Managing General Partners or Trustees of a Fund approve the entry into transactions with an Affiliated Bank that has short-term debt rated high grade by at least one NRSRO (*e.g.*, A–1, A–2 or A–3 by Standard & Poor's Corporation). If the Affiliated Bank has no short-term debt rating, the Funds may enter into transactions with such Affiliated Bank if FMR determines that its creditworthiness is comparable to high quality short-term debt, subject to review by the Funds' respective Trustees or Managing General Partners. Moreover, applicants will only engage in secured short-term bank loans with Affiliated Banks meeting the same creditworthiness standards.

5. The terms of each currency and secured borrowing transaction must be reasonable and fair to the shareholders of that Fund and will not involve overreaching of that Fund or its shareholders on the part of any person concerned. The terms and the prices to be paid or received (with respect to currency transactions) or the terms and interest rates to be paid (with respect to borrowing transactions) will be at least as favorable to the relevant Fund as the best terms and prices or terms and interest rates available from other sources, obtained pursuant to these procedures. Before any short-term transaction in currencies, or any borrowing, may be conducted pursuant to the exemption, the Funds of their advisers must obtain such available market information as they deem necessary to determine that the price to be paid or received for, or the terms of, each transaction is at least as favorable as that available from other sources. This shall include the following information, without limitation. With respect to short-term round lot currency transactions, the Funds or their advisers must obtain and document two competitive indications with respect to the specific proposed transaction, either from two other currency dealers or from one currency dealer and from an automated quotation system approved by the Board of Trustees and General Partners of the Funds, including a majority of noninterested members. Competitive quotation information includes price and settlement terms With respect to prospective purchases or disposition of currencies, these dealers must be those who, in the experience of the Funds' advisers, have demonstrated the consistent ability to provide professional execution of currency transactions at competitive market prices in the currencies of the type desired. With respect to the prospective purchase or disposition of currencies, these dealers must be those who, in the experience of the Funds' advisers, are in a position to quote favorable prices.

In the case of short-term odd lot currency transactions, the cost of each transaction must be consistent with guidelines established and reviewed at least annually by the Funds' Boards, including a majority of the noninterested members. These guidelines will fix what is an odd lot and will take into account current market prices of currencies (based on specified pricing procedures) and the size of the transactions, and the range of permitted prices will be based on a

survey of currency dealers (which are not affiliates) that have, as a group, executed at least 90% of odd lot currency transactions for the Funds (other than transaction with affiliates) since the last survey period. The dealers will be asked to furnish data concerning prices of odd lot currency transactions based upon actual odd lot currency trades with parties other than the Funds or their affiliates during normal market conditions during a one-week period. If a Managing General Partner or a Board, including a majority of its non-interested members, approves the survey methodology as a means for establishing guidelines, then it will further determine the frequency with which such survey data will be updated (but no less than annually), and will further determine the one-week period or periods during which the survey will be conducted. The survey will not be conducted as to currencies affected by market dislocation during such periods of dislocation. Rather, after any market dislocation (*e.g.*, the recent European monetary crisis), a new survey will be conducted with respect to the affected currencies within 30 days of the end of the market dislocation, using the same methods described herein for the annual survey. The guidelines will only be used if dealers who have, as a group, executed at least 50% of such non-affiliate transactions respond in writing and, with respect to each currency, at least two responses are received. The guidelines will be based on a composite average of the survey results for each currency, using statistically reliable methods. In the event that FMR fails to obtain a response with respect to a particular currency sufficient to establish guidelines, then no trade in that currency will be executed with an Affiliated Bank (unless the trade can be effected at the prevailing round lot price, in which case the price would be verified, as with an ordinary round lot transaction, by two competitive quotations). This information will be incorporated in guidelines to be affirmed at the next Board meeting. No trade will be executed with an Affiliated Bank unless the price falls within the guidelines. The guidelines and the information upon which they are based will be reviewed by the Boards, including a majority of the noninterested members, annually and whenever currency market dislocations or significant changes in the currency market have occurred. In addition, all transactions effected pursuant to the guidelines will be reviewed quarterly. In the event that FMR wishes to effect a short-term odd lot trade at a time of currency market dislocation and the Funds are unable to obtain round lot prices to effect the trades, FMR would use the existing guidelines for such currency in effecting the trade, if it determined that reliance on such guidelines was reasonable under the circumstances. In every such case, the relevant Fund's Managing General Partners or Trustees, including a majority of the non-interested members, will specifically review and approve the transaction at the next scheduled meeting.

With respect to borrowings, the Funds or their advisers must obtain and document competitive quotations from at least two unaffiliated banks that will include interest rate, maturity, collateralization requirements, prepayments rights and transaction charges.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28932 Filed 11-24-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19885; 812-8532]

Smith Barney Shearson Fundamental Value Fund Inc., et al.

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Fundamental Value Fund Inc. and Smith Barney Shearson Growth and Opportunity Fund, a series of Smith Barney Shearson Equity Funds (the "Company").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the Act granting an exemption from section 17(a) of the Act to enable Smith Barney Shearson Fundamental Value Fund Inc. ("Value Fund") to acquire the assets of Smith Barney Shearson Growth and Opportunity Fund ("Growth Fund"), a series of the Company, in exchange for shares of Value Fund.

FILING DATES: The application was filed on October 18, 1993. By letter dated November 9, 1993, counsel for Applicants agreed to file an amendment to the application containing certain additional information, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1993, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Boston Company Advisors, Inc., Exchange Place, Boston, Massachusetts 02109, Attention, Mary E. Moran, Esq..

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUMMARY INFORMATION: The following is a summary of the application. The complete applications may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Value Fund is a Washington corporation registered under the Act as an open-end management investment company. Value Fund offers for sale three classes of shares with different sales load arrangements and fee structures. Smith Barney Shearson Asset Management Division (the "Adviser") of Smith, Barney Advisers, Inc. ("SBA") serves as the investment adviser of Value Fund.

2. Growth Fund is one of four series of the Company, a Massachusetts business trust registered under the Act as an open end management investment company. Growth Fund offers for sale three classes of shares with the same fee structure as each respective class of Value Fund. Salomon Brothers Asset Management Inc. serves as investment adviser to Growth Fund.

3. The other series offered by the Company are Smith Barney Shearson Growth and Income Fund ("Growth and Income Fund"), Smith Barney Shearson Strategic Investors Fund and Smith Barney Shearson Sector Analysis Fund

("Sector Analysis Fund"). The investment advisers of Growth and Income Fund and Sector Analysis Fund are Greenwich Street Advisors Division of Mutual Management Corp. ("Greenwich Advisors") and Smith Barney Shearson Strategy Advisers Inc. ("Strategy Advisers"), respectively. The Adviser and Strategy Advisers are both wholly-owned subsidiaries of SBA.

4. Smith Barney Shearson Inc. (the "Distributor') serves as the distributor for each Applicant. The Distributor, SBA, and Greenwich Advisors are each direct or indirect wholly-owned subsidiaries of Primerica Corporation ("Primerica"). Primerica is primarily engaged, through its subsidiaries, in providing consumer finance services, incurance services and investment services.

5. Value Fund proposes to acquire all or substantially all of the assets of Growth Fund in exchange for its shares (the "Reorganization"). The consummation of the Reorganization is subject to certain conditions, including that the parties shall have received exemptive relief on the application from the SEC.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, such registered investment company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include any person directly or indirectly under common control with such other person. Section 17(b) of the Act authorizes the SEC to grant exemptive relief from section 17(a) if it finds that the proposed transaction is fair and reasonable, that it does not involve overreaching on the part of any person concerned, and that it is consistent with the policies of any investment companies involved at those policies are recited in their registration statements and reports filed under the Act and with the general purposes of the Act.

2. Where two investment companies have a common investment adviser, directors and/or officers, the companies may be considered to be under common control and, therefore, affiliated persons of each other. Thus, a merger or other combination of two such companies could be considered to involve a prohibited purchase or sale under section 17(a)

3. Rule 17a–8 under the Act excepts from the prohibitions of section 17(a) transactions involving a merger or other combination of investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors and/or common officers, provided that certain conditions are satisfied. Applicants do not meet the requirements of that rule, however, because they do not have a common investment adviser, common directors and/or common officers.

4. Value Fund and Growth Fund may be deemed to be under the ultimate common control of Primerica, however, because through its subsidiaries, Primerica may be deemed to have the power to exercise a controlling influence over the management and policies of each Fund. Accordingly, the Funds may be deemed to be "affiliated persons" of one another within the meaning of section 2(a)(3) of the Act.

5. Nonetheless, Applicants submit that the terms of the proposed transactions relating to the Reorganization meet the standards of section 17(b) of the Act for an exemption from section 17(a). They note, in particular, that the board of trustees of Growth Fund and the board of directors of Value Fund, including, in each case, the board members who are not "interested persons" of such boards (as such term is defined in the Act), have concluded that the Reorganization is in the best interests of the Applicants' respective shareholders and will not result in the dilution of the interests of any of the existing shareholders. Accordingly, Applicants request that the SEC issue an order under section 17(b) of the Act exempting the proposed transactions from section 17(a) of the Act to the extent necessary to permit Applicants to effect the proposed Reorganization.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28934 Filed 11–24–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Pilot in Region VI To Streamline Loan Application Process

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Region VI Pilot.

SUMMARY: On November 2, 1993, the Administrator of SBA authorized the commencement of a pilot in Region VI in order to test an attempt to streamline the loan application process for guaranty loans of $100,000 or less under section 7(a) of the Small Business Act. This notice is issued pursuant to § 120.1–2 of SBA's regulations (13 CFR 120.1–2).

Phase one of the pilot will cover loans originating from the service areas of the SBA district offices in San Antonio, Dallas and Houston. Phase two is scheduled to commence on January 1, 1994 to cover the other SBA district offices in Texas, Oklahoma and Louisiana. All the loan applications submitted under this pilot will be processed at the SBA district office in San Antonio, Texas. Lenders who participate in this pilot will be encouraged to submit applications by FAX or mail. If the pilot proves to be successful, lenders will be encouraged to use computer transmission. The pilot is scheduled to end on December 31, 1994.

While the pilot is in effect, with respect to guaranty loans of $100,000 or less, lenders and SBA will rely on the individual applicant's personal and business credit history as an indication of the ability and willingness to repay a loan. Other traditional credit criteria, including collateral, lien position and business equity, although considered, will not be a primary consideration in approving such loans. Accordingly, the pilot will reduce SBA's application documents, with the lender's own documents being used in lieu of some of the SBA forms. SBA's primary focus for the credit decision will be the willingness to repay debt as indicated by a good credit history, the likelihood that expected earnings will be enough to make the scheduled payments, and that with the financing, the business has a good chance of achieving success. Lenders will be required to secure a credit report on all owners, guarantors and co-signers.

Existing statutory requirements for loan maturities will be maintained during the pilot. Loans under the pilot will be term only, with no revolving feature allowed. SBA personnel will make eligibility determinations. Permitted use of proceeds will be the same as in the normal section 7(a) program, including the reductions of lender's exposure when it meets the current policy requirements, except that the maximum amount that will be allowed for the reduction of a lender's exposure will be 25% of the total loan. A lender may choose to increase its percentage of participation to cover the level of its reduction, when the reduction exceeds the 25% maximum.

Under the pilot, lenders will be required to liquidate loans having an original loan amount of $50,000 and under, and SBA will not pay any of the liquidation expenses in excess of recoveries on these loans. All

recoveries, less liquidation expenses, will be applied to the loan balance prior to the lender submitting a request to SBA for purchase. If the original loan amount exceeds $50,000, lender will submit a liquidation plan to SBA prior to any liquidation action. Once the liquidation plan is approved by SBA, the lender will perform the liquidation, unless SBA determines it to be in its best interest to perform the liquidation.

Dated: November 12, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-28974 Filed 11-24-93; 8:45 am]

BILLING CODE 8025-01-M

Providence District Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting at 10:30 a.m. on Thursday, December 16, 1993, at the U.S. Small Business Administration, 380 Westminster Mall, Room 511, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528-4580.

Dated: November 17, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-28975 Filed 11-25-93; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5455]

Triad Capital Corp. of New York; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 104.102)) by Triad Capital Corporation of New York, 15 West 39th Street, 9th floor, New York 10018, for transfer of ownership and control of its license under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*). The transfer of ownership and control of Triad Capital Corporation of New York, which was licensed November 25, 1983, is subject to prior written approval of SBA.

If approved, the Business Consortium Fund, Inc. of the National Minority Supplier Development Council will own 100 percent of Triad Capital Corporation of New York.

The proposed officers and directors are:

Name	Title
Marcial E. Robiou, 15 West 39th Street, 9th Floor, New York, NY 10018.	President & Director.
Thomas C. Fitzgerald, 100 Crystal Drive, Hershey, PA 17033-0810.	Chairman.
William Alcorn, 5001 Spring Valley Rd., Dallas, TX.	Vice Chairman & Treasurer.
C. Douglas Dixon, 90 Park Avenue, 37th Floor, New York, NY 10016.	Secretary & Director.

Triad Capital Corporation of New York will be managed by Rutgers Minority Investment Company, a Small Business Investment Company located at 92 New Street, Newark, New York 07102. The applicant will begin operations with private capitalization of approximately $1.6 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not latter than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 19, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93-28973 Filed 11-24-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120-XX]

Development of Advisory Circular (AC) on Flightcrew Sleeping Quarters/ Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of FAA intent to consider the design and installation criteria for flightcrew rest facilities on commercial transport aircraft contained in Aerospace Recommended Practice (ARP) 4101/3 in the development of AC 120-XX, Flightcrew Sleeping Quarters/ Facilities; and request for comments concerning the adequacy and appropriateness of these criteria.

SUMMARY: This notice contains a reprint of the Society of Automotive Engineers (SAE) document ARP4101/3, Crew Rest Facilities, which contains information that the FAA intends to consider in development of AC 120-XX, Flightcrew Sleeping Quarters/Facilities. When developed and issued, this AC would provide guidance for one means, but not the only means, for Federal Aviation Regulations (FAR) parts 121 and 135 certificate holders to obtain an FAA finding regarding the adequacy of sleeping quarters/facilities to be used for flight crewmembers sleeping in flight. These sleeping quarters/facilities would be used: (1) By three- or four-pilot crews during long-range flights under FAR part 135; and (2) when applicable, by flight crewmembers in conduct of flag and supplemental operations under FAR part 121. This notice gives all interested persons an opportunity to present their views on the adequacy of the information in the subject SAE document for the purpose described herein. The FAA will consider all comments received prior to issuing any notice of availability of draft AC 120-XX, Flightcrew Sleeping Quarters/ Facilities.

DATES: Comments must be received on or before January 25, 1994.

ADDRESSES: Send all comments on the subject to SAE document to: Federal Aviation Administration, Air Carrier Branch, AFS-220, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Streeter, AFS-220, at the address above, telephone (202) 267-7579.

SUPPLEMENTARY INFORMATION: In developing a flightcrew sleeping

quarters/facilities AC, the FAA intends to provide standard technical definitions and guidelines for FAR part 121 certificate holders and, based on comments received, FAR part 135 certificate holders. The definitions and guidelines would then be used by these certificate holders to develop plans for a sleeping quarters installation in a particular type airplane and to obtain an FAA finding regarding the adequacy of that installation for sleeping purposes. This AC will reference recommended guidelines based on suggested criteria contained in ARP4101/3 for the design and installation of crew rest facilities on commercial transport aircraft capable of ultra-long-range operations with augmented/enlarged crew complements.

FAR § 135.269 permits certificate holders to assign three- or four-pilot crews to flights having extended duty periods, under certain conditions. One condition that must be met to authorize such assignments is that adequate sleeping quarters must be available for use on such flights. The FAA recognizes that accepting certain guidance criteria in ARP4101/3 may be difficult for FAR part 135 operators. Therefore, comments from FAR part 135 operators regarding the adequacy of the ARP4101/3 criteria are requested to ensure the development of equitable guidelines. Some of the issues in need of comment are:

(1) Aircraft size is limited under FAR part 135, therefore, recognizing the size differential, should or can the ARP4101/3 criteria be applied to FAR part 135 aircraft?

(2) Should the proposed AC include FAR part 135 guidelines? If so, should the FAR part 135 guidelines be separate from the FAR part 121 guidelines?

(3) Should a separate AC be developed for FAR part 135 operators?

(4) What additions or changes in the ARP4101/3 criteria would be needed to accommodate the needs of FAR part 135 operators? The following related SAE documents may also prove to be useful in the development of the draft AC:

SAE ARP4101—Flight Deck Layout and Facilities
SAE ARP4101/4—Flight Deck Environment
SAE ARP1323—Type Measurements of Aircraft Interior Sound Pressure Levels During Cruise
SAE AIR4245—Quantities for Description of the Acoustical Environment in the Interior of Aircraft

Copies of these documents may be obtained, for a fee, by contacting: SAE, The Engineering Society For Advanced Mobility Land Sea Air and Space International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, Attention: Mr. Richard A. Vandame, Jr., telephone (412) 776–4841.

Issued in Washington, DC, on November 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–28969 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Part 65 Working Group—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Part 65 Working Group.

SUMMARY: Notice is given of a new task assignment for the Part 65 Working Group from the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Lenoelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service. At its first meeting on air carrier/general aviation maintenance issues on May 24, 1991 (56 FR 20492, May 3, 1991), the ARAC established the Part 65 Working Group and assigned it a task. At its meeting held on October 18, 1993 (58 FR 49542, September 23, 1993), the ARAC assigned an additional task to the Part 65 Working Group:

Task

Specifically, the Part 65 Working Group's task is the following:

1. Conduct a further regulatory review of Part 65, including possible development of additional certifications and re-registration of aviation maintenance technicians and repairmen, to include appropriate training issues. Additional certifications would include an advanced generalist and an advanced specialist, based on the current system of Airframe and Powerplant generalists and repairmen specialists.

2. If the working group determines that a notice of proposed rulemaking would be an appropriate measure, ensure that the recommendation to the FAA is a complete package. That package should include the preamble, the proposed rule, an economic evaluation or analysis, and an appropriate legal review.

3. If the working group determines that an advisory circular would be appropriate, that package should include a complete justification and an appropriate legal review before submitting a recommendation to the FAA.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the ARAC before proceeding with the work as stated in the task statement above.

C. Give a status report on the task at each meeting of the ARAC held too consider air carrier/general aviation maintenance issues.

The Part 65 Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the Part 65 Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory

Committee Act. Meetings of the Part 65 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 19, 1993.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-28980 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the November 30, 1993, meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues (58 FR 60081, November 12, 1993) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Small Airplane Directorate (ACE-112), 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-5688.

Issued in Washington, DC, on November 19, 1993.

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-28977 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee Policy, Procedures and Public Awareness Subcommittee

AGENCY: Notice of the Aviation Security Advisory Committee's Policy (ASAC), Procedures and Public Awareness Subcommittee Meeting.

SUMMARY: This notice announces a meeting of the ASAC's Policy, Procedures and Public Awareness Subcommittee to examine the discussion papers associated with the rewrites of 14 CFR parts 107 and 108.

DATES: The meeting will be held December 15, 1993, from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Air Transport Association Headquarters, 1301 Pennsylvania Avenue NW., Board Room, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8293.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), this notice announces a meeting of the ASAC's Policy, Procedures and Public Awareness Subcommittee to be held December 15, 1993, at the Air Transport Association Headquarters, 1301 Pennsylvania Avenue NW, Board Room, Washington, DC.

The agenda will include a review of the discussion papers—outlining areas for consideration in the Re-write of parts 107 and 108 that is being distributed to all ASAC members prior to the December 15 subcommittee meeting. The papers are also available to non-ASAC members. Persons wishing to obtain a copy of the discussion papers should contact the telephone number under the "**FOR FURTHER INFORMATION CONTACT**" section listed above. The details for gathering the Subcommittee's comments and responses on the discussion papers, such as forming a task force, will be discussed.

Attendance at the December 15, 1993, meeting is open to the public but limited to available space. Members of the public may address the subcommittee only with the written permission of the chair, which needs be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at any time.

Issued in Washington, DC, on November 19, 1993.

Jack Gregory,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 93-28978 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on December 8, 1993 at 8 a.m. Arrange for oral presentations by November 29, 1993.

ADDRESSES: The meeting will be held at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., suite 1100, Goddard Rooms A and B, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 8, 1993, at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., suite 1100, Washington, DC. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Reports of working groups.
- Special discussion and possible action regarding the efforts of the Small Transport and Commuter Airworthiness Assurance Working Group, Airworthiness Assurance Working Group, Installation Harmonization Working Group, and Propulsion Harmonization Working Group.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 29, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on November 16, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-28979 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Benedum Airport, Clarksburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Benedum Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Joseph H. Scheff, Manager, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Stewart, Airport Manager of the Benedum Airport Authority at the following address: Benedum Airport Authority, 200 Aviation Way, Bridgeport, West Virginia 26330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Benedum Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. Scheff, Manager Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Benedum Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 13, 1993, the FAA determined that the application to impose and use the revenue form a PFC submitted by the Benedum Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 8, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: December 1, 1993
Proposed charge expiration date: December 31, 1995
Total estimated PFC revenue: $108,241

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects:

—Airport Runway Signs
—Terminal Building/Security
—Replace Heating & Air Conditioning and removal of asbestos in terminal building
—Purchase snow blower
—Replace ARFF equipment
—Replace electric cables to runway & Taxiway
—Purchase two snow removal vehicles (sand spreader & snow plow)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Benedum Airport Authority.

Issued in Jamaica, New York State on November 15, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–28972 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Guam International Air Terminal-Agana NAS, Agana, Guam

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Guam International Air Terminal-Agana NAS under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009,

or

Honolulu Airports District Office, P.O. Box 50244, Honolulu, HI 96850–0001; Street Address: 300 Ala Moana Blvd., room 7116, Honolulu, HI 96813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jess Q. Torres, Executive manager of the Guam Airport Authority at the following address: Guam Airport Authority, Guam International Air Terminal, P.O. Box 8770, Tamuning, Guam 96931.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Guam Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Honolulu Airports District Office, P.O. Box 50244, Honolulu, HI 96850; Street Address: 300 Ala Moana Blvd., room 7116, Honolulu, HI 96813; Telephone: (808) 541–1243. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Guam International Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Guam Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1994
Proposed charge expiration date: September 1, 2026

Total estimated PFC revenue:
$308,110,994.00

Brief Description of the proposed projects: the project are part of a multi-phased development program as defined in FAR part 158.3 consisting of the following:

(1) Renovate and expand Terminal Building by 544,000 square feet including: install 5 baggage claim carousels, provide new INS and Customs processing areas and office space, increase administrative office and terminal support space, install 11 new passenger loading bridges, replace existing outbound baggage system, install multi-user Flight Information Display System, replace single departure lounge of 13,500 square feet with gate oriented lounges totaling 69,000 square feet, construct 204,000 square feet of public area, and construct 26,000 square feet of mechanical/electrical space to support terminal building.

(2) Reconfigure Airport Access Road with grade separated crossovers, and reconstruct terminal loop road to increase curb frontage by 800 feet.

(3) Expand aircraft apron for 7 additional gates with taxilanes.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's Part 135 air taxi/commercial operators.

Availability of Application

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airport office located at: Western-Pacific Region, Airports Division, room 3012, 15000 Aviation Blvd., Hawthorne, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Guam Airport Authority.

Issued in Hawthorne, California, on November 5, 1993.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 93-28970 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Brunswick County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in the Town of Sunset Beach, Brunswick County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, suite 410, Raleigh, North Carolina 27601, Telephone (919) 856-4350.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the improvement of SR 1172 in the Town of Sunset Beach, Brunswick County, North Carolina. The proposed action would be the replacement of the Sunset Beach Bridge on SR 1172 over the Atlantic Intracoastal Waterway, potentially on new location, along with the reconstruction of the approach roadways. The project extends from the island to the mainland in Sunset Beach. Improvements to the existing one-lane pontoon bridge are considered necessary to improve traffic safety and highway access between the island portion of the Town of Sunset Beach and the Brunswick County mainland and to enhance watercraft operation on the Intracoastal Waterway.

Alternatives under consideration include: (1) The "no-build," (2) rehabilitation of the existing structure, (3) replacing the existing structure at its current location, and (4) replacing the structure on new location. A 65-foot fixed span and various heights of movable span structures will be evaluated.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A complete public involvement program has been developed for the project to include: The distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the project study area. A toll-free project telephone "hotline" is also being made available. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal interagency scoping meeting has also been conducted.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: November 18, 1993.

Roy C. Shelton,

Operations Engineer, Raleigh, NC.

[FR Doc. 93-28993 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Gila, Coconino, and Navajo Counties, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Gila, Coconino, and Navajo Counties, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan M. Banks, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004, Telephone: (602) 379-3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an Environmental Impact Statement (EIS) for a proposal to improve State Route 260 between Payson and Heber, AZ. The proposal will include a "no action" alternative in addition to a range of build alternatives along and away from the existing roadway to improve the capacity and safety features of this 54-mile segment. Various designs of grade, alignment, geometry and access will be evaluated. The evaluation of alternatives will consider the social, economic, and environmental impacts associated with construction and with secondary and cumulative effects.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will continue with public information meetings to obtain public input in the planning process, newsletters to advise

the public of project progress, and a public hearing following distribution of the Draft EIS.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental construction on Federal programs and activities apply to this program)

Dated: November 19, 1993.

Nathan M. Banks,

District Engineer, Phoenix, Arizona.

[FR Doc. 93-28982 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge/highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 472-3616;

or

Lewis M. Gurley, Regional Director, New York State Department of Transportation, Region 4, 1530 Jefferson Road, Rochester, New York 14623-3161, Telephone: (716) 272-3310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NYSDOT will prepare an Environmental Impact Statement (EIS) on a proposal on a proposal to repair or replace the Mitchell Road bridge, Bridge Identification Number 4443070, over the Erie Canal in Monroe County, New York. The proposed improvement would involve the repair or replacement of the existing one-lane bridge located on Mitchell Road in the town of Pittsford. Through the NYSDOT bridge inspection system, the Mitchell Road bridge was found to be in a state of advanced deterioration. The bridge was closed to all traffic on April 18, 1988. The repair or replacement is necessary to address the existing structurally deficient bridge.

Alternatives under consideration included (1) taking no action; (2) rehabilitation of the existing structure; (3) replacement with a one-lane structure at the same location; (4) replacement with a two-lane structure at the same location; and (5) replacement with a two-lane structure at a new location. Incorporated into and studied with the various building alternatives will be design variations of grade and alignment. The suggested termini for any new location alternative are defined as New York Route 31 to the east and New York Route 96 to the west.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. A public information meeting will be held in the town of Pittsford between January and June of 1994. In addition, the opportunity for a public hearing will be offered. Public notice will be given of the time and place of the meeting and hearings (if necessary). The Draft EIS will be available for public and agency review and comment. A formal National Environmental Policy Act scoping meeting will be held at a date and time to be determined.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Dated: November 19, 1993.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 93-28994 Filed 11-24-93; 8:45 am]

BILLING CODE 4190-22-M

Federal Transit Administration

[Docket No. 93-B]

Private Enterprise Participation

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed recision of private enterprise participation guidance.

SUMMARY: The Federal Transit Administration proposes to rescind its current guidance on private enterprise participation. This guidance addresses the requirement that local transportation improvement plans encourage the participation of private transportation companies in transit service funded under the Federal Transit Act. With the Intermodal Surface Transportation Efficiency Act of 1991 has come a new emphasis on public participation in local decisionmaking on transit choices; as a result, the current guidance is believed to be unnecessary, as well as overly restrictive of the ability of local planning agencies and transit operators to make rational transportation choices in light of local needs. Accordingly, FTA proposes to rescind its current non-regulatory guidance.

DATES: Comments on this notice must be received on or before January 25, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, Federal Transit Administration, Department of Transportation, room 9316, No. 93-B, 400 Seventh Street, SW., Washington, DC 20590. They will be available for review at this address from 9 a.m. to 5 p.m., Monday through Friday.

Commenters who desire acknowledgment of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

FOR FURTHER INFORMATION CONTACT: John W. Spencer, Deputy Associate Administrator, Office of Budget and Policy, Federal Transit Administration, 202/366-4050; Gregory B. McBride, Deputy Chief Counsel, Federal Transit Administration, 202/366-4063.

SUPPLEMENTARY INFORMATION:

I. Background

The principal purpose of the Federal Transit Act (FT Act), as amended, 49 U.S.C. app. 1601 et seq., is to assist the development and improvement of mass transportation systems in metropolitan and rural areas. In sections 3, 9, 16(b)(2), and 18, Congress has authorized FTA to make funds available to State and local public bodies for capital acquisition and construction, operating assistance, and planning activities in connection with mass transportation projects. Congress has expressed its concern that such Federal assistance not be used without regard for the interests of private enterprise. At the same time, Congress has made it clear that decisions regarding mass transportation services to be provided with Federal assistance

are to be made locally. Indeed, section 2(b) of the FT Act states that one of the fundamental purposes of the Act is

> to provide assistance to State and local governments and their instrumentalities in financing such systems, *to be operated by public or private mass transportation companies as determined by local needs* * * *.

49 U.S.C. app. 1601(b)(3) (emphasis added).

This emphasis on local decisionmaking in determining how best to serve the transportation needs of the local area has been recognized by the courts, e.g.:

> The statutory scheme of [FTA] emphasizes the large role to be played by local bodies responsible for urban mass transit * * *. This reliance on the local or State group is consistent with the statute's encouragement of local responsibility in urban mass transportation. The statute does not promote a procedure which leaves all decisions with the Secretary [of Transportation], but rather emphasizes local solutions to problems.

Pullman v. *Volpe*, 337 F. Supp. 432, 438–439 (E.D. Pa. 1970).

The participation of private enterprise in mass transit is addressed at several points in the FT Act; most notably, section 9(f) requires that in developing a proposed program of projects recipients consult with "interested parties, including private transportation providers" and in developing the final program of projects recipients particularly consider the "comments and views * * * of private transportation providers." This activity at the recipient level is the first step that leads to the planning process under section 8. In section 8(o) Congress has required that local transportation plans and programs prepared under section 8 encourage "to the maximum extent feasible the participation of private enterprise." In section 3(e), Congress has directed that where an existing mass transportation company is providing service, FTA may not provide financial assistance to a public body for the operation of competing or supplemental service, unless it finds that the relevant transportation improvement program required by section 8 provides for such private enterprise participation to the "maximum extent feasible." In section 9(e)(1), Congress extended the requirement of section 3(e) to the section 9 formula program.

II. Legal Provisions Relating to Private Enterprise Involvement in Transit Operations

Since enactment of the FT Act in 1964, the Federal transit program has recognized the need to address the interests of existing private operators. Section 3(e) originated in Senate Bill S. 6 in 1963 (88th Cong., 1st Sess.), which was introduced by Senator Harrison Williams. This section reads in pertinent part:

> No financial assistance shall be provided under this Act * * * for the purpose * * * of acquiring any interest in, or purchasing * * * property of a mass transportation company, or for improving * * * any property acquired from any company, or for providing, by contract * * * for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing mass transportation company, unless (1) the Secretary finds that such assistance is essential to the program of projects required by section 8 of this Act, (2) the Secretary finds that such program, to the maximum extend feasible, provides for the participation of private mass transportation companies * * *.

In his remarks before the Senate, Senator Williams emphasized that the aim of the provision was to assure fair and equitable treatment for private operators that were providing service at the time the statute was enacted. In a broader context, however, Senator Williams made it clear that local decisionmakers, not the Federal government, would decide, case by case, whether mass transit services should be provided by privately or publicly owned carriers.

> The most important single feature of the bill is a long-range program of Federal grants to States and local public bodies to assist public and private transit systems in financing the acquisition, construction, and improvement of mass transportation facilities and equipment. The eligible facilities and equipment would include terminal facilities, rights-of-way, buses and other rolling stock, and any other property needed for an efficient and coordinated mass transportation system * * *.
>
> A grant under this program would be made only to a public body which shows that it has the legal, financial, and technical capacity to carry out the proposed transit project. However, the public body would not necessarily have to operate the transit facilities and equipment itself. It could provide for their operation by lease or other arrangement. Thus, every locality would remain free to choose public or private operation of its transportation system or any combination of the two.

109 Cong. Rec. 215 (Daily Ed., Jan. 14, 1963).

Debate on the provision in the House reflected the intent of Congress to make transit assistance available to existing mass transportation companies so that they might be able to remain in business and improve their transportation services. This legislative history indicated, however, that local officials should be free to decide whether service should be provided by public or private operators, consistent with local needs. H.R. Rep. No. 204, 88th Cong 2d Sess., 1964 U.S. CODE CONG. & AD. NEWS, 2569, 2583–2584.

The courts have accordingly determined that while the interests of existing private operators are entitled to consideration, the statute was enacted for the public benefit, not for the special benefit of any party, including a private mass transportation company. E.g., *A.B.C. Bus Lines, Inc.* v. *Urban Mass Transportation Administration*, CA No 86–05698 (D.R.I. 1987) aff'd. 831 F.2d 360 (1st Cir. 1987); *Associated Businesses of Franklin, Inc.* v. *Warren County Board of Commissioners*, 522 F. Supp. 1015 (S.D. Ohio 1981).

This original congressional intent that local decisionmakers, not FTA, determine the appropriate level and conditions for private enterprise involvement, has been reiterated in a recent amendment to section 8(i)(5) of the FT Act made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, which prohibits FTA from withholding certification of a Metropolitan Planning Organization (MPO) on the basis of an MPO's private enterprise policies or those of a recipient. Section 8(i)(5) thus reinforces the fundamental statutory principle on this issue: local decisionmakers must make the decision as to whether transit service should be publicly or privately operated. FTA's role under section 3(e) is to make a judgment, at the time of a specific grant where an existing mass transportation company is providing service, as to whether the transportation improvement program developed under section 8 adequately addresses the participation of private enterprise, "an administrative decision which is essentially an exercise of discretion." *South Suburban Safeway Lines, Inc.* v. *City of Chicago*, 416 F.2d 535, 539 (7th Cir. 1969). In enacting the FT Act, Congress declared its intent "to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies *as determined by local needs.*" 49 U.S.C. 1601(b)(3) (emphasis added). Congress further declared that "[i]t is the purpose of this Act to create a partnership which permits *the local community*, through Federal financial assistance, to exercise the initiative necessary to satisfy its urban mass transportation requirements." 49 U.S.C. 1601(a) (emphasis added).

In enacting ISTEA in 1991 Congress also emphasized the need for autonomy

in local planning and local decisionmaking by States and local agencies. It is clear that in both the FT Act and ISTEA, Congress vested the States and local mass transportation agencies with wide discretion and responsibility in making transit decisions responsive to local needs. FTA therefore believes that local disputes involving private enterprise involvement should be resolved locally, not by FTA. In this connection, section 9(f) of the FT Act requires a consultative process between transit operators and local providers of private transportation services as provided in FTA Circular 9030.1A. Furthermore, the recently issued joint FTA/Federal Highway Administration statewide and metropolitan planning regulations (49 CFR part 613 and 23 CFR part 450, 58 FR 58040, October 28, 1993) now require a process for demonstrating explicit consideration and response to public views, including those of private operators of transit service, during the planning and program development process provided for in 23 CFR 450.212(a)(5) and 450.316(b)(1)(v). FTA believes that these processes will afford private operators ample opportunity to express their views and comments on the development of transit programs, while allowing local officials to encourage the participation of private enterprise to the maximum extent feasible.

III. FTA Guidance on Private Enterprise

Between 1964 and 1984, FTA provided no separate guidance relating to the participation of private enterprise in mass transportation, except in its charter service regulation (49 CFR part 604). FTA first issued guidance on this issue in a policy statement, "Private Enterprise Participation in the [Federal Transit] Program" (49 FR 41310, October 22, 1984), which set forth the factors FTA would consider in determining whether a recipient's planning process appropriately considered the participation of private enterprise. These factors included consultation with private providers in the local planning process, consideration of private enterprise in the development of the mass transit program, and the existence of records documenting the participatory nature of the local planning process and the rationale used in determining whether or not to contract with private operators for transit services.

Thereafter, in the Conference Report accompanying the Department of Transportation and Related Agencies Appropriations Act, 1987 (Pub. L. 99–464), Congress expressed concern that FTA had exceeded its discretion by conditioning certain section 9 grants on private enterprise involvement. Section 327 of that Act prohibited such conditioning of section 9 formula grants.

In 1986, FTA further informally implemented its private enterprise guidance for sections 3 and 9 recipients in FTA Circular 7005.1 ("Documentation of Private Enterprise Involvement in Sections 3 and 9 Programs") and for sections 16(b)(2) and 18 recipients in Chapter X of FTA Circular 9040.1C ("Section 18 Program Guidance") and Chapter IV of FTA Circular 9070.1B ("Section 16(b)(2) Program Guidance"). These Circulars state clearly that FTA will not condition grants on a certain level of private enterprise involvement. At the same time, the Circulars outline certain elements and procedures relating to private enterprise participation that a grantee should include in its planning process. Recipients have found some of these elements burdensome. FTA has reviewed its policy in light of the statutory background and believes these elements should no longer be part of its guidance.

1. Review of Existing Service

The Circulars provide that recipients should review each route every three years to determine whether the services in question could be more effectively provided by private operators. Based on reports received from its recipients, FTA believes that this provision entails a significant administrative burden for many, especially major transit agencies with large and complex route structures, requiring the devotion of very substantial staff time to conducting reviews on an arbitrary three-year cycle. FTA believes that local authorities should determine the frequency of any such reviews.

2. Fully Allocated Cost Analysis

When issued the Circulars provided that grantees should use a fully allocated cost methodology when calculating their costs of providing service for comparison with those of potential private operators. The use of this accounting methodology was intended to ensure that local decisionmakers have considered all costs associated with the provision of service by a public agency. The experience of many recipients, however, shows that in the context of their operations the fully allocated cost methodology is not always an appropriate gauge of the true cost of providing a particular service; in some cases, it takes into account costs already incurred or costs that remain fixed. Costs such as salaries of senior managers or other personnel who would be on the recipient's payroll regardless of whether or not the service was operated by the recipient may or may not enter into the business judgments involved in deciding whether or not to operate a particular route. Similarly, FTA has interpreted the policy to require that recipients bid fully allocated costs when competing with the private sector in response to a procurement solicited by a third party. This requirement interferes with maximum open competition by artificially restricting price competition between recipients and private enterprise. FTA's "Fully Allocated Cost Analysis Guidelines" are set forth in a complex and lengthy document the application of which imposes a significant administrative burden, especially on smaller recipients that lack adequate staff resources.

FTA believes that in comparing public and private costs of operating a particular service, recipients should be free to use any reasonable accounting methodology they find appropriate in a given setting. Indeed, the Circulars never required that the ultimate local decision be based on the fully allocated cost comparison, only that those costs be considered. However, the participation of private operators "to the maximum extent feasible" can depend on a number of factors, e.g., the ability to maintain quality service, ensure continued responsiveness, operate in a coordinated system, and provide an adequate measure of safety.

3. Institutional Barriers

The Private Enterprise Policy Statement and the Circulars also fail to recognize local institutional and policy constraints on private involvement. They provide that FTA will not recognize local labor agreements or local laws or policy that call for direct operation of mass transit service as an acceptable limitation on private enterprise participation. Many grantees maintain that this position unduly restricts the prerogatives of local officials and impedes their ability to consider a broad range of transit options. Moreover, the successful negotiation of collective bargaining agreements often requires that transit officials be accorded a maximum degree of bargaining flexibility.

4. Appeal Process

The Circulars provide that both recipients and MPOs should develop a process for the resolution of disputes with private operators. Private operators

may appeal to FTA if they fail to resolve their disputes at the local level. Pursuant to this provision, FTA has rendered administrative decisions following an investigation of disputes. In certain of these decisions, FTA has indicated that it would withhold Federal funds from grant recipients that failed to conform to an FTA determination. Since FTA will be conducting regular reviews of grantees' compliance with the planning requirements, a formal appeal process leading to FTA does not appear necessary, although FTA is always available to receive reports of planning process failures.

IV. Proposed Action

In keeping with congressional intent that FTA carefully respect the prerogatives of local decisionmakers with regard to the participation of private enterprise in the provision of mass transit, FTA proposes to rescind its 1984 Policy Statement (49 FR 41310, October 22, 1984), Circular 7005.1, Chapter X of Circular 9040.1C, and Chapter IV of Circular 9070.1B. FTA believes the best way to assure that private enterprise participation is encouraged is to fully support the consultative process under section 9(f).

Indeed, we particularly want to emphasize the continuing significance of the section 9(f) process as described in FTA Circular 9030.1A, during which key decisions regarding private enterprise participation are made. Pursuant to Chapter IV of that Circular, each recipient:

- Makes available to the public information concerning the amount of funds available under section 9 and the program of projects that the recipient proposes to undertake with such funds;
- Develops a proposed program of projects concerning activities to be funded in consultation with private transportation providers and other interested parties;
- Publishes the proposed program of projects in sufficient detail and in such a manner as to afford private transportation providers and others an opportunity to examine its content and to submit comments on the proposed program of projects and budget and on the performance of the recipient; and
- Affords an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects.

The Circular further provides that in preparing the final program of projects to be submitted to the FTA, the recipient must particularly consider the views and comments of private transportation providers and, if deemed appropriate, modify the proposed program of projects and budget. In FTA's view, local transit providers are best able to develop procedures concerning the participation of private enterprise in local transit programs and to determine levels of private enterprise involvement that are consistent with diverse local circumstances and needs. We believe that it is up to each recipient to determine how private enterprise providers should be included in light of specific local factors. We believe that recipient's planning activities, including consideration of private enterprise participation pursuant to the section 9 process, link with the section 8 planning process and thereby provide the basis for an FTA finding under section 3(e).

As previously noted, in ISTEA Congress signaled its intent that FTA should defer to the local decisionmaking process with regard to the participation of private enterprise by adding the following to section 8(i)(5).

> The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 8(o) of the Federal Transit Act.

Accordingly, in making the finding relating to private enterprise required under section 3(e) when making a specific grant, FTA will rely on its previous certification of the relevant program of projects developed under section 8, unless it has noted deficiencies in that program related to private enterprise participation. FTA will conduct periodic Federal planning management reviews to ensure that all the planning requirements of section 8 are being met by recipients of FTA funds. In addition, FTA will monitor compliance with the private enterprise provisions of the FT Act as part of the annual audits and triennial reviews mandated by section 9 of the FT Act. Similarly, FTA believes that the statewide planning regulations, which also call for a detailed public participation process, will provide the basis for a finding under section 3(e) in connection with the sections 16 and 18 programs.

V. Invitation for Public Comment

FTA has not generally provided advance notice and opportunity for comment—as it does in its rulemaking proceedings—when adopting or rescinding the circulars it uses to provide guidance to its grantees, and it did not when issuing the 1984 Policy Statement and Circular 7005.1. It is providing notice of its proposed action to rescind these Circulars, however, because this action would represent a relatively significant change of recent FTA philosophy, consistent with the direction of ISTEA, by removing unnecessary Federal direction of local parties' discharge of their planning responsibilities under the FT Act and giving full weight to the need to provide for and respect the local decisionmaking process. In addition, considerable interest has been expressed by various members of the public, as well as members of Congress, in FTA's review of these private enterprise issues. FTA welcomes comment on its proposed action during the 60 days following publication of this notice.

Dated: November 19, 1993.

Gordon J. Linton,

Administrator.

[FR Doc. 93-28897 Filed 11-19-93; 2:35 pm]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 19, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0099
Form Number: FFIEC 030
Type of Review: Revision
Title: (MA)—Foreign Branch Report of Condition
Description: This report is the only report collected from all foreign branches of U.S. commercial banks. It provides information on the structure and geographic distribution of foreign branch assets and liabilities. The information is used to analyze foreign operations of U.S. banks and to plan examinations. Aggregate data are available to the public.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 677

Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: Quarterly, Annually.
Estimated Total Recordkeeping Burden: 3,255 hours.
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland
Departmental Reports Management Officer.
[FR Doc. 93–29009 Filed 11–24–93; 8:45 am]
BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8849.
Type of Review: New collection.
Title: Claim for Refund of Excise Taxes.
Description: Internal Revenue Code (IRC) sections 6402, 6404, and §§ 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/Recordkeeping: 155,667.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 59 min.
Learning about the law of the form—12 min.
Preparing the form—48 min.
Copying, assembling, and sending the form to the IRS—1 hr., 22 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,549,380 hours.
OMB Number: 1545-0024.
Form Number: IRS Form 843.
Type of Review: Revision.
Title: Claim for Refund and Request for Abatement.
Description: Internal Revenue Code (IRC) sections 6402 and 6404, and §§ 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/Recordkeeping: 545,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law of the form—7 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—28 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 720,060 hours.
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–29010 Filed 11–24–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: In order to allow respondents sufficient lead time as possible in advance of the survey described below, the Department of Treasury's Office of Data Management is requesting review and approval from the Office of Management and Budget (OMB) by December 28, 1993. Sufficient lead time would significantly reduce their burden of reporting of this survey because it would enable them to plan and implement the most efficient, or least costly, method of retrieving the requested data from their databases and reporting them in a timely fashion. All comments must be received by close of business December 21, 2993.

Departmental Offices/Economic Policy/Office of Data Management

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Survey of Selected Foreign Financial Assets, as of March 31, 1994.
Description: The purpose of this survey is to collect data on U.S. persons' selected financial claims on foreigners in order to reassess the value of various classes of portfolio capital positions as currently reported under the Treasury International Capital (TIC) reporting system. The data will be used to ensure the quality and completeness of international financial statistics used by U.S. Government policy makers. The survey will be filed primarily by U.S. custodians, but will also include other U.S. persons such as pension funds, insurance companies and investment managers.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,500.
Estimated Burden Hours Per Response/Recordkeeper: 40 hours.
Frequency of Response: Other (one-time survey).
Estimated Total Reporting/Recordkeeping Burden: 100,750 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–29011 Filed 11–24–93; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, December 3, 1993, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

December 3, 1993

Agenda

I. Approval of Agenda
II. Approval of Minutes of the November 19, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Connecticut, Idaho, Missouri, New Hampshire (interim), and Texas Advisory Committees
VI. White Supremacist Activity in Montana
VII. Hate Crime in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations
VIII. New York Hearing Update
IX. Future Agenda Items
X. Commissioner Briefing on Economic Opportunity

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 93–29106 Filed 11–23–93; 10:46 am]

BILLING CODE 6335–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–28026.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, November 18, 1993 at 10:00 a.m. Meeting Open to the Public

The following item was withdrawn from the Agenda:

Implementing Directives for the Interim Ex Parte Communications Regulations.

DATE AND TIME: Tuesday, November 30, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
Briefing on Allocation Regulations.

DATE AND TIME: Thursday, December 2, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–18: Alan E. Siegel on behalf of Southwestern Bell Corporation.
Report of the National Performance Review on Reinventing Government—Creating a Government That works Better and Costs Less.
MURs in the Record.
Status of Regulations Projects.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 93–29188 Filed 11–23–93; 3:38 pm]

BILLING CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 19, 1993, 58 FR 61140.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 23, 1993, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG–3 on the Agenda scheduled for November 23, 1993:

Item No., Docket No., and Company

CAG–3—RP85–177–102 and RP85–177–107, Texas Eastern Transmission Corporation

Lois D. Cashell,
Secretary.

[FR Doc. 93–29194 Filed 11–23–93; 3:48 pm]

BILLING CODE 6712–02–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 59516, November 9, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, November 17, 1993.

CHANGE IN THE MEETING: The following topic was deleted from the open portion of the meeting:

- System 2000 Implementation: Goal #5 Update

The Board determined that this change was made on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Managing Director.

[FR Doc. 93–29137 Filed 11–23–93; 12:43 pm]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 1, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–29186 Filed 11–23–93; 3:10 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-35]

TIME AND DATE: December 1, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 303-TA-24, 701-TA-356-358 and 731-TA-664-668 (Preliminary) (Phthalic Anhydride from Venezuela, Brazil, Israel, Mexico and Hungary).
5. Outstanding action jackets
   1. GC-93-127, **Federal Register** notice of proposed section 337 rulemaking.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: November 19, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-29153 Filed 11-23-93; 2:47 pm]

BILLING CODE 7020-02-P

NUCLEAR REGULATORY COMMISSION

DATE: Monday, November 29, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, November 29

2:00 p.m.

Briefing by the Executive Branch (Closed—Ex. 1)

Dated: November 22, 1993.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504-1292. Contact Person for More Information: William Hill (301) 504-1661.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-29150 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, December 7, 1993, in Washington, D.C. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, December 6, 1993, but it will consist entirely of briefings and is not open to the public.

AGENDA

Tuesday Session

December 7, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 1-2, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Consideration of the FY 1993 Financial Statements. (Governor Sam Winters and M. Richard Porras, Vice President, Controller)
4. Final FY 1995 Budget Request to Congress. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance)
5. Chief inspector's Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
6. Capital Investments. (Peter A. Jacobson, Senior Vice President, Processing and Distribution)
   a. Westchester, New York, Processing & Distribution Center.
   b. New Haven, Connecticut, Processing & Distribution Center.
7. Tentative Agenda for the January 3-4, 1994, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 93-29115 Filed 11-23-93; 11:39 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

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.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94-C0003]

Berman Mattress Co., Inc., a Domestic Corporation, and Sheldon Haber, Individually and as an Officer of the Corporation; Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document 93-27367 beginning on page 59242 in the issue of Monday, November 8, 1993, make the following correction:

On page 59242, in the second column, in **DATES:**, in the fifth and sixth lines, "November 13, 1993." should read "November 23, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R-93-1691; FR-3521-I-01]
RIN 2502-AG16

Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects

Correction

In rule document 93-28388 beginning on page 61017 in the issue of Friday, November 19, 1993, make the following corrections:

On page 61018, in the first column, in the **DATES**, in the second line, "May 20, 1994" should read "March 21, 1994", and in the fourth line, "March 21, 1994" should read "May 20, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 2]
RIN 2127-AE10

Drug Offender's Driver's License Suspension

Correction

In rule document 92-19102 beginning on page 35989 in the issue of Wednesday, August 12, 1992, make the following correction:

§ 1212.3 [Corrected]

On page 35999, in the second column, in § 1212.3(d), in the last line, "§§ 1038.11-.15." should read "§§ 1308.11-.15."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92-64; Notice 3]

RIN 2127-AE63

Motor Vehicle Content Labeling

Correction

In proposed rule document 93-28392 beginning on page 61042 in the issue of Friday, November 19, 1993, make the following corrections:

1. On page 61043, in the first column, in the **DATES** section the *Proposed effective date* should read as follows:

Proposed effective date: The proposed new part would be added to the Code of Federal Regulations on [insert date 30 days after publication of the final rule in the **Federal Register**].

§ 583.1 [Corrected]

2. On page 61060, in the first column, in § 583.1(d)(1), in the 7th line insert "15" after "by".

3. On page 61063, the "Appendix to Preamble: Sample Labels" is corrected to read as follows:

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

Appendix to Preamble: Sample Labels

Sample Figure 1: Section 583.5(b), the Standard Label

For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Source of Foreign Parts Content:
Japan: 20%
Mexico: 15%

For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

Sample Figure 2: Section 583.5(e), Low U.S./Canadian Content Label

For vehicles in this carline:
U.S./Canadian Parts Content: Minimal
Major Source of Foreign Parts Content:
Italy: 90%

For this vehicle:
Final Assembly Point: Turin, Italy
Country of Origin:
Engine: Italy
Transmission: Italy

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

Sample Figure 3: Section 583.5(f)-(g), Label for Multistage Manufacturers of Carlines With Fewer Than 1000 Vehicles Produces Annually; and Manufacturers That Produced a Total of Fewer Than 1000 Vehicles Annually

Final Assembly Point for this Vehicle:
Phoenix, AZ

Country of Origin for this Vehicle:
Engine: Mexico
Transmission: U.S.

BILLING CODE 1505-01-D

federal register

Friday
November 26, 1993

Part II

Federal Emergency Management Agency

44 CFR Part 59, et al.
National Flood Insurance Program; General Provisions and Insurance Coverage; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 61, and 62

RIN 3067-AB71

National Flood Insurance Program; General Provisions and Insurance Coverage

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule amends the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by clarifying certain insurance coverage provisions, amending the NFIP definitions of terms, and by establishing a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, while making appropriate amendments to the existing SFIP forms, the Dwelling Form and the General Property Form.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-3419.

SUPPLEMENTARY INFORMATION: On July 30, 1992, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** (Vol. 57, Page 33669) a proposed rule containing amendments to the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) to clarify certain insurance coverage provisions, and to amend the NFIP definitions of terms. The rule also proposed to establish a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, and to amend the existing SFIP forms (the Dwelling Form and the General Property Form) to conform to the new Residential Condominium Building Association Policy Form.

A 60-day period was provided for review and comment on the proposed changes. FEMA also requested comments on the estimates for the recordkeeping and reporting burden in connection with the collection of information titled "Claims for National Flood Insurance Program" and invited the public to submit comments to FEMA and/or the Office of Management and Budget (OMB) on the paperwork issues including the burden estimates and any aspects of the information collection requirements. While neither FEMA nor OMB received comments in connection with the collection of information during the comment period, FEMA did receive comments on the proposed changes to the NFIP from five respondents. The tally of comments included representatives from two private insurance companies participating in the NFIP Write Your Own Program, one flood insurance committee consisting of representatives from various producer trade associations, one state association of insurance agents, and one association concerned with flood plain management issues.

Most of the comments received were related to the SFIP Forms and, while generally supportive, did express concern for one or more of the proposed provisions. Other comments were editorial or technical in nature, some of which were incorporated into this final rule and some of which were not.

In the development of the new Residential Condominium Building Association Policy Form and the revised Dwelling Policy and General Property Policy Forms, a review of the forms was requested and received from six editors of the National Underwriter Company's publication "Fire, Casualty, and Surety (FC&S) Bulletins," as well as from Write Your Own company members of the Condominium Master Policy (CMP) Task Force to ensure that the policies conform to the greatest extent possible to the simplified language, procedures, and practices of the private sector personal lines insurance industry.

Before the Standard Flood Insurance Policies were included in the regulations as Appendices A(1) and A(2), key insurance terms and key provisions of the flood insurance policy were included respectively in part 59—Definitions and in the text of part 61—Insurance Coverage and Rates. When Appendices A(1) and A(2) were added in October 1979, these key insurance terms and provisions were retained and, over the years, as revisions were made to the policies in the Appendices, the definitions in part 59 and the text in part 61 were revised as well to conform with the Appendices. This has proved to be a cumbersome process and a needless duplication that, as the regulations have increased in volume over the years, is both time-consuming and costly. FEMA is, therefore, removing these key insurance terms and provisions from the text of parts 59 and 61.

Federal procurement procedures are followed in the selection of an NFIP servicing agent to assist in issuing flood insurance policies under the Program. Under these procedures, National Con-Serv, Inc. (NCSI), whose offices are located in Rockville, Maryland, became the new NFIP servicing agent effective October 1, 1993. An editorial change is being made in part 62 to reflect this change in the servicing agent. Since NCSI has several different addresses for receipt of correspondence depending on the various transactions being submitted and since those addresses are contained in the NFIP Agents Manual revisions, which are disseminated to insurance agents and other parties having an interest in writing flood insurance, a further editorial change is being made at part 62 to remove any reference to the servicing agent's mailing address.

Regarding the proposed coverage clarifications, in the Definitions section of the General Provisions, at § 59.1, and variously, in the SFIP, at § 61.13, one private insurance company questioned whether the new definition of "association," is accurate in regard to "managing the condominium building," and whether the definition of "elevated building" is complete enough. FEMA believes that these definitions are accurate and complete although it might be helpful to clarify at § 59.1 that "elevated building" is an insurance concept. Further, the six editors of the National Underwriter and the CMP Task Force members had no problems with these definitions. In keeping with the decision to remove key insurance terms from the Definitions section of the regulatory text, the definition for "association" is being removed at § 59.1 of this final rule but is contained in Article 2—Definitions of all three policies as originally proposed. The definition for "elevated building" is included in Article 2—Definitions of all three policies as originally proposed. The definition for "elevated building" is also being retained in § 59.1 of this final rule and, for clarification, is being revised to add the phrase ", for insurance purposes," following the phrase "Elevated building means". No comments were received concerning the proposed new definitions of "coinsurance," "improvement," "unit" (in conjunction with the SFIP condominium forms of coverage), and "special hazard area," as well as the amended definition of "direct physical loss by or from flood;" and these definitions are also contained in the final rule as originally proposed, except that, with respect to the definition of "special hazard area," zone "AR" has been added alphabetically to the listing. No comments were received concerning the proposed new definition of "valued policy." In keeping with the decision to

remove key insurance terms from the Definitions section of the regulatory text, this definition is being removed at § 59.1 of this final rule but is contained in Article 2—Definitions of all three policies as originally proposed. One respondent commented that the definition of "residential condominium building" in the Dwelling Form differed from the definition in the General Property Form and the Residential Condominium Building Association Policy Form. This is a valid point and, in the final rule, the definition in the Dwelling Form has been amended to conform to the definition in the other two policy forms. However, as this is an insurance term, the definition of "residential condominium building" is being removed at § 59.1 of this final rule.

One respondent commented on the proposal at § 61.3 (and the conforming language in the SFIP Dwelling Form's "Property Covered" article), to amend the grant of coverage for additions and extensions to include coverage only for a building which is attached to the insured structure by means of a common wall and suggested that a "common roof" should be addressed as well in order to further clarify the single building issue. Another respondent questioned how the language affects coverage for decks, carports, etc. The Dwelling Policy, as proposed, provides at Article 4, Coverage A, paragraph A.3., for a 10 percent extension of coverage for detached garages and carports and this 10 percent extension is not affected by the proposed language, one purpose of which is to eliminate coverage for decks. FEMA believes that the language as proposed provides sufficient clarification on the single building issue. In keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the proposed change at § 61.3 is not included in this final rule and the current last sentence is being removed from § 61.3 in this final rule. However, for clarification, the language as originally proposed in the Dwelling Form at Article 4—Property Covered, Coverage A—Building Property, paragraph A.1. is being revised in this final rule to reference Article 6—Property Not Covered, paragraph D.2. Due to a technical oversight, the proposed language was not included in the General Property Form and the Residential Condominium Building Association Policy Form in the proposed rule but, in this final rule, the revised language is included in these policy forms as well. Further, to make it clear that there is no coverage for decks, whether covered or not, a change is being made to the "Property Not Covered" article at Paragraph D.2. of all three policies to specifically list decks.

In the proposed rule at § 61.4, and in the conforming language at Article 3 of all three policies, new language was proposed to clarify when sewer backup or seepage of water is a covered peril. The current Dwelling Form has a more restrictive condition for coverage to attach than does the current General Property Form. In keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the designation (a) is being removed from the paragraph beginning with the words "All flood insurance" and paragraphs (b) through (e) of § 61.4 are being removed in this final rule. However, this final rule addresses changes to Article 3 of all three policies. Since the language in the proposed rule would have required "actual physical contact between surface flood water and the insured building" for coverage to attach, it was also proposed to offer optional coverage under the Dwelling Form whereby, subject to conditions, policyholders could purchase coverage for certain losses due to water seepage and sewer backup without the requirement that there be actual physical contact between the surface flood water and the insured building and for land subsidence as well.

Given the fact that the General Property Form provides coverage when the seepage or backup of water is related to a condition of "flood," as defined" and because, historically, the instances of land subsidence, water seepage and sewer backup have not occurred frequently, rather than offering an optional endorsement which would provide coverage for land subsidence, water seepage and sewer backup, it has been decided to include, at Article 3—Losses Not Covered of all three policies, a new paragraph B.3 providing coverage for land subsidence, water seepage, and sewer backup where certain conditions as specifically enumerated are present. In commenting on the optional endorsement, a private insurance company suggested changing the wording related to the time limit for the damage to occur from "72 hours from the onset of the flooding" to read "72 hours after the flood has receded." FEMA believes that this suggestion is worthwhile and it has been incorporated into paragraph B.3.

There will not be an additional premium charge for the coverage for land subsidence, water seepage and sewer backup but there will be a deductible of $250 to be applied for each building and contents loss, separately, in addition to the deductible amount for building and contents coverage, as appropriate, otherwise applicable to the policy.

Although an additional premium charge will not apply, additional premium dollars will be generated since one of the requirements for the coverage to attach is that the insured building must be insured, at the time of loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program. Further, FEMA intends to monitor the claims experience for the next few years to determine whether an additional premium charge may at some future time be appropriate.

Therefore, Optional Endorsement #3 is removed from this final rule and, instead, Article 3—Losses Not Covered, paragraph B.3., of all three policies is revised in this final rule to provide that the policy does cover loss caused by land subsidence, sewer backup or seepage of water where the enumerated conditions are present. Further, at Article 7—Deductibles of all three policies, a new paragraph E. has been added to provide for a deductible amount to be applied for each building and contents loss, separately, for land subsidence, water seepage, and sewer backup coverage.

One respondent, in commenting on paragraph B.3. of Article 3, expressed uncertainty as to the meaning of the last part of the paragraph and whether freezing, thawing, or the pressure or weight of ice or water are independent events not requiring physical contact between surface flood water and the insured property. Therefore, for clarification, a new paragraph B.4., is added to separately list freezing, thawing, or the pressure or weight of ice or water.

In furtherance of loss prevention, as an insurance concept, and hazard mitigation, in October 1984, the SFIP policy forms were revised to provide for reimbursement up to the then minimum deductible of $500.00 for certain loss mitigation measures, such as the purchase of sandbags, including the sand to fill them, and plastic sheeting and lumber used in connection with them. In January 1986, although maintaining the $500.00 limitation, the SFIP policy forms were further revised to include reimbursement for fill for temporary levees, pumps, and wood. In October 1992, FEMA established new deductibles of $750.00 (building and contents separately) for those flood insurance policies which are rated using the subsidized rates (i.e., chargeable

rates) established pursuant to sections 1308 (a)(1) and (a)(2) and 1336(b)(1) of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4015 and 42 U.S.C. 4056). Loss prevention and hazard mitigation are major goals of FEMA and it seems only equitable to extend the reimbursement for the loss mitigation measures specifically listed in the policy to the higher standard deductible for policies rated using the chargeable rates. Therefore, in this final rule, Article 5, paragraph D., of all three policies is revised to provide for coverage for certain loss mitigation measures in an aggregate amount not to exceed $750.00.

Regarding the proposal to establish new deductibles for the insuring of residential condominium buildings, one respondent expressed concern about the large mandatory deductibles and pointed out that, based upon past experience, many mortgage companies, especially unit owner mortgagees, will not accept policies with deductibles over $1,000. Another respondent suggested that, since the deductibles are keyed to condominiums of five units or more, it would be better to change the wording to require a deductible of "$750.00 or $500.00 times the number of units, subject to a maximum deductible of $7,500 or $5,000." After carefully considering the issues raised and giving consideration to the importance of maintaining consistency in the Program, FEMA has determined that, in lieu of establishing separate deductibles, it would be better to retain the current standard deductibles of $750.00 (for buildings where Pre-FIRM rates are used to calculate the premium) or $500.00 (for all other buildings), as appropriate, for residential condominium buildings of five units or more and charge premium rates commensurate with the risk. This determination is made in recognition of the range of optional deductibles that will be available which condominium associations can avail themselves of with some corresponding reduction in the premium rates. Therefore, paragraphs (d)(1) and (d)(2) are being removed from § 61.5 in this final rule and paragraph (d)(3) is being redesignated as paragraph (d). Further, in keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the last sentence of paragraph (a)(1) and paragraphs (e) through (h) are being removed, paragraph (i) is being redesignated as paragraph (e), and paragraph (j) is being removed from § 61.5 in this final rule.

As stated in the proposed rule, new minimum deductibles became effective on and after October 1, 1992, for buildings (and the contents in them) that were built before the effective date of the Flood Insurance Rate Map for the community or December 31, 1974, whichever is later, and that are located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE or V. In establishing the effective date for determining when the new minimum deductibles were to be applied, the intent was to be consistent with the grandfather clause contained in section 1308(c) of the National Flood Insurance Act of 1968, as amended, related to the availability of chargeable premium rates; and with language in the new definition of "Post-FIRM Building" being added to all three policies. Due to a technical oversight, the word "initial" was not included before the phrase "Flood Insurance Rate Map" in the proposed language at Article 7—Deductibles, paragraph C., of all three policies. This oversight has been corrected and, in this final rule, the phrase "initial Flood Insurance Rate Map" is included in Article 7, paragraph C. of all three policy forms.

No comments were received concerning the proposal to add a new paragraph (c) to § 61.6 providing that, consistent with the existing procedures related to the Condominium Master Policy, in the case of a residential condominium building in a regular program community, the allowable limits of building coverage are stated in terms of the number of units times the allowable limits of coverage for single family homeowners; nor were any comments received concerning the proposed amendment to the "Liberalization" clause to clarify that it only applies to losses occurring on or after the effective date of any policy changes. Therefore, these provisions are included in the final rule as originally proposed.

Regarding the proposal to specifically list in the SFIP, in all its forms, the kinds of property which can only be covered under the policy's building coverage and the kinds of property which can only be covered under the personal property coverage, the only comments received were editorial or technical in nature, some of which have been incorporated into this final rule and some of which have not.

Regarding the proposal to establish a new, distinct SFIP for the insuring of residential condominium buildings which will contain a coinsurance clause requiring the insured condominium association to share in the flood loss if it has not insured the building to 80 percent of its replacement cost value, one private insurance company expressed concern about the effect the coinsurance requirement would have on marketing for risks located in lower hazard areas. This respondent also suggested eliminating the examples from the SFIP and commented that providing examples is not normally done in insurance policies. Another private insurance company questioned the necessity of imposing the 80 percent coinsurance requirement on all buildings insured under the residential condominium building association policy form. The comment was made that the odds of a total flood loss are very small except for "V" zones and some coastal "A" zones, the contention being that the risk from flooding in "B," "C," and "X" zones does not justify requiring limits of 80 percent to value and that the rates for those zones are adequate to provide sufficient premium dollars for the exposure. It was suggested instead that the 80 percent insurance to value building coverage requirement be limited only to condominium buildings in special hazard areas. FEMA has carefully considered the positive and negative aspects of imposing the coinsurance requirement across the board or only in special hazard areas. However, for all of the reasons discussed in the supplementary information for the proposed rule, it is believed that the fair and equitable policy is to apply the insurance to value concept to all residential condominium buildings regardless of the flood zone in which the building may be located. In recognition of the very small odds of a total loss occurring in "B," "C," and "X" zones, appropriately low rates will be established for these zones. Further, since the penalty at the time of a loss for not insuring to value could, in some instances, be substantial, it is believed that the examples are necessary to ensure a clear understanding of the consequences of not insuring to value. Therefore, the coinsurance provision is included in the final rule as originally proposed.

The rule also proposed to add in Article 5 of all three policies a paragraph to make explicit that the SFIP is not a "valued policy" and that in processing a flood claim, loss will be paid in an amount equal to the lesser of the value of the damaged property under the terms and conditions of the policy (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the Act. One respondent suggested that this language be eliminated from the policy. However, for the reason outlined in the proposed rule, FEMA believes it important to

retain this language and it is included in the policies as originally proposed.

In addition to the optional endorsement included in the proposed rule for coverage for land subsidence, water seepage and sewer backup where certain enumerated conditions are present as already discussed, the rule also proposed that optional endorsements be offered under the Dwelling Form whereby policyholders could purchase coverage for certain losses due to increased cost of construction arising out of compliance with local floodplain management ordinances; and the standard policy's limitations of coverage in basements. Three respondents commented on the proposed endorsements. The comments were generally supportive with regard to the endorsement related to land subsidence, water seepage and sewer backups, as well as the endorsement related to the standard policy's limitations of coverage in basements. However, one private insurance company questioned why the three endorsements were being limited to the Dwelling Form and then only to single-family detached buildings which, at the time of a loss, are insured for at least 80 percent of their replacement cost or the maximum amount of insurance available under the NFIP.

From a review of the legislation related to the flood insurance program, it appears that, from the beginning of the NFIP, the major thrust of the program was toward the residential property owner. Specifically, in setting forth the scope of the program at section 1305(a) of the National Flood Insurance Act of 1968, as amended, Congress provided that priority should be given to "* * * residential properties which are designed for the occupancy of from one to four families * * *" Further, at section 1362(c) wherein Congress provided authorization for low interest loans for elevation of structures under certain circumstances, such authorization was limited to a "* * * single-family dwelling structure * * *"

In proposing the optional endorsements, FEMA chose to follow the lead of Congress and limit their availability to single family detached dwellings. However, as previously discussed, revisions are being made in this final rule to all three policies to provide for land subsidence, water seepage and sewer backup coverage where certain enumerated conditions are present. Therefore, the Optional Endorsement Related to Land Subsidence, Seepage of Water and Sewer Backup Exclusions is removed from this final rule and changes are being made in this final rule related to the other optional endorsements as discussed below.

Optional Endorsement Related to Coverage for Increased Costs of Repair or Reconstruction Due to a Community Flood Plain Management Ordinance

Regarding the endorsement related to the increased cost of construction arising out of compliance with local flood plain management ordinances, a private insurance company suggested that, in the second paragraph, condition 2., the phrase "market value" be changed to "replacement cost;" that the endorsement be clarified to show that the intent is to provide coverage for work which is done on the undamaged portion of the dwelling as well as the damaged portion; and that the endorsement be amended to provide demolition coverage. An association concerned with flood plain management commented that it understood that it was the Federal Insurance Administration's (FIA's) intent to study the increased cost of construction concept in a team-work approach over the coming year and it expressed interest in working with FIA on this issue. FIA is appreciative of the association's offer and stands ready to work with the association as well as all other interested parties on this important issue. Further, the suggestions made by the private insurance company are worthwhile and will be given careful consideration before implementing any procedures for providing increased cost of construction coverage. However, as legislative initiatives are currently under development which will, among other things, address the issue related to increased cost of construction, FEMA is postponing at this time any action related to coverage for increased cost of construction. Optional Endorsement #1 is, therefore, removed from this final rule.

Optional Endorsement Related to Coverage in Basements

A private insurance company questioned why the proposed endorsement is being offered to Pre-FIRM risks in certain zones and why the endorsement is being limited to buildings that were originally constructed with a finished floor, subgrade on all sides and containing, as originally constructed, a living room, dining room, and kitchen. The respondent commented that these conditions for eligibility will mean that the coverage would be available to only a limited number of structures countrywide.

This respondent's observation is correct. Upon further consideration in FEMA, it was decided that, due to such limited availability as outlined in the proposed rule, FEMA should defer at this time any action related to basement coverage and instead study the issue further with the option of developing a more broad granting of basement coverage by endorsement for an additional premium at actuarial rates at some future time. Optional Endorsement #2 is, therefore removed from this final rule.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

The information collection requirements in this final rule were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), and assigned OMB control number 3067–0021.

Public reporting and recordkeeping burden for this collection of information is estimated to average 3.8 hours per claim. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information requirements. The following forms are approved for NFIP use to obtain data required by this rule. The burden estimate for each form is provided:

FEMA form No.	Title	Burden estimate
81–40	Worksheet-Contents-Personal Property	2.5 hours.
81–40	Worksheet-Building	2.5 hours.
81–41A	Worksheet-Building (Cont'd)	1.0 hour.

FEMA form No.	Title	Burden estimate
81–42	Proof of Loss	5–6 minutes.
81–43	Notice of Loss	4 minutes.
81–44	Statement as to Full Cost of Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy.	6–7 minutes.
81–57	National Flood Insurance Program, Preliminary Report	4 minutes.
81–58	National Flood Insurance Program, Final Report	4 minutes.
81–59	National Flood Insurance Program, Narrative Report	5–6 minutes.
81–63	Cause of Loss and Subrogation Report	45 minutes to 1 hour.

Send comments regarding the accuracy of the burden estimates and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067–0021), Washington, DC 20503.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59, 61 and 62

Flood insurance.

Accordingly, 44 CFR parts 59, 61 and 62 are amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 59.1 is amended by removing the current definition of "Elevated building" and adding, in place thereof a new definition to read as follows:

§ 59.1 Definitions.

* * * * *

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 61.3 [Amended]

4. Section 61.3 is amended by removing the last sentence.

§ 61.4 [Amended]

5. Section 61.4 is amended by removing the designation "(a)" from the paragraph beginning with the words "All flood insurance", by removing paragraphs (b) through (e) and by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (a), (b), (c), and (d).

§ 61.5 [Amended]

6. Section 61.5 is amended as follows:

a. By removing the last sentence in paragraph (a).

b. By removing paragraphs (d)(1) and (d)(2).

c. By redesignating paragraph (d)(3) as paragraph (d).

d. In newly redesignated paragraph (d) add, above the "Note," the following new "Category Four" of "Optional Deductibles" to read as follows:

* * * * *

(d) * * *

CATEGORY FOUR.—RESIDENTIAL CONDOMINIUM BUILDING POLICIES

Options	Policy combining building and contents	Single coverage only policy (either building or contents)
	$10,000/$10,000 25,000/10,000	$10,000 25,000

e. By removing paragraphs (e) through (h).

f. By redesignating paragraph (i) as paragraph (e).

g. By removing paragraph (j).

7. Section 61.6 is amended by adding a new paragraph (c), to read as follows:

§ 61.6 Maximum amounts of coverage available.

* * * * *

(c) In the insuring of a residential condominium building in a Regular Program community, the maximum limits of building coverage permitted under the Act is the lesser of $185,000.00 times the number of units in the building or the building's replacement cost. The maximum limit of contents coverage permitted under the Act in a Regular Program community is the lesser of $60,000.00 or the actual cash value of the contents.

§ 61.13 [Amended]

8. Section 61.13 is amended as follows:

a. By removing the parenthetical phrase in paragraph (a) and adding in its place the following parenthetical phrase:

* * *(General Property, Dwelling, and Residential Condominium Building Association) * * *

b. By adding, in paragraph (d) after the word "than" and before the word "through", the phrase "by the express written consent of the Administrator".

9. Appendix A(1) of part 61 is revised to read as follows:

Appendix A (1)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Dwelling Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions. This policy covers only:

1. A non-condominium residential building, designed for principal use as a dwelling place of one to four families, or

2. A single family dwelling unit in a condominium building.

Insuring Agreement

Agreement of insurance between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we," "our," and "us,") and the Insured, (hereinafter known as "you" and "your").

We insure you against all *direct physical loss by or from flood* to the insured property, based upon:

1. Your having paid the correct amount of premium; and

2. Our reliance on the accuracy of the information and statements you have furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, you are insured up to the lesser of:

1. The *actual cash value*, except as provided in *Article 8*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

We insure only:

A. The named Insured and legal representatives;

B. Any mortgagee and loss payee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 9*, paragraph P.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy—

Act means the National Flood Insurance Act of 1968, and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the *policy* to be issued and the correct premium payment. The correct premium payment must accompany the *application* for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the *condominium building* in which you, as the insured unit owner, maintain your residence.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H. and a *walled and roofed building* in the course of construction, alteration or repair.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Condominium Association Policy means a *policy* of *flood* insurance coverage issued to an *association* pursuant to the *Act*.

Declarations Page is a computer generated summary of information furnished by you in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and our name. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Dwelling means a *building* designed for use as a residence for no more than four families and a single family *dwelling unit* in a *condominium building*.

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land area from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, installations, or additions comprising a part of the insured *building* or *condominium dwelling unit*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between you and us; it includes this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. Only one *dwelling building* or *unit*, specifically described by you in the *application*, may be insured under this *policy*, unless application to cover more than one *dwelling building* or *unit* is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential condominium building means a *building* owned by the members of a *Condominium Association* containing one or more residential *units* and in which at least 75 percent of the floor area within the *building* is residential.

Special hazard area means an area having special *flood*, mudslide, (i.e., mudflow) and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a single family *dwelling unit*, owned by the named Insured, in a *condominium building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

We only provide coverage for *direct physical loss by or from flood* which means we do not cover:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Your additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the described *dwelling* or from any condition which is within your control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by you, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which your insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by your modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by you or any member of your household.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. Loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5, and 6 Provisions, Which Also Apply to the Other Articles, Terms and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

Subject to paragraph C. below, we cover your *dwelling* which includes:

A. A residential *building*, not a *condominium*, designed for principal use as a *dwelling* place for no more than four families, including:

1. Additions and extensions attached to and in contact with the *dwelling* by means of a common wall (but see *Article 6*, paragraph D.2.).

2. Materials and supplies to be used in constructing, altering or repairing the *dwelling* or an appurtenant structure while stored inside a fully enclosed *building:*

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

3. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10 percent of the amount of insurance you have purchased to cover the *dwelling*, including additions to the *dwelling*. By exercising this option, you reduce the amount of insurance available to cover other loss relating to Coverage A.

This option may not be used to extend coverage to *buildings*:

a. Occupied, rented or leased in whole or in part for *dwelling* purposes (or held for such use); or

b. Used in whole or in part for business or farming purposes (or held for such uses); or

c. Which are boathouses.

4. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed*;

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

B. Or, we cover your single-family *dwelling unit*, including *improvements* therein owned solely by you, in a *condominium building*. We also cover your share of assessments made against you as a tenant in common in that *building's* common elements and the common elements of any other *building* of your *Condominium Association* covered by insurance that is:

1. In the name of your *Condominium Association;*

2. Provided under the *Act;* and

3. In an amount at least equal to the *actual cash value* of the *building's* common elements at the beginning of the current *policy* term or the maximum *building* coverage limit available under the *Act*, whichever is less.

Provided, with respect to coverage for single-family *dwelling unit* assessments:

1. Coverage is available only when each of the *unit* owners comprising the membership of the *Association* are also assessed by reason of the same cause and provided the assessment arises out of a *direct physical loss by or from flood* to the *condominium building* in which your *unit* is located or to another *condominium building* of the *Association*, as to which the *condominium* documents (Articles of Association, Declarations, and your Deed) impose upon you the responsibility for such an assessment). The deductibles provisions of *Article 7* of this *policy* do not apply to assessments.

2. Assessments made by the *Association* to recoup the amount of a loss deductible incurred by the *Association in* connection with any *condominium building* or contents *policy* of insurance are not covered.

3. Assessments made by the *Association* in connection with loss of or damage to personal property, including any contents of any *condominium building* of the *Association*, are not covered.

4. Assessments made by the *Association* of a *condominium building* are not covered if

the assessments are made to recoup loss not reimbursed to the *Association*, under a *policy* of insurance issued pursuant to the *National Flood Insurance Program*, by reason of the fact that the *condominium building* insured under such *policy* was not, at the time of the loss, insured in an amount equal to the lesser of 80 percent or more of the full replacement cost of the *building* or the maximum amount of insurance available under the *National Flood Insurance Program*.

C. And we cover fixtures including the following items of property, if owned solely by you, for which coverage is *not provided* under "Coverage B - Personal Property":

- Furnaces
- Wall mirrors permanently installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Fire Sprinkler Systems
- Built-in Dishwashers
- Garbage Disposal Units
- Outdoor Antennas and Aerials
- Pumps and Machinery for operating them
- Carpet Permanently Installed Over Unfinished Flooring
- Built-in Microwave Ovens
- Hot Water Heaters, Including Solar Water Heaters
- Ranges and Stoves
- Radiators
- Kitchen Cabinets
- Light Fixtures
- Plumbing Fixtures
- Refrigerators

Coverage B—Personal Property

A. *Subject to paragraphs B. and C.* below, we cover personal property:

1. Owned by you as contents incidental to the occupancy of the *building*.

2. Owned by members of your family in your household.

3. At your option and within the limits of personal property coverage you have purchased, owned by your guests and servants.

Such personal property is covered while stored:

a. Within your *dwelling;*

b. Within a fully enclosed *building* at the property address;

c. Within a *building* having in place two or more rigid walls and a fully secured roof if the contents are secured to prevent flotation out of the *building* during flooding. The flotation out of the *building* during flooding of any such contents shall be deemed to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation; or

d. At a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph C.2.).

B. Coverage, under this "Coverage B—Personal Property," includes the following property if owned solely by you, for which coverage is *not provided* under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the *dwelling* or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

C. *Limitations.* Under this "Coverage B—Personal Property" we shall not reimburse you for loss as to:

1. Personal property owned by you in common with any *unit* owners comprising the membership of a *Condominium Association*.

2. The following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

Within the limits of your coverage, we cover any expense you incur, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a *flood*. Under these provisions coverage extends to:

A. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property.

B. Parts of the insured property which is anywhere:

1. On the described premises; and

2. On property beyond the boundaries of the described premises.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *Condominium unit owner coverage is excess over Association coverage.* The insurance under this *policy* shall be excess over any insurance in the name of your *Condominium Association* covering the same property covered by this *policy*. Loss shall not be paid under "Coverage A—Building Property", paragraph B., and under "Coverage B—Personal Property" until we have verified the extent to which loss to *improvements* and personal property within your *unit*, and to the common elements of your *building* or any other *building* of your *Condominium Association*, is covered by any insurance in the name of your *Condominium Association*.

Should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to you as a tenant in common under any *Condominium Association flood* insurance *policy* provided under the *Act* for the same loss, exceed the statutorily permissible limits of *building* coverage available for the insuring of single-family *dwellings* under the *Act*, then the limits of *building* coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

B. *This policy is not a valued policy.* Loss will be paid, provided you have purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

C. *Insured Property, Covered Locations.* Your *dwelling* and personal property are covered while the property is located:

1. At the property address shown on the *application* or endorsement, if corrected by endorsement; and

2. For 45 days, at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed by you in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, in moving any of your insured property temporarily away from the peril of *flood* shall be reimbursed to you in an amount not to exceed $500. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement.

D. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by you for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement.

For reimbursement under this paragraph D. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the

flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

We do *not cover* any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building* or *unit*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on your premises, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2*:

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other *improvements*, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., except for the case of a *dwelling unit* in a *condominium building* as to which the *Association's* coverage is sufficient to cover such property, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as you have *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and or tanks used in conjunction with solar energy
- Furnaces
- Hot water heaters
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways.
- Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—Replacement Cost Provisions

Subject to *Article 7* and the limits of *building* coverage you have purchased, these provisions shall apply only to a single family *dwelling* which is your principal residence and which is covered under this *policy*.

For purposes of this *Article 8*, a single family *dwelling* qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your *building* for either:

1. 80 percent of the calendar year immediately preceding the loss; or

2. 80 percent of the period of your ownership of the insured *building*, if less than one calendar year immediately preceded the loss.

The following are excluded from replacement cost coverage:

1. A *unit*, in a *condominium building*, not used exclusively for single family *dwelling* purposes.

2. Outdoor antennas and aerials, awnings, and other outdoor equipment, all whether attached to the *building* or not.

3. Carpeting.

4. Appliances.

Under this Article:

A. If at the time of loss the total amount of insurance applicable to the *dwelling* is 80 percent or more of the full replacement cost of such *dwelling*, or is the maximum amount of insurance available under the *National Flood Insurance Program*, the coverage of this *policy* applicable to the *dwelling* is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to the *dwelling* is less than 80 percent of the full replacement cost of such *dwelling* and less than the maximum amount of insurance available under the *National Flood Insurance Program*, our liability for loss shall not exceed the larger of the following amounts:

1. The *actual cash value* (meaning replacement cost less depreciation) of that part of the *dwelling* damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the *dwelling* damaged or destroyed, which the total amount of insurance applicable to the *dwelling* bears to 80 percent of the full replacement cost of such *dwelling*.

If 80 percent of the full replacement cost of such *dwelling* is greater than the maximum amount of insurance available under the *National Flood Insurance Program*, use the maximum amount in lieu of the 80 percent figure in the application of this limit.

C. Our liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The replacement cost of the *dwelling* or any part thereof identical with such *dwelling* on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *dwelling* or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5 percent of the whole amount of insurance applicable to said *dwelling*, we shall not be liable for any loss under paragraph A. or subparagraph B.2. of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said *dwelling* is 80 percent or more of the full replacement cost of such *dwelling*, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest *basement* floor, or where there is no *basement*, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet or personal property (contents) covered under this *policy*, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your *dwelling* sustains a total loss or if we should pay you the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that you rebuild the *building* at the insured property address.

I. If the community in which your property is located has been converted from the Emergency Program to the Regular Program during the current *policy* term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the *National Flood Insurance Program* at the beginning of the current *policy* term instead of at the time of loss.

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a *policy* to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance.* If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association* issued pursuant to the *Act*, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance shall be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:*

You may cancel this *policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area*; and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act*; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy*;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, you shall be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us prior to a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we shall give a notice of additional premium due, and if you *remit* and we *receive* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy*, we shall give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the *declarations page* which is attached to the *policy*. We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* which we send to you. *Policy* changes includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to *Article 9*, paragraph F. above. If the renewal premium payment is mailed by certified mail to the *National Flood Insurance Program* prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received at the office of the *National Flood Insurance Program* and, in that event, we shall not be obligated to provide you with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* prior to the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program*, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of its being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstance, we shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we shall not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy* signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any *policies* of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium*, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other *condominium* documents if you are a *unit* owner in a *condominium building;* and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options:* We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us.

However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal*: If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both of us equally.

O. *Loss Clause*: If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood*. Of course, all loss arising out of a single, continuous *flood* of long duration shall be adjusted as one *flood* loss.

P. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom we have actual notice prior to the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify us of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by us, it shall continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease, and we shall have the right, on like notice, to cancel this agreement.

Whenever we shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, we shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations*: If you fail to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit*: You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation*: Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy*;
2. Not to seek renewal of this *policy*; and
3. Not to apply for any *flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When we find that duplicate *policies* are in effect, we shall by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.
2. If you choose to keep in effect the *policy* with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or your insurable interests, whichever is less.

We shall make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

Article 10—Liberalization Clause

If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should we have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to your benefit as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to your benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this *policy* below and hereby enter into this Insurance Agreement.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

10. Appendix A (2) of part 61 is revised to read as follows:

Appendix A(2)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

General Property Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and
2. Except for personal property coverage, for a unit in a condominium building.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and
2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and
3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or
2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy*:

A. The named Insured and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 8*, paragraph L.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit

building or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a "*flood*" (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a *unit* in the insured *Condominium Building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such

failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

This *policy* covers a *building* (the "*building*") at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including, if owned in common by a *Condominium Association*, as named Insured, all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and in contact with the *building* by means of a common wall (but see *Article 6*, paragraph D.2.).

3. Fixtures, machinery and equipment, including the following property, all while within the *building* and owned by the named Insured, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Fire Sprinkler Systems
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating Them
- Carpet Permanently Installed Over Unfinished Flooring
- In the *Units* Within the *Building Installed:*
- Built-in Dishwashers
- Garbage Disposal Units
- Hot Water Heaters
- Kitchen Cabinets
- Built-in Microwave Ovens
- Plumbing Fixtures
- Radiators
- Ranges
- Refrigerators
- Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B, C, and D, below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned solely by the Insured, or in common by the *unit* owners of a *condominium*, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. In the case of a *condominium*, owned solely by a *condominium association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. When the insurance under this *policy* covers personal property (contents), coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this *policy* covers other than household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: Merchandise and stock, materials and stock supplies of every description, furniture, fixtures, machinery and equipment of every description all owned by the Insured and all while within the described enclosed *building*. Bailees' goods are specifically excluded from coverage under this *policy*.

2. When the insurance under this *policy* covers household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: All household and personal property usual or incidental to the occupancy of the premises as a residence, except any property more specifically covered in whole or in part by other insurance including the peril insured against in this *policy*, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the *option of the Insured*, belonging to a servant or guest of the Insured—all while within the described enclosed *building*.

C. Coverage for personal property includes the following property, subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the *Building*
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

D. *Limitations*. Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

E. The Insured, if not an owner of the described *building*, may apply up to 10 percent of the amount of insurance applicable to the personal property covered under this item, not as an additional amount of insurance, to cover loss to *improvements* to the described *building* which have been made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, even though the *improvements* are not legally subject to removal by the Insured.

F. The Insured, if a *condominium unit* owner in the described *building*, may apply up to 10 percent of the amount of insurance on personal property covered under this *policy*, not as an additional amount of insurance, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a *condominium association policy* insuring the described non-residential *condominium building*.

G. In the case of personal property owned by the Insured in a *condominium building*, as a *condominium unit* owner, as well as in common with other *condominium unit* owners, should the amount of insurance collectible under this *policy* for a loss, when

combined with any recovery available to the Insured as a tenant in common under any *condominium association flood* insurance coverage provided under the *Act* for the same loss, exceed the statutorily permissible limits of personal property coverage available under the *Act* for the insuring of the personal property, then the limits of personal property coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

The insurance under this *policy* shall be excess over any insurance in the name of the *Condominium Association* covering the same property. Loss shall not be paid under this *policy* until the Insurer has verified the extent to which such loss is covered by any insurance in the name of a *condominium association*.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this *policy* to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application;* and

2. For 45 days at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy*.

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2*:

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., above, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Hot water heaters
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners

• Heat pumps
• Electrical junction and circuit breaker boxes
• Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways
• Clean-up
• Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or
2. In accordance with manufacturer's specifications; or
3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Public Law 101–591, 16 U.S.C. 3501 *et seq.*

K. *Residential condominium buildings* and their contents owned by the Insured as a tenant in common with others under a *condominium* form of ownership and any *building* components and contents owned solely by the Insured in connection with a *residential condominium building* in a *Regular Program community.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy.*

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—General Conditions and Provisions

A. *Pair and Set Clause*: If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud*: This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or
2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or
3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of

additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the *declarations page* which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy by Insured:* The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* which has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or

trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* That in case the mortgagor or owner shall neglect to pay any premium due under this *policy,* the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy,* it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause* (*Applicable to contents items only*): Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss*: Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values,* amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents*: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium,* property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*: The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options*: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable*: Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy,* or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment*: The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal*: In case the Insured and the Insurer shall fail to agree as to the *actual cash value* of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer*: No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation*: In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 9—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021).

11. Appendix A (3) of part 61 is added to read as follows:

Appendix A(3)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Residential Condominium Building Association Policy

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

Insuring Agreement

Agreement of insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, except as provided in *Article* 8, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy*:

A. The named Insured *condominium association*, *unit* owners in the insured *residential condominium building* and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 10*, paragraph L.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this Policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the

policy to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Residential Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Coinsurance means that the Insurer's liability for loss under the *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the property bears, at the time of loss, to the value of the insured property under the terms and conditions of this *policy*, provided, if the property is insured at the time of loss in an amount equal to the lesser of 80 percent or more of its full replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of the *policy*, as if the amount of insurance and the value of the insured property are equal.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this policy on the expiration date shown on the declarations page.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program not covered by the expense constant. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4014, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*, including the *units* within the insured *building*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in title 44 of the Code of Federal Regulations, subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75 percent of the floor area within the *building* is residential.

Residential Condominium Building Association Policy means a *policy* of *flood* insurance coverage issued to an *Association* pursuant to the *Act*.

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a single family dwelling *unit*, in a *Residential Condominium Building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide,

destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

This *policy* covers the *Residential Condominium Building* (the *building*) at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and in contact with the *building* by means of a common wall (but see *Article 6*, paragraph D.2.).

3. Fixtures, machinery and equipment, including the following property, all while within the *building*, including its *units*, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces.
- Wall Mirrors Permanently Installed.
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper.
- Ventilating Equipment.
- Fire Extinguishing Apparatus.
- Venetian Blinds.
- Central Air Conditioners.
- Awnings and Canopies.
- Elevator Equipment.
- Fire Sprinkler Systems.
- Outdoor Antennas and Aerials.
- Pumps and Machinery for Operating them.
- Carpet Permanently Installed Over Unfinished Flooring.
- In the *Units* Within the *Building, Installed:*
- Built-in Dishwashers.
- Garbage Disposal Units.
- Hot Water Heaters.
- Kitchen Cabinets.
- Built-in Microwave Ovens.
- Plumbing Fixtures.
- Radiators.
- Ranges.
- Refrigerators.
- Stoves.

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building:*

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the § ductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B. and C. below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned by the *unit* owners of the *condominium* in common, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. Owned solely by the *Condominium Association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. Coverage for personal property includes the following property, whether owned by the *Association* or *unit* owner and subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers.
- Clothes Dryers.
- Food Freezers.
- Air Conditioning Units Installed in the *Building*.
- Portable Dishwashers.
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed.
- Carpet not permanently installed over unfinished flooring.
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address.
- Portable microwave ovens and "cook-out" grills, ovens and the like.

C. *Limitations*. Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application*; and

2. For 45 days at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a flood loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning*:

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning*:

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including*:

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including*:

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building*.

E. *Other personal property, meaning*:

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy*.

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property as follows*:

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home*:

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in Article 2:

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., above, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps.
- Well water tanks and pumps.
- Oil tanks and the oil in them.
- Cisterns and the water in them.
- Natural gas tanks and the gas in them.
- Pumps and/or tanks used in conjunction with solar energy.
- Furnaces.
- Hot water heaters.
- Clothes washers and dryers.
- Food freezers and the food in them.
- Air conditioners.
- Heat pumps.
- Electrical junction and circuit breaker boxes.
- Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways.
- Clean-up.
- Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or unit is below ground, unless the lowest level is at or above the *base flood* elevation by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any *flood* insurance *policy* issued or renewed for any property located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—Replacement Cost Coverage (For Building Coverage Only)

Subject to *Articles 7 and 9*, this *policy* will, in the event of a loss for which there is coverage and subject to the limits of *building* coverage purchased, pay the full cost of repair or replacement of the damaged parts of the *building* without deduction for depreciation. Under this Article:

A. The following outdoor property, whether attached to the insured *building* or not, are excluded from Replacement Cost Coverage: Antennas, aerials, carpeting, awnings, appliances, and other outdoor equipment.

B. Carpeting inside the insured *building* and laid over or affixed to finished or unfinished flooring is excluded from Replacement Cost Coverage.

C. The Insurer's liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The cost to repair or replace the *building* or any part thereof with material of like kind and quality on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *building* or any part thereof intended for the same occupancy and use.

D. The Insurer shall not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged *building*, or parts thereof, is completed.

E. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

F. If the *building* sustains a total loss or if the Insurer should pay the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that the *building* be rebuilt at the insured property address.

Article 9—Coinsurance (For Building Coverage Only)

A. In consideration of the rate and form under which this *policy* is written, it is expressly stipulated and made a condition of this contract that the Insurer's liability for loss under this *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the insured property bears, at the time of loss, to the replacement cost value of the insured property, as follows:

1. If at the time of loss the total amount of insurance applicable to the insured property is the lesser of 80 percent or more of the full replacement cost of the insured property or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of this *policy*, as if the amount of insurance and the value of the insured property are equal.

2. If at the time of loss the Insured has not purchased the maximum amount of insurance available under the *National Flood Insurance Program*, or if the replacement cost value of the covered property at the time of the loss times 80 percent is greater than the amount of insurance purchased to cover the property, the full cost of replacement or repair of the insured property, subject to the terms and conditions of this *policy*, arising out of a covered loss, shall not be paid and payment shall be made as follows:

To the extent the Insured has not purchased insurance in an amount equal to the lesser of 80 percent or more of the full replacement cost of the insured property at the time of loss or the maximum amount of insurance available under the *National Flood Insurance Program*, the Insured will not be reimbursed fully for a loss. The amount of loss to be paid in such cases shall be determined in accordance with the following formula:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1:* The insurance carried is $500,000.00, the replacement cost value of the *building* is $1,000,000.00 (which is available under the *National Flood Insurance Program*) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500{,}000.00}{\$1{,}000{,}000.00 \times 80\%} \times \$240{,}000.00 = \frac{\$500{,}000.00}{\$800{,}000.00} \times \$240{,}000.00 = \$149{,}500.00 \text{ Limit of Recovery}^{*}$$

*($150,000 Less Deductible) The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the *building* is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds

$1,600,000 ($2,000,000×80%). The Insured is paid the full amount of the loss ($1 Million).

B. In determining if the whole amount of insurance applicable to the *building* is 80 percent or more of the full replacement cost of such *building:*

1. The replacement cost value of any covered *building* property described in *Article 4* shall be included and the replacement cost value of any *building* property described in *Article 4* which constitutes property not covered under this *policy* shall not be included.

2. Regarding *improvements,* only the replacement cost value of *improvements* installed by the *Association* shall be included.

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1,* paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided,* if at the time of loss, there is other insurance *made available* under the *Act,* in the name of a *unit* owner which provides coverage for the same loss covered by this *policy,* this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy,* in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy,* the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy,* in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy.* Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application,* renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy,* for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy,* the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy,* the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date,* as shown on the *declarations page* which is attached to the *policy.* The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy,* subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date,* it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation,* termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy,* the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured*: The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this *policy*.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided*, that it in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause* (*Applicable to contents items only*): Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal*: If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer*: No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation*: In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give

the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* of those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

12. The authority citation for part 62 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 62.3 [Amended]

13. Section 62.3 is amended as follows:

a. By revising paragraph (b) to read as follows:

* * * * *

(b) National Con-Serv, Inc., whose offices are located in Rockville, Maryland, is the servicing agent for the Federal Insurance Administration.

* * * * *

b. By removing paragraph (d).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 12, 1993.

James L. Witt,

Director.

[FR Doc. 93–28487 Filed 11–24–93; 8:45 am]

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federal register

Friday
November 26, 1993

Part III

Department of Transportation

Federal Highway Administration

Orders in Motor Carrier Safety Enforcement Cases; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of agency decisions.

SUMMARY: This document gives notice of the Decisions and Orders served from February 8, 1993, to September 30, 1993, concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR Part 386. These Orders include both those issued by the Associate Administrator for Motor Carriers and those decided by Administrative Law Judges and adopted by the Associate Administrator. Earlier motor carrier safety enforcement decisions were published previously on March 31, 1993 (58 FR 16916), June 26, 1992 (57 FR 28709), October 26, 1990 (55FR 43264) and January 29, 1990 (55 FR 2924).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Office of Chief Counsel, Federal Highway Administration (202) 366–1354, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The following orders are being published:

Name	Docket No.
Monson Trucking, Inc	R5–93–097
Exide Corporation	PA–93–001–561
Payne, Inc	R3–92–132
Used Equipment Sales, Inc	R1–91–03
Forsyth Milk Hauling Co., Inc.	91–GA–020–SA
Carry Companies of Illinois, Inc.	R5–93–348
Mr. Nick's Transporation and Brokerage, Inc.	R1–92–147
Trailer Shuttle Systems, Inc	R1–92–425
F & L Oil Co., Inc	R3–92–005
Browning-Ferris Industries of Alabama, Inc..	93–AL–027–SH
American Diversified Construction, Inc.	90–TN–043–SA
Elkins Distributing Co., Inc	R3–91–228
L. P. Fleming, Jr., Hauling, Inc	R3–91–159
James Kelton, Sr. d/b/a Kelton Tours.	90–AL–028–SA
National Retail Transportation, Inc..	R1–92–03
Trailer Shuttle Systems, Inc	R1–92–425
Browning-Ferris Industries of Alabama, Inc..	93–AL–027–SH
PGT Trucking, Inc	R3–92–278
John Steven Johnson	R9–89–058
Northeastern Poly Products, Inc.	92–207
PGT Trucking, Inc	R3–92–278
PGT Trucking, Inc	R3–92–278
WDP Transportation, Inc	91–KY–027–SA
Owings Transport, Inc	R3–91–196
Otto Brehm, Inc	R1–92–132
Lakeview Farms, Inc	R3–91–157
Bill Carter Trucking, Inc	R3–91–279
Allen A. West	91–196
Northeastern Poly Products, Inc.	92–207
Twenty-eight Motor Carrier Safety Cases.	

(23 U.S.C. 315; 49 CFR 1.48)

Issued On: November 16, 1993.

Rodney E. Slater,

Federal Highway Administrator.

Before the Federal Highway Administration: In the Matter of Monson Trucking, Inc., Respondent; Docket No. R5–93–097.

Order Granting an Extension of Time

On September 9, 1993, the Regional Director, Region 5, filed a motion for final order on a December 4, 1992, notice of claim citing Monson Trucking, Inc., (Monson) with 38 violations of the Federal Motor Carrier Safety Regulations.[1]

Monson responded in a letter dated September 22, 1993, stating that it did not receive the Regional Director's motion for final order until September 15 and requesting an additional 14 days to reply to the motion. The carrier asserts that the additional time is necessary to permit it to adequately review and address the issues raised in the motion. The Regional Director has not responded to Monson's request.

Therefore, pursuant to 49 CFR 386.33, I find that good cause has been shown for granting the time extension.

It is hereby ordered that Monson Trucking's request for an extension of time to reply to the Regional Director's motion for final order is granted. Monson shall have until Wednesday, October 6, 1993, to respond to the September 9, 1993, motion.

Dated: September 30, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the matter of Exide Corporation, Respondent; Docket No. PA–93–001–561.

Order

This matter comes before me on a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 C.F.R. part 386.

Background

In a notice of claim dated February 8, 1993, Respondent Exide Corporation was cited for 25 violations of Federal Motor Carrier Safety Regulations (FMCSRs). Twenty-two of these violations were for the repeated use of a driver who had tested positive for the use of controlled substances. These counts were cited as substantial health or safety violations of 49 CFR 391.11(a) and 391.95(a) and a penalty of $220,000 was assessed. The three remaining counts involved the use of three other drivers without first receiving the results of preemployment controlled substances tests for each driver. These counts were cited as a serious pattern of violations of 49 CFR 391.11(a) and 391.103(a) and a penalty of $3,000 was assessed for these violations. Notices of investigation and abatement were included with the notice of claim.

By letter dated February 19, 1993, Exide responded to these notices through counsel requesting a hearing "to determine if any violations did occur and if they did, whether they were of a serious or substantial nature." Exide's only specific denial, however, was that the alleged violations were neither "serious or substantial."

The Regional Director's June 28 motion for a final order asserts that Exide's response failed to comply with the requirements of 49 CFR 386.14 in that it failed to list all material facts believed to be in dispute. The Regional Director opposes the request for a hearing and asks that the Associate Administrator find the facts to be as alleged in the notice of claim and to impose a total penalty of $223,000 as assessed in the notice of claim. Attached to the Regional Director's motion is evidence supporting the violations alleged in the notice of claim.

On July 6 Exide answered the motion for final order opposing it and reiterating Exide's request for a hearing. The Regional Director replied to Exide's answer on July 12 and supplemented his reply on September 1.

Discussion

1. Violations of the Federal Motor Carrier Safety Regulations

If a motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of the facts constituting each defense * * *." 49 CFR 386.14(b)(1). In addition, "[a]

[1] I note that the Regional Director's motion did not include a copy of the notice of claim.

request for a hearing must list all material facts believed to be in dispute." 49 CFR 386.14(b)(2). I find that Exide's response of February 19 does not meet the requirements of Part 386.

A motion for final order is analogous to a motion for summary judgment. See, *e.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16,983 (FHWA Order 1993) (affirmed by Final Order Sept. 23, 1993). The Regional Director has submitted documentary evidence supporting his motion for a final order. This documentary evidence establishes a *prima facie* case that Exide violated the safety regulations cited in the notice of claim. Exide has not submitted evidence or argument tending to rebut the Regional Director's *prima facie* case.

The Associate Administrator has held in numerous cases that when a carrier seeks a hearing under 49 CFR 386.14 that is opposed by the Regional Director with sufficient evidence, then simple denials will not suffice and the carrier must properly support its hearing request. *In re Kelton Tours*, FHWA Docket No. 90–AL–028–SA, Final Order at 2 (July 28, 1993), *citing In re Bryant Trucking*, 58 FR 16,968 (FHWA 1992) (Final Order). To the extent that Exide's February 19 response can be read to deny any facts alleged in the notice of claim, I find such bare denial to be insufficient to support Exide's request for a hearing in view of the Regional Director's *prima facie* case.

Accordingly, I deny Exide's request for a hearing and I find that Exide violated the FMCSRs as alleged in the notice of claim by requiring or permitting Thomas A. Hodges to drive a commercial motor vehicle in interstate commerce on the dates cited in Exhibit A to the notice of claim, despite Mr. Hodges' positive controlled substances test which rendered him unqualified to drive, and by requiring or permitting Donald Allen Green, Michael L. Gannon, and Mark E. Sanders to drive commercial motor vehicles in interstate commerce on the dates cited in Exhibit B to the notice of claim, despite Exide's failure to complete the required preemployment controlled substances testing for these drivers.

2. Penalty Determinations

The notice of claim states that requiring or permitting a driver to drive a commercial motor vehicle in interstate commerce, after that driver has tested positive for controlled substances, constitutes a "substantial health or safety violation" of the FMCSRs and that, in this case, requiring or permitting three drivers to operate commercial motor vehicles in interstate commerce without first completing the required controlled substances testing amounts to a "serious pattern of safety violations."

Exide specifically challenges the Regional Director's assertion that the use of a driver who tested positive for controlled substances amounts to a substantial health or safety violation. Exide argues that the Regional Director must demonstrate that the use of this driver, who tested positive more than a week before the first of the 22 instances cited in the notice of claim, resulted in serious personal injury or death or could have reasonably led to serious injury or death. Moreover, Exide faults the Regional Director for not offering any evidence that the driver was impaired at the time of the violations.

Impairment of the driver is not an issue in this case. Exide has not been charged with permitting an impaired driver to drive. Exide has been charged with violating the FHWA's controlled substances testing regulations which expressly provide that a person who tests positive for controlled substances is not qualified to drive. The Regional Director's position in this regard is fully consistent with FHWA policy.

The use of unqualified or disqualified drivers poses a serious threat to the traveling public. See, *e.g., Used Equipment Sales, Inc.*, 58 FR 16,952, at 16,962 (1993) (Order of the Administrative Law Judge) (affirmed upon review, Final Order September 23, 1993). I have recently held that the use of a driver who was unqualified to drive because of a positive test result for controlled substances constituted a substantial health or safety violation of the FMCSRs. *In the Matter of Mr. Nick's Transportation and Brokerage, Inc.*, FHWA Docket No. R1–92–147 (August 26, 1993). Accordingly, I find Exide's use of Thomas A. Hodges as a driver of a commercial motor vehicle in interstate commerce, while unqualified as a result of a positive controlled substances test, constitutes a substantial health or safety violation of the FMCSRs. Similarly, I find Exide's use of Donald Allen Green, Michael L. Gannon, and Mark E. Sanders as drivers of commercial motor vehicles in interstate commerce, while unqualified as a result of Exide's failure to complete the required preemployment controlled substances tests for these drivers, constitutes a serious pattern of violations of the FMCSRs. *Id.*

Exide also argues that the Regional Director should show how each day of driving by an unqualified driver represents a separate violation and not just one violation of the FMCSRs. Again, the Regional Director's position on this issue is consistent with long-standing agency interpretation of its regulations. Each time a motor carrier dispatches an unqualified or disqualified driver to drive, the carrier separately violates the FMCSRs. See *Used Equipment Sales, Inc.*, FHWA Docket No. R1–91–03 (Final Order September 23, 1993).

The Regional Director has assessed the maximum civil penalty allowed under law for the 25 violations cited in the notice of claim. Exide has argued the assessed penalty is inappropriate and that the burden is on the Regional Director to support his penalty assessment.

The amount of the civil penalty is determined by taking into account the "nature, circumstances, extent, and gravity of violations committed, and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance." 49 U.S.C. 521(b)(2)(C). I agree with Exide that the burden of proof is on the Regional Director to establish the justification for and amount of the penalties assessed in an enforcement action. *Used Equipment Sales, Inc.*, 58 FR 16,952, at 16,962 (1993) (Order of the Administrative Law Judge) (affirmed upon review, Final Order September 23, 1993). I do not agree, however, that a hearing is required. The Associate Administrator has repeatedly held that an objection to the penalty amount does not constitute a material factual issue in dispute which would merit a hearing. See, *e.g., In re Drotzmann, Inc.*, 55 FR 2,929 (FHWA 1990) (Order Appointing Administrative Law Judge). While the Associate Administrator has stated that he has the inherent authority to send a matter to a hearing if a hearing will enhance his ability to make a decision in a particular case (*Gunther's Leasing Transport, Inc.*, Order of the Associate Administrator September 30, 1991, published at 58 FR 16,985 (1993)), I do not believe that a hearing is necessary in this case to determine the appropriate penalty.

Nevertheless, I believe that the record before me is inadequate for me to independently determine the appropriate penalty in this case. The Regional Director's motion for final order states that the Regional Director considered the size of the carrier and prior enforcement proceedings against it in assessing the penalty amount. As noted above, the statute authorizing civil penalties requires additional factors to be considered, and I find that the parties must further address the penalty issue before I can determine

whether the penalty assessed by the Regional Director is reasonable.

It is hereby ordered that Exide's hearing request is denied, that the Regional Director's motion for final order is granted as to the issue of liability, and the Regional Director and Exide are directed to submit pleadings and supporting evidence, not already submitted, addressing the appropriate penalty for the 25 violations cited in the notice of claim and for which this order finds Exide liable. The parties shall submit their pleadings within 30 days of the date of this order. Either party may reply to the pleading of the other within 15 days of the date of service of the pleading. Submissions shall be in accordance with 49 CFR 386.61.

Dated: September 24, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Payne, Inc., Respondent. Docket No. R3–92–132.

Final Order

This matter comes before me upon a Verified Motion for Final Order by the Regional Director, Region 3. The Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386, govern this proceeding.

Background

The Respondent, Payne, Inc. (Payne), is an authorized for-hire carrier of general freight. After a July 1991 compliance review of its operations revealed numerous hazardous materials violations, Payne was issued an "unsatisfactory" safety rating and an Operations Out-of-Service Order the following October. A subsequent review of Payne's operations was performed on December 6, 1991, and revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399. As a result of this review, the Regional Director issued a notice of claim to Payne on February 24, 1992.

The notice of claim charged Payne with 18 violations of the FMCSRs. Specifically, the carrier was charged with nine violations of § 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty; six violations of § 395.3(b), requiring or permitting a driver to drive after having been on duty more than 70 hours in eight consecutive days; and three violations of § 395.8(e), failing to ensure that entries on records of duty status are true and correct, in that a driver used by Payne allegedly made false entries upon records of duty status.

Payne submitted two replies to the notice of claim, the first on March 4, 1992, and the second on March 13, 1992. In its first reply, Payne requested an administrative hearing, but stated that it "[did] not dispute the facts of the eighteen (18) violations * * * set forth in the Notice of Claim * * *." Payne claimed, however, that it intended to present at a hearing evidence tending to show that the FHWA's Federal Program Manager for Region 3 had approved, prior to the December 6, 1991, compliance review, a "plan" under which Payne would "abate all safety violations" cited in the October 1991 Out-of-Service Order. According to the carrier's reply, "[t]he plan went into initial effect December 1, 1991[,] but did not take full effect until about December 9, 1991. Payne, Inc.[,] advised the [FHWA] that it would not be ready for another safety review until the week of December 9 through 13, 1991, but the Federal agents conducted the review prematurely on or about December 6, 1991." Respondent's March 4, 1992, Letter at 1.

On March 13, 1992, Payne submitted a second reply, which it styled an "amendment and supplement" to its earlier letter. The carrier again stated that it did not dispute the facts of the 18 violations cited in the notice of claim, but argued that the FHWA's investigators "misrepresented" the July 1991 review as "a follow-up to an earlier review conducted in 1983" and also "misrepresented" to Payne that the "*sole purpose* of [the review on] * * * December 6, 1991[,] was to remove the out of service order for transporting hazardous materials * * *," and not to search for additional violations of the FMCSRs. Respondent's March 13, 1992, Letter at 1.

The Regional Director submitted his Verified Motion for Final Order and in Opposition to Request for a Hearing on April 9, 1993. In his motion, the Regional Director stated that the December 6, 1991, compliance review was intended as a follow-up to both the October 1991 Out-of-Service order and an earlier enforcement action. The Regional Director's motion specifically denied that the FHWA Federal Program Manager had agreed to any sort of "grace period" before Payne would have to come into compliance with the FMCSRs. Regional Director's Motion for Final Order at 2–3. Payne has made no reply to this motion.

Discussion

1. Payne's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute."Section 386.14(b)(2).

Payne has not denied any of the charges in the notice of claim. Furthermore, for reasons that will be explained more fully in the next section, I find Payne's statements concerning the alleged "plan" fail to show the existence of a material factual dispute as to the 18 violations charged in the notice of claim. Accordingly, I decline to grant Payne's request for an administrative hearing.

2. The Regional Director's Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.,* 58 FR 16,983 (FHWA 1991) (Order). Consequently, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party.

As I have already noted, Payne has not denied the charges leveled against it in the notice of claim. Furthermore, the Regional Director's motion was accompanied by extensive documentary evidence, including drivers' records of duty status, company invoices, shipping papers, etc., tending to show that Payne committed each of the violations charged against it in the notice of claim.

The only remaining issue for purposes of Payne's liability is the carrier's claim that it entered into an agreement with the Federal Program Manager to allow it a grace period before coming into full compliance with the FMCSRs. In his motion for final order, the Regional Director's took issue with Payne's description of the "plan," claiming instead that it consisted only of a list of actions to be taken by Payne to abate the violations found during the July 1991 compliance review that led to the issuance of the Out-of-Service order. According to the Regional Director, "Payne's allegation that it had a plan to correct its past noncompliance with some type of grace period approved by [the Federal Program Manager] is an irrelevant misunderstanding * * *."

Regional Director's Verified Motion for Final Order at 3.

Regardless of whether such an agreement was actually made, I do not believe that an FHWA Federal Program Manager has the authority to allow a motor carrier to continue to operate in violation of the FMCSRs. Consequently, any such agreement would be invalid. Moreover, I note that the violations discovered in December 1991 occurred the previous October and November, two to four months after the compliance review that led to an Out-of-Service Order. These violations involve both the regulations governing carriers' recordkeeping and drivers' hours-of-service. Payne's failure to remedy these violations by October 1991 is unacceptable.

For all of these reasons, I find that Payne committed the 18 violations charged in the notice of claim. Therefore, I grant the Regional Director's motion for final order.

3. Penalty Determination

For each of the 15 charges involving hours-of-service violations, the Regional Director assessed a penalty of $750. The record before me indicates that these 15 counts, which occurred over a period of less than two months, involved no fewer than six of Payne's drivers. I find these two types of charges demonstrate serious patterns of safety violations, subject to a maximum penalty of $1,000 per violation, not to exceed $10,000 per pattern. 49 U.S.C. 521(b)(2)(A). I note that the penalty assessed by the Regional Director is within the statutory limits. Payne has provided me with no reason to reduce the assessed penalty, and considering the nature and scope of the violations, I decline to do so. 49 U.S.C. 521(b).

The three remaining charges are for violations of recordkeeping requirements, and subject the carrier to a maximum penalty of $500 for each violation. 49 U.S.C. 521(b)(2)(A). The Regional Director assessed a penalty of $400 for each count. Payne has offered no arguments in mitigation of this amount, and the record before me provides none. Accordingly, I find the penalties assessed by the Regional Director appropriate and reasonably calculated to induce Payne's compliance with the FMCSRs.

It is hereby ordered that the Regional Director's motion for a final order is granted. Payne, Inc., is directed to pay $12,450 to the Regional Director within 30 days of the date of this Order.

Dated: September 23, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Used Equipment Sales, Inc., Respondent. Docket No. R1–91–03.

Final Order

This matter comes before me on a petition for review of a decision of Administrative Law Judge Robert L. Barton, Jr., served on May 6, 1992. In his decision, the Administrative Law Judge found Respondent Used Equipment Sales, Inc., liable for 31 violations of the Federal Motor Carrier Safety Regulations and assessed a total civil penalty of $37,900.[1] For the reasons set forth below, the decision of the Administrative Law Judge is affirmed and hereby adopted as a final agency order.

1. Respondent Used Equipment Sales, Inc., argues that the Administrative Law Judge erred in holding that each day of use of a disqualified driver may be considered a separate offense. Respondent asserts that holding a carrier liable for separate violations for each day it used a disqualified driver amounts to cumulative penalties for the same continuing offense, and that such cumulative penalty is not authorized by the civil penalty statute (49 U.S.C. 521(b)).

In this case the Administrative Law Judge found Respondent liable for separate dispatches of disqualified drivers. This holding is in accord with the Federal Motor Carrier Safety Regulations. Section 391.15 provides that a carrier may not require or permit a driver who is disqualified to drive. 49 CFR 391.15. Each time a carrier dispatches a disqualified driver on a new trip is a separate violation. To accept Respondent's argument would compel us to conclude that continuous and repeated use of a disqualified driver during the period the driver is disqualified would never constitute more than one violation of the agency's regulations. That clearly is not the law.

2. Respondent argues that the Administrative Law Judge erred in ruling that Respondent should have known of the disqualification of driver MacDonald.

The Judge dealt with this issue at length. He held that Respondent should have know that MacDonald, and other drivers, were disqualified and, in effect, would have known they were disqualified if Respondent exercised closer control over its operations.

Nothing in Respondent's Petition for Review provides me with a basis for overturning the Judge's conclusion on this point. Respondent argues that there were no facts to put company officials on notice that MacDonald had been disqualified. Respondent further argues that no "reasonable inquiry" that might have been made would have disclosed the fact of MacDonald's disqualification.

I believe that the Administrative Law Judge's findings and conclusions as to what Respondent knew or should have known are entitled to considerable deference. The Judge conducted a full, formal hearing in this matter, observed the witnesses, weighed all the evidence, and applied the law to form his conclusions. I concur with the Regional Director that the Judge "determined that it was the duty of the respondent to take effective measures to supervise the performance of its employees." To accept Respondent's argument on this point would be to accept the notion that a motor carrier could escape liability for noncompliance with important safety regulations if it adopted company policies that employees should obey the law, but then took no effective action to ensure that the employees abided by that policy. Respondent points to no facts that prevented Respondent from more closely monitoring the work of both its drivers and its dispatchers.

3. Respondent argues that the Administrative Law Judge erred in ordering that a civil penalty be paid for Respondent's use of MacDonald, a driver who was disqualified. Respondent argues that, in effect, the Judge found that the dispatch of MacDonald was not a substantial health or safety violation. [Respondent argues that the FHWA does not have civil penalty authority available to it unless the alleged violation falls into one of three penalty categories (substantial health or safety, serious pattern, or recordkeeping).] The Regional Director in reply maintains that the Judge never said that the dispatch of MacDonald was not a substantial health or safety violation.

The Administrative Law Judge's discussion of this violation must be read in the context of the Judge's entire opinion. First, I note that the primary discussion of the violation involving MacDonald, and the assessment of a $1,500 fine for each use of that driver, is under the heading of "Substantial Health and Safety Violations" (pages 53 through 57). Second, while the Judge specifically stated that he could not determine that the dispatch of

[1] The November 21, 1990, notice of claim upon which this case is based alleged 32 violations of the Federal Motor Carrier Safety Regulations and assessed a total penalty of $75,500.

MacDonald was a "serious infraction" because there was no evidence showing why McDonald's license was suspended (see Decision at 55), on page 47 of the decision the Judge expressly found that MacDonald was disqualified for safety reasons and posed "a serious threat to the traveling public."

The test for what constitutes a "substantial health or safety violation" is set forth in the statute, *i.e.*, whether the violation "could reasonably lead to, or has resulted in, serious personal injury or death * * *." 49 U.S.C. 521(b)(2)(A). In *R. W. Bozel Transfer, Inc.* the Associate Administrator discussed "substantial health or safety violations," as that term is used in 49 U.S.C. 521(b), and stated that "Whether an action is a threat to health and safety is inherent in the action itself * * *." 58 FR 16,918, at 16,920.

The Administrative Law Judge in this case has exhaustively analyzed the facts of this case. The Judge's decision contains a lengthy discussion of both the liability and penalty issues raised in this case. I believe that the Judge concluded that the dispatch of MacDonald, who had been disqualified, was a substantial health or safety violation because of the serious threat to the traveling public posed by disqualified drivers. The Judge further concluded, however, that a lesser penalty was warranted that that imposed for the use of drivers Bradley and DeVasto because of the lack of evidence on the specific reason MacDonald's license was suspended. Thus, the Judge mitigated the assessed penalty for using this disqualified driver because of an absence of evidence to show *how* serious these violations were. I find nothing in Respondent's Petition for Review to persuade me that the judge erred in concluding that the dispatch of MacDonald, after MacDonald was disqualified, constituted a substantial health or safety violation. Similarly, I find nothing in the record before me to warrant revising the Judge's penalty determination for these particular violations.

4. Respondent argues the Administrative Law Judge erred with respect to Respondent's failure to retain copies of records of duty status and driver inspection reports required to have been prepared by driver DeVasto. Respondent mischaracterizes, however, the Administrative Law Judge's imposition of "cumulative per diem penalties." As discussed above, the fact of the matter is that Respondent was not assessed penalties for multiple days of the same violation (*i.e.*, for succeeding days' failure to maintain a particular record). Rather, Respondent was found to have separately violated the recordkeeping requirements for separate days. Each of the separate days cited required separate reports which Respondent failed to obtain and keep. The Judge's decision on this point is consistent with the Federal Highway Administration's longstanding interpretation of the Federal Motor Carrier Safety Regulations.

In its Petition for Review, Respondent claims that it was double punishment to cite Respondent for Respondent's failure to keep both records of duty status and vehicle inspection reports. Respondent claims that the form it uses for driver's records of duty status contains the required vehicle inspection reports on the reverse side.

The applicable safety regulations separately require the retention of driver's records of duty status and vehicle inspection reports. While a carrier is permitted under the rules to combine a record of duty status with any other form (49 CFR 395.8(a)(1)), the carrier's decision to combine the record of duty status with another agency required form does not insulate the carrier from citations for separate violations, which is what occurred here.

The Respondent also argues that the Administrative Law Judge erred in failing to consider the fact that "when Respondent discharged driver DeVasto it no longer had an effective means to enforce collection of logs and vehicle inspection records."

The safety regulations impose a duty on motor carriers to take effective steps to ensure that their drivers make and submit driver's records of duty status and vehicle inspection reports. The Judge found that Respondent did not have an effective system in place for ensuring that these reports were made and submitted. I believe that the Judge carefully assessed the facts in this instance and properly applied the law to find Respondent liable for these violations. The record amply supports a finding that Respondent was in violation of the regulations before terminating DeVasto, and any inability to secure from DeVasto the required records afterward would speak to mitigation rather than exoneration. In this instance, I believe that the Administrative Law Judge properly weighed all the facts in arriving at his penalty determinations.

For the Reasons Set Forth Above, *It is hereby ordered* that the Administrative Law Judge's Decision of May 6, 1992, is adopted and Respondent Used Equipment Sales, Inc., is directed to pay $37,900 to the Regional Director, Region 1, within 30 days of the date of this Order.

Dated: September 23, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Forsyth Milk Hauling Co., Inc., Respondent, Docket No. 91–GA–020–SA.

Final Order

This matter comes before me on a renewed motion for final order by the Regional Director, Region 4. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386 (Rules of Practice).

Background

On December 5, 1991, the Associate Administrator issued an order in this case, holding that Forsyth Milk Hauling Co., Inc., (Forsyth), failed to report a reportable accident within the required time period in violation of 49 CFR 394.9(a). The carrier admitted it reported the accident several months after it occurred and only after it was told by a Federal Highway Administration safety investigator that this accident was "reportable" under 49 CFR 394.3[1] The Associate Administrator also held that, in the face of Forsyth's denials, the Regional Director did not make a *prima facie* showing that Forsyth committed the remaining 14 charges of failing to properly maintain driver qualification files as required under 49 CFR 391.51(a). Therefore, he denied the Regional Director's motion for final order as to these 14 counts but granted him leave to renew this motion. *In re Forsyth Milk Hauling Co.*, 58 FR 16,983 (FHWA 1983) (Order).

On May 4, 1992, the Regional Director filed a renewed motion for final order on the remaining counts. Included with that motion was a declaration by safety investigator Randolo B. Cuttino whose review of Forsyth's operations led to the charges in this case. The investigator declared that all of the driver qualification files he examined were incomplete, and that Forsyth employees were unable to produce the missing documents by the end of the two-day compliance review. Forsyth's president, by sworn declaration, replied that he did keep complete driver qualification files on the dates the compliance review was conducted, but that they were simply misplaced and could not be

[1] Part 394, Notification and Reporting of Accidents, has since been removed from the Federal Motor Carrier Safety Regulations. 58 FR 6726 (1993). Effective March 4, 1993, 49 CFR 390.15(b) provides that instead of submitting reports, carriers are required to maintain a register recording each "accident," as defined in 49 CFR 390.5, for a period of one year after the accident occurs.

located for the investigator due to the confusion caused by his bookkeeper's imminent departure from the company and by the investigator's unexpected arrival.

The carrier also contests the reportable accident charge. In his sworn statement, Forsyth's president stated the non-fatal accident was not a "reportable accident" under 49 CFR 394.3 because there were no injuries requiring treatment away from the scene and the damages were under $4,400. Forsyth claimed it submitted an accident report on the September 30, 1990, accident "in a good faith effort to comply" with the recommendations made by the investigator, not because it was obligated to do so under § 394.9. Forsyth attached to its reply a copy of the accident report which indicates a person other than the carrier's driver or co-driver was injured in the accident. This accident report was a part of the record upon which the Associate Administrator issued his December 1991 order. The Regional Director did not respond to Forsyth's pleading and thus did not address the carrier's assertion regarding the reportable accident charge.

Discussion

The Regional Director's Renewed Motion for Final Order

The December 5, 1991, opinion in this case addressed at great length the evidentiary burden borne by the Regional Director when seeking a final order on motion. Because the Regional Director would bear the burden of proving that Forsyth committed the alleged violations at any hearing on these charges, he must clearly establish all of the essential elements of his claim when seeking this summary disposition. *In re American Pacific Power Apparatus, Inc.*, 58 FR 16,977, at 16,978 (FHWA 1993) (Order). All pleadings, affidavits, and supporting evidence must show that there is no genuine issue as to any material fact and that the Regional Director is entitled to a judgment as a matter of law.

A. Incomplete Driver Qualification File Charges

The declarations of Messrs. Cuttino and Sanders, Sr., reveal that the parties do not dispute the facts surrounding Mr. Cuttino's examination of the carrier's driver qualification files on January 10 and 11, 1991. Both parties agree that the carrier could not produce the missing documents at the time of the review. The parties disagree, however, on the consequences of these facts.

The Regional Director concludes that the files could not be produced because they "did not exist." (Mot. Final Order at 4.) Even if Forsyth did have the required files at the time of the review, the Regional Director asserts that "[a]ny late submission of DQ files which Forsyth might attempt in the future would fail to disprove the failure to maintain DQ files at the time of the review." (Mot. Final Order at 5.) Therefore, the Regional Director argues, the carrier violated 49 CFR 391.51(a) because it failed to properly maintain a driver qualification file on each driver it employs. But Forsyth asserts that it "did have Driver Qualification files on January 10 and 11, 1991 and that they were in order" but were simply misplaced due to the confusion. (Sanders Decl. at 3.) The carrier concludes that this fact, coupled with its willingness to submit the complete files to the Regional Director once they were located, support a finding that it did properly maintain its driver qualification files at all times.

Thus, the pleadings plainly raise a question of law, not fact, namely, whether a carrier's inability to produce complete driver qualification files at the time of a compliance review, despite its claim that it did have the complete records at that time, constitutes a violation of 49 CFR 391.51(a). For the reasons set forth below, I find that Forsyth, in failing to produce the driver qualification files upon demand, violated § 391.51(a).

The motor carrier investigation program is built upon a practice of unannounced carrier reviews. By providing limited, if any, advance notice of the review, the safety investigator is better able to determine a carrier's true level of compliance with the Federal Motor Carrier Safety Regulations. Given sufficient notice, all but the most remiss carrier could cure its deficiencies before the arrival of the investigator. The FHWA cannot tolerate such piecemeal compliance, but instead requires that carriers consistently comply with the FMCSRs. In recognition of this policy, 49 U.S.C. 504(c) authorizes safety investigators, on demand and display of proper credentials, to inspect the equipment of a carrier and inspect and copy any record of a carrier. Thus, the statute authorizing safety inspections and the underlying aim of the inspection program both support the finding that a carrier must be able to produce certain documents *on demand*. Forsyth was not able to do so, and therefore violated 49 CFR 391.51(a).

B. Failure To Report a Reportable Accident Charge

The carriers' May 4, 1992, pleading and the declaration of its president now dispute the reportable accident violation for which Forsyth was found liable and fined $300 in the December 5, 1991, order.

Any party may petition the Associate Administrator for reconsideration of a final order within 20 days after issuance under 49 CFR 386.64. Any aggrieved person adversely affected by a final order, may, within 30 days of such order, petition for its review in a United States Court of Appeals under 49 CFR 386.67. Because Forsyth's May 4 pleading was submitted to me, I consider his objections to the reportable accident charge to be a petition for reconsideration of the Associate Administrator's ruling on this count in the December 5 order. Coming five months after the date of entry of the order, well past the 20-day time limit, Forsyth's claim is untimely.

The principle of finality of agency decisions cautions against re-opening an issue once it is fully and fairly addressed. That principle dictates the result in this case. With his original motion for final order, the Regional Director submitted a motor carrier accident report which revealed that a person in the car involved in the September 30, 1990, accident with a Forsyth driver was injured. In addition, Forsyth admitted in its reply to the notice of claim [2] that it did not report the injury accident until told to do so by the safety investigator several months after the accident occurred. Thus, the Associate Administrator found that Forsyth admitted it failed to report the accident in a timely manner. Since the Associate Administrator thoroughly addressed the reportable accident charge in his earlier order. I find no reason to reconsider the charge at this late date.

Penalty Determination

The Regional Director assessed a penalty of $300 for each of the 14 driver qualification charges. The general civil penalty provision, 49 U.S.C. § 521(b)(2), establishes a maximum civil penalty of $500 for each such recordkeeping violation. Forsyth has not directly

[2] Forsyth also failed to reply to the Regional Director's original motion for final order. Thus, the carrier had the opportunity to raise its objection to the reportable accident charge in response to the Regional Director's motion but failed to do so. Similarly, Forsyth could have petitioned for reconsideration or appealed but did neither. To the extent that this decision is adverse to Forsyth, it is, in part, attributable to the carrier's failure to fully participate in this proceeding.

objected to the penalty amount, but has asserted it is now willing to supply the Regional Director with the missing driver qualification files. As the Associate Administrator has held before, post-review compliance efforts carry little weight in determining an appropriate penalty. Forsyth "should have been in full compliance prior to this action based on its earlier contacts with the Agency," because Forsyth was cited for driver qualification file violations in a 1984 safety review report. See *In re Stanford & Inge*, 55 Fed. Reg. 43,296 (FHWA 1990) (Order Upon Reconsideration). Moreover, in spite of Forsyth's assertions that it would supply the missing driver qualification files, they have apparently never been produced. Thus, Forsyth has not shown that it has, in fact, taken action to correct its long history of driver qualification file deficiencies.

The extent of these driver qualification file violations is great. The compliance review report documents that the carrier was unable to produce a single properly-maintained driver qualification file. Forsyth claims the circumstances surrounding the inspection, *i.e.*, the confusion of the inspector's unplanned arrival at the time his bookkeeper was departing, somehow justify its inability to produce the requested records. I cannot agree. This factor is a mitigating one at best, and I believe the mid-range penalty of $300 per violation sufficiently reflects this factor. Finally, Forsyth has not claimed it would be unable to pay the $4,200 penalty, or that such sum would adversely affect its ability to continue to do business. Nor do I independently find evidence in the record that would lead me to believe payment of the $4,200 sum would cause undue financial hardship for Forsyth.

After applying the nine penalty determination factors in 49 U.S.C. 521(b)(2)(C) to the facts of this case, I find that the $4,200 penalty assessed by the carrier is reasonably calculated to induce compliance with the regulations.

It is hereby ordered that the Regional Director's motion for final order is granted, and Forsyth Milk Hauling Co., Inc., is directed to pay the sum of $4,200 for 14 violations of 49 CFR 391.51(a), failing to properly maintain a driver qualification file for each driver it employs.

Dated: September 23, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Carry Companies of Illinois, Inc., Respondent. Docket No. R5–93–348.

Order

This matter comes before me on a motion by Respondent Carry Companies of Illinois, Inc. (Carry), for an extension of time until September 17, 1993, to reply to a notice of claim and a notice of investigation, apparently dated July 16, 1993, and a notification of safety rating, apparently dated July 14, 1993. This motion was filed by counsel for Carry on August 18, which, according to the motion, was the date Carry engaged the service of counsel to represent it. The request for additional time is based on the need for counsel to consult with Carry and to review Carry's records.

The Regional Director has opposed this request for additional time partly on the ground that additional time is not needed under 49 CFR part 385 to respond to the notification of safety rating and partly because the Regional Director believes that the request is a delaying tactic.

At the outset I wish to note that the record before me consists solely of Carry's motion, the Regional Director's opposition, and Carry's August 19 rebuttal to the Regional Director's opposition. I do not have copies of the notice of claim, notice of investigation, or notification of safety rating.

I agree with the Regional Director that additional time is not now needed for Carry to respond to the notification of safety rating. Section 385.15 of the Federal Highway Administration (FHWA) regulations provides that petitions for review of safety ratings are to be submitted within 90 days to the Director, Office of Motor Carrier Field Operations. 49 CFR 385.15(b)(1). Carry's response to the safety rating notice should be made to the Director of that office in accordance with part 385 of the regulations. By my reckoning, Carry has until October 12, 1993, to submit such a petition.

Review of the notice of claim and notice of investigation is governed by 49 CFR part 386, FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. 49 CFR 386.11. Reply to a notice of claim combined with a notice of investigation is due in 30 days. 49 CFR 386.11(c)(3) and 386.14(a). Requests for extensions of time are properly filed with the Associate Administrator. 49 CFR 386.33.

Apparently based on a compliance review of June 14, 1993, Carry's safety rating was downgraded to conditional and it was served with a notice of claim for $29,000 and a notice of investigation. Carry has requested a limited extension of time for it to consult counsel and for counsel to prepare a reply to the agency's actions of July 14 and 16. I am not persuaded that this request constitutes a "delaying tactic." Nothing in the record before me indicates that Carry has attempted to evade its responsibilities under either the substantive safety regulations or the FHWA's procedural regulations. The Regional Director's pleading admits that Carry was in contact with the Regional motor carrier safety office at least within 30 days of the notice of investigation. The Regional Director does not say whether Carry submitted any written reply during that time.

The Regional Director has not indicated in what way the government would be prejudiced by giving the respondent limited, additional time to prepare its response to the agency's charges. The Regional Director has not alleged that he believes that Carry has defaulted and that the notice of claim has become a final agency order, nor has the Regional Director moved the Associate Administrator for a final order respecting the notice of investigation. See 49 CFR 386.14(e).

I believe that the interests of justice will be best served by permitting Carry until September 17, 1993, to respond to the notice of claim and notice of investigation issued to it on July 16, 1993. Respondent Carry is advised that its reply should conform in all other respects to the requirements of section 386.14(b).

Accordingly, *it is hereby ordered* that Carry Companies of Illinois, Inc., shall reply to the July 16, 1993, notice of claim and notice of investigation on or before September 17, 1993.

Issued: August 26, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Mr. Nick's Transportation and Brokerage, Inc., Respondent. Docket No. R1–92–147.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 1, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 C.F.R. part 386.

Background

The Respondent, Mr. Nick's Transportation and Brokerage, Inc. (Mr. Nick's), is an authorized for-hire carrier of fruit and produce. After a compliance review of Mr. Nick's operations in October and November 1991 allegedly

revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served the carrier with a notice of claim on December 23, 1991. The notice of claim charged Mr. Nick's with 13 violations of the FMCSRs, including: one violation of §§ 391.11(a) and 391.95, using an unqualified driver who tested positive for a controlled substance; one violation of § 391.11(b), using a driver less than 21 years old; seven violations of § 391.103, failing to require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition; two violations of § 395.3, requiring or permitting a driver to drive after having been on duty more than 70 hours in eight consecutive days; and two violations of § 391.51, failing to maintain a complete qualification file for each driver used or employed.

Mr. Nick's replied to the notice of claim in a letter dated January 14, 1992. The carrier did not deny any of the charges in the notice of claim, but asked for an administrative hearing in order to "state our case and ask for consideration and leniency." Respondent's Reply at 1. The carrier offered explanations for each of the violations charged in the notice of claim.

The Regional Director submitted his Motion for Final Order on February 18, 1992. Mr. Nick's has made no reply to this motion.

Discussion

1. Mr. Nick's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * * " 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." § 386.14(b)(2). Ordinarily, unless a respondent's reply complies with these basic requirements, no hearing will be granted.

As I have already noted, Mr. Nick's has not denied any of the charges listed in the December 1991 notice of claim. In fact, with the exception of the charge of using a driver who had tested positive for a controlled substance, the carrier has admitted to all of the charges, while offering explanations in mitigation of the assessed penalties. With regard to the positive drug test, Mr. Nick's stated that "[t]he driver was and [sic] excellent driver, has several safe driving awards in his past experience. When tested again, the driver tested negative. This seems to cast serious doubt on the validity of the previous test and raises the question of error." Respondent's Reply at 2. I do not find this statement to be a denial that one of the carrier's drivers did in fact test positive for a controlled substances. Furthermore, Mr. Nick's does not deny that it used this driver after the date of the positive test. Instead, the reply contains a mere allegation, without elaboration, that the driver was later retested with negative results. The record before me contains no other evidence that the driver in question actually underwent a second test, nor does it provide any evidence as to when such a test might have taken place (hours, days, or weeks after the first test?). For these reasons, I find this statement does not present a material factual issue in dispute requiring a hearing.

Turning to Mr. Nick's request that a hearing be granted in order to allow it to present arguments for mitigation of the penalty amount, I note that "[m]itigation alone is not a material factual issue in dispute subject to hearing." *In the Matter of Tonawanda Tank Transport Service, Inc.*, 55 FR 43,279 (FHWA 1990) (Final Order). Accordingly, for the reasons set forth above, I hereby deny Mr. Nick's request for an administrative hearing.

2. The Regional Director's Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16,983 (FHWA 1991) (Order). Consequently, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party, Mr. Nick's in this case.

As I have already noted, Mr. Nick's has not denied any of the charges leveled against it in the notice of claim. The Regional Director, on the other hand, has not submitted any affidavits or other evidence tending to support the charges. When a carrier denies the allegations against it but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish at least a *prima facie* case. See, *e.g., Forsyth Milk*, FR at 16,984. But in the absence of a denial by the carrier, I do not believe that the Regional Director must submit affidavits or other evidence in support of his motion for final order. *In re Bill Carter Trucking, Inc.*, 58 FR 16,935 (FHWA 1992) (Final Order). If Mr. Nick's had denied any of the charges against it, then the Regional Director would have been required to submit documentary or other evidence supporting his charges.[1] *Id.*

I do not believe Mr. Nick's can complain that the Regional Director has not produced substantive evidence in support of the violations alleged. The carrier has failed to deny any of the charges cited and ignored repeated opportunities to rebut the Regional Director's allegations, most recently by failing to respond to the Regional Director's motion for final order.

Accordingly, based on the record before me in this case, I find that Mr. Nick's committed the 13 violations cited in the notice of claim. Therefore, I grant the Regional Director's motion for final order.

3. Penalty Determination

The notice of claim alleged that the charge of using a driver who had tested positive for a controlled substance constituted a "substantial health and safety violation," and assessed a penalty of $3,000. Whether an action is a threat to health and safety, and thus subject to a maximum penalty of $10,000 under 49 U.S.C. § 521(b)(2)(A), is inherent in the action itself. *In re R.W. Bozel Transfer, Inc.*, 58 FR 16,918, 16,920 (FHWA 1992) (Final Order). In this case, the facts indicate that Mr. Nick's used a driver found to have used controlled substances in the past. The use of this driver by the carrier created a substantial safety hazard for members of the public who had to share the road with the driver. Accordingly, I find the violation of §§ 391.11(a) and 391.95 constituted a substantial health and safety violation warranting a significant penalty.

In its defense, Mr. Nick's has requested mitigation of the penalty amount, and has made unsubstantiated statements to the effect that the driver tested negative for drugs at a later date. In light of the serious nature of this violation, however, and absent more concrete information from the carrier in response to the notice of claim or the Regional Director's motion for final order, and recognizing that the assessed penalty is well below the maximum allowed by law, I find that no reduction in the amount of the penalty is warranted.

For each of the counts involving the use of an underage driver, failure to

[1] As stated in the discussion of Mr. Nick's hearing request, I do not find the carrier's statements concerning the positive drug test charge to rise to the level of a denial. *See* p. 3, *supra*.

require pre-employment drug tests, or hours-of-violations, the Regional Director assessed a penalty of $1,000. As for these counts, the record before me indicates that the underage driver (who was just 18 at the time of the violations) was used more than once by the carrier, and the record before me also demonstrates multiple violations of both the pre-employment drug-testing and hours-of-service regulations. I find these three types of charges demonstrate serious patterns of safety violations, subject to a maximum penalty of $1,000 per violation, not to exceed $10,000 per pattern. 49 U.S.C. 521(b)(2)(A). I note that the penalty assessed by the Regional Director is within the statutory limits. Mr. Nick's has provided me with no reason to reduce the assessed penalty, and considering the nature and scope of the violations, I decline to do so.

As for the two remaining counts, for violations of recordkeeping provisions of the FMCSRs, the Regional Director assessed a penalty of $500 for each count, the maximum amount for such violations. *Id.* In its reply to the notice of claim, Mr. Nick's alleges that these violations have been corrected. I find this argument unavailing for purposes of reducing the assessed penalty amount, however, because Mr. Nick's should have been in compliance with the regulations *before* the initiation of this action. See *In the Matter of Stanford & Inge*, 55 FR 43,296 (FHWA 1990) (Order Upon Reconsideration). I also note that although these charges are for recordkeeping violations, one of them involved the use of Mr. Nick's underage driver. Accordingly, I find the penalties assessed by the Regional Director appropriate and reasonably calculated to induce Mr. Nick's compliance with the FMCSRs.

It is hereby ordered that the Regional Director's motion for a final order is granted. Mr. Nick's Transportation and Brokerage, Inc., is directed to pay $14,000 to the Regional Director within 30 days of the date of this Order.

Dated: August 26, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Trailer Shuttle Systems, Inc., Respondent. Docket No. R1–92–425.

Final Order

Introduction

This matter comes before me on a motion by the Regional Director, Region 1, for a final order finding Respondent Trailer Shuttle Systems, Inc. (TSS), of Mississauga, Ontario, Canada, liable for 14 violations of the Federal hours of service regulations (49 CFR part 395) and assessing a penalty of $7,000 (United States). By order dated May 25, 1993, I extended the time for TSS to reply to the Regional Director's motion. On May 29, Michael Dorken, President of TSS, replied by letter opposing the Regional Director's motion, and on June 7, 1993, counsel for the Regional Director responded renewing the Regional Director's request for a final order.

On August 24, 1992, the Region 1 office of the Federal Highway Administration (FHWA) sent a notice of claim to TSS alleging that TSS was liable for fourteen (14) violations of the Federal Motor Carrier Safety Regulations. Motion at Exhibit 5. These violations included 10 instances of accepting false reports of a record of duty status and 4 violations of accepting altered supporting documents, all in violation of 49 CFR 395.8(e). *Id.* A total penalty of $7,000 was assessed for these alleged violations. *Id.*

Right to a Hearing

The notice of claim stated that Respondent TSS had 3 options in responding to the notice of claim: (1) Pay the fine; (2) contest the matter within 15 days; or (3) discuss settlement of the case. The letter clearly stated that options 2 and 3 required TSS to reply in 15 days. The 15-day response period for cases in which respondents wish to contest notices of claim is statutorily based. 49 U.S.C. 521(b)(1); see also 49 CFR 386.14(a). The notice of claim further set forth the necessity of complying with the requirements 49 CFR part 386, including the need to list all material factual issues believed to be in dispute if a hearing is requested, and the consequences for failing to request a hearing within 15 days, *i.e.*, a waiver of the right to a hearing. See 49 CFR 386.14(b).

By letter dated August 28, 1992, the President of TSS responded to the notice of claim. Motion at Exhibit 7. This letter explicitly acknowledges receipt of the August 24 notice of claim, but states that Mr. Dorken was "unable to allocate any immediate time to the alleged accusations," due to "a change in [his] marital status." *Id.* This letter clearly does not meet the requirements of the applicable regulation, 49 CFR 386.14.

Mr. Dorken again wrote to the Regional Office on September 22, 1992. Motion at Exhibit 8. Nowhere in that letter does Mr. Dorken deny that the alleged violations occurred. Indeed, he appears to admit that inaccurate documents are accepted because the only alternative that occurs to him is to "shred" them, thus "mak[ing] us an accomplice to falsifying." Mr. Dorken then outlined the steps that TSS took to discipline the drivers responsible for these "inaccurate" reports, including terminating some of the drivers.

Mr. Dorken's assertion that "shredding" is the only alternative to "accepting" is patently absurd. This agency expects that motor carriers operating commercial motor vehicles on public highways will exercise that quantum of control over their drivers necessary to ensure compliance with applicable safety regulations. Whether termination from employment, a rather severe measure to be sure, is necessary to secure a driver's compliance is a determination we leave to motor carriers to make. In any event, the terminations Mr. Dorken asserts TSS effected appear to have been initiated after the safety investigator brought the violations to the carrier's attention. Thus, at best, these "remedial" actions might be viewed as mitigating factors in assessing a penalty rather than exonerating the carrier from liability for the violations.

Mr. Dorken also failed to request a hearing in his September 22 letter. In fact, he expressed his hope that "it will not become necessary for me to apply for a formal hearing * * *."

Mr. Dorken's September 22 letter also does not conform to the requirements of 49 CFR 386.14(b). Rather, this letter evidences TSS's intent to pursue option 3 presented in the notice of claim, *i.e.*, TSS sought to settle the claim against it. The record before me, including Mr. Dorken's letters of October 29 and December 4, 1992, indicates that the parties discussed settlement of this case, obviously without success. Accordingly, I conclude that the record supports a finding that, at least from August 28 through December 4, 1992, TSS failed to deny the charges against it and failed to request a hearing, but pursued the third option of seeking to settle this case with the FHWA Regional Office.

I have also carefully reviewed Mr. Dorken's letters of January 29, February 15, May 7, and May 29, 1993. I find Mr. Dorken's protestations about the reasonableness of the 15-day response period unavailing.

The FHWA considers compliance with its safety rules to be an important matter for all motor carriers engaged in interstate or foreign commerce. We believe that the Congress indicated the importance it assigns to compliance in specifying 15 days as the time in which a motor carrier should contest alleged safety violations. on August 28, Mr. Dorken asserted that his personal affairs

precluded his devoting any time to reviewing and responding to serious allegations of safety violations. On September 22, Mr. Dorken wrote to say that he had time to review the charges against TSS. Nevertheless, his response again failed to conform to the requirements of 49 CFR 386.14(b), if it was his intention at that time to request a hearing. Specifically, he failed to deny the violations or request a hearing.

In view of TSS's failure to timely request a hearing in this matter, I find that TSS has waived its right to a hearing in this matter.

Motion for Final Order

The Regional Director's motion for a final order is accompanied by an affidavit of the FHWA safety specialist who conducted the compliance review that forms the basis of the instant case. Documentary evidence supporting the violations alleged in the notice of claim, apparently obtained from the carrier's files, is attached to this affidavit. Mr. Dorken's May 29, 1993, letter reflects that he has read these documents, yet he fails to offer any evidence or argument contradicting them. Indeed, he repeats assertions made in his September 22, 1992, letter that TSS terminated the employment of some of its drivers because of the violations discovered by the FHWA safety investigator and alleged in the notice of claim.

Based on the record before me, I find that the Regional Director has established a *prima facie* case that the violations occurred as alleged in the notice of claim. TSS has failed to convincingly deny these violations occurred nor has it satisfactorily rebutted the case presented by the Regional Director. Generally, it appears Mr. Dorken seeks to shift the responsibility for compliance with safety regulations to TSS's drivers. I find this to be inconsistent with the motor carrier's duty to require observance of the safety regulations by the driver, 49 CFR 390.11; see *R.W. Bozel Transfer, Inc.*, 58 FR 16,918, 16,920 (March 31, 1993) (FHWA Final Order 1992). Moreover, a fair reading of Mr. Dorken's letters reveals a pattern of assigning a low priority to meeting the safety obligations of a carrier involved in foreign commerce. Indeed, his personal affairs appear to have interfered more than once with his ability to devote attention to the claim against TSS.

Based on the record before me, I find that the violations alleged in the August 24, 1992, notice of claim occurred. I also hold that TSS is directly liable both for the actions of its drivers in submitting false documents and for its own actions in accepting these false documents.

Penalty Determination

The Regional Director has assessed the maximum penalty permitted by law for the individual recordkeeping violations cited in the notice of claim. Mr. Dorken's letter of May 29 asks that I mitigate the penalty in this case, but affords no basis for doing so.

The statute pursuant to which the Regional Director assessed the $7,000 penalty in the instant case provides that certain factors are to be considered. 49 U.S.C. 521(b). These factors include gravity of the violation, degree of culpability, and history of prior offenses. The record before me indicates that TSS management has accepted documents deliberately falsified in violation of safety regulations. TSS has been the subject of previous safety and compliance reviews and was the subject of an enforcement proceeding in 1991 which resulted in the payment of $2,250 for similar violations. I believe that the $7,000 penalty assessed in this case fully takes into account the aggravating factors outlined above.

TSS has provided no evidence to show that it is unable to pay this fine nor that it will adversely affect TSS's ability to continue to do business. Insofar as it is painful, the statute also provides that the assessment shall be calculated to induce further compliance. 49 U.S.C. 521(b)(2). It appears that the payment of $2,250 in 1991 for similar violations failed to induce TSS to comply with these regulations in 1992.

It is hereby ordered that the Regional Director's motion for final order is granted, and Trailer Shuttle Systems, Inc., is directed to pay the sum of $7,000 (United States) to the Regional Director, Region 1, within 30 days of this order for accepting false reports of records of duty status and altered supporting documents.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of F & L Oil Co., Inc., Respondent. Docket No. R3–92–005.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 3, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, F & L Oil Company, Inc. (F & L), is a private interstate carrier of petroleum products. After an October 17, 1991, compliance review allegedly revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs), the Regional Director served F & L with a notice of claim on January 6, 1992. The notice charged the carrier with a total of 28 violations, including: one violation of § 391.21, using a driver who has not completed and furnished a proper application for employment (count one); two violations of § 391.23, failing to maintain in drivers' qualification files responses to inquiries into drivers' driving and/or employment records (counts 2–3); three violations of § 391.25, failing to maintain in drivers' qualification files notations of annual reviews of drivers' driving records (counts 4–6); three violations of § 391.27, failing to maintain in drivers' qualification files lists or certificates of violations of motor vehicle laws or ordinances (counts 7–9); ten violations of § 395.8(a), failing to require driver to make and submit a record of duty status (counts 10–19); and nine violations of § 180.405(b), transporting hazardous materials requiring specification packaging in nonspecification cargo tanks (counts 20–28).

F & L requested a hearing in a reply dated January 22, 1992. F & L denied counts 2, 4, 5, 7, 8, and 23 through 28. As for the remaining 17 charges, all involving the same driver, F & L claimed that it was not responsible for the alleged violations because the driver in question, Ronald Rumley, was an "independent contractor" and "not an employee of F & L Oil Company, Inc. * * *" Reply of F & L Oil Co., Inc., at 1.

The Regional Director submitted his Motion for Final Order and In Opposition to Request for a Hearing on March 6, 1992. F&L responded to this motion on March 13, 1992. The Regional Director then submitted two Amendments to the motion on March 23, 1992, along with exhibits and other evidence to support the charges in the notice of claim. After conducting discovery, and after F&L submitted documentary evidence in response to a request by the Regional Director, in August 1992 both sides joined in a request that the Associate Administrator for Motor Carriers render a ruling on this matter.

Discussion

1. F&L's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." § 386.14(b)(2). Furthermore, "[i]f the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In the Matter of American Pacific Power Apparatus, Inc.*, 58 FR 16977 (FHWA 1992) (Order).

F&L has denied 11 of the 28 charges in the notice of claim and has offered a defense against liability for the remainder. These latter counts, all involving a driver that F&L claims was an "independent contractor" (counts 1, 3, 6, 9, and 10–22), concern a question of law—the driver's employment status under the FMCSRs—and not of fact. Accordingly, I deny F&L's request for a hearing on these counts.

For the six hazardous materials charges (counts 23–28) that do not involve Rumley, F&L denied the allegations in the notice of claim, stating that the vehicles in question had been inspected at a local garage. I find that this denial also presents a legal, not a factual question: Does such an inspection satisfy the requirements of the HMRs? As such, I decline to grant the respondent's request for a hearing on these counts.

The five remaining counts (2, 4, 5, 7, and 8) involve incomplete driver qualification files. F&L has denied each of these counts, and in response to a discovery request by the Regional Director has supplied documentary evidence tending to show that the carrier did, in fact, have at least some of the required documents in its possession. Nevertheless, F&L has never denied that it did not have these documents at its Bluefield, Virginia, office (where the October 1991 compliance review took place). Nor has F&L denied that it failed to tell the FHWA's safety inspectors that the records might exist elsewhere. F&L did not produce the required records at the time of the review. Therefore, the records that F&L has produced subsequent to that time do not demonstrate the existence of a material factual issue in dispute concerning the allegations in the notice of claim.

2. The Regional Director's Motion for Final Order

I have held a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA 1991) (Order). Accordingly, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party, F&L in this case.

As noted in the previous section, while F&L does not deny 17 of the charges against it (counts 1, 3, 6, 9, and 10–22), it nevertheless claims that it should not be held liable for these charges because they involve F&L's use of a driver whom the carrier claims was an "independent contractor" and not its "employee." This defense is without merit, since the term "employee," as defined in the FMCSRs, clearly includes "independent contractors" such as Ronald Rumley.[1] Therefore, based on F&L's failure to deny these counts and the documentary evidence submitted by the Regional Director, I find F&L liable for these counts and grant the Regional Director's motion for a final order as to counts 1, 3, 6, 9, and 10 through 22.

F & L denied the six hazardous materials charges not involving driver Rumley (counts 23–28), claiming in its reply that the vehicles in question "had been inspected by Shaffers Crossing Garage of Roanoke, Virginia, and there was a plackard [sic] on the truck identifying it as a hauler of hazardous materials." Reply of F & L Oil Co., Inc., at 2. F & L has provided no further evidence to demonstrate that the vehicles in question met the requirements of the HMRs. The Regional Director, on the other hand, has provided numerous exhibits, including copies of photographs of the vehicles in question and an affidavit by the FHWA safety investigator, tending to show that the carrier committed the alleged violations. I find the carrier's statement, without more, to be insufficient to overcome the Regional Director's *prima facie* case, and I hereby grant the Regional Director's motion for final order as to counts 23 through 28.

The last five charges (counts 2, 4, 5, 7, and 8) involve incomplete driver's qualification files. The evidence before me in this case tends to show that F & L did not produce the pertinent records when requested to do so during the October 1991 compliance review. Moreover, this evidence, including the affidavit of the safety investigator who performed the compliance review, indicates that the carrier never informed the FHWA that the requested records might exist elsewhere than the carrier's Bluefield, Virginia, office.[2] Only months later, after a request for the production of documents was served on the carrier by the Regional Director, did F & L produce some, but not all, of the documents that were missing at the time of the compliance review.

Based on the evidence before me, I conclude that F & L has failed to rebut the Regional Director's *prima facie* case as to counts 2, 4, 5, 7, and 8. Accordingly, for the reasons set forth above, I hereby grant the Regional Director's motion for final order for these counts.

3. Penalty Determination

The notice of claim assessed a penalty of $300 for each violation of the FMCSRs, and a penalty of $1,000 for each violation of the HMRs. Title 49, United States Code, § 521(b)(2)(C), provides nine factors to be considered in assessing the propriety of penalties assessed pursuant to the FMCSRs. Substantially the same factors are provided in 49 U.S.C. app. § 1809(a) for consideration of penalties assessed pursuant to the HMRs.

Reviewing the record before me in light of these factors, I note first that there is no indication that F & L was the subject of any prior enforcement action resulting in either an admission of liability by the carrier or a formal finding against it. I also note that while 19 of the 28 counts leveled against F & L are for violations of recordkeeping requirements, nine of the counts are for more serious violations of the HMRs. Also, nothing in the record before me indicates that F & L cannot pay the assessed penalty, which I note is well below the maximum allowed by law. See 49 U.S.C. 521(b)(2)(A); 49 U.S.C. app. § 1809(a).

F & L did submit documents tending to show that it had in its possession at

[1] 49 CFR 390.5 reads, in pertinent part, "*Employee* means: (a) A driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) * * *" *See also* 49 CFR 390.11; *In re Bozell Transfer, Inc.*, 58 FR 16918, 16920 (FHWA 1992) (Final Order).

[2] While F & L claims that its payroll, health insurance, and personnel records are kept at its Roanoke, Virginia, office, Affidavit of Coy Bowling at 1, its letterhead states that the company's "Main Office" is located in Bluefield, Virginia, where the October 1991 compliance review took place. Further, the evidence before me indicates that at least two earlier safety reviews took place at the same location. Affidavit of Terry Runge-Earle at 2. F & L admits that it has never submitted a written request to the FHWA for divided records authority, as required by 49 CFR 391.51(g). Respondent's Answer to Regional Director's First Request for Admissions at 1.

least some of the records pertaining to counts 2, 4, 5, 7, and 8. Nevertheless, the carrier has never denied that it did not produce these records at the time of the compliance review, nor has F & L denied that it did not inform the FHWA's safety inspectors that such documents might be kept elsewhere. The FMCSRs required a carrier wishing to maintain its records in more than one office to submit a written request to the Director of the Regional Motor Carrier Safety Office for the region in which the carrier has his principal place of business. 49 CFR 391.51(g). F & L admits that it has never done so. FHWA safety inspectors should not be required to guess the location of a carrier's driver qualification files, nor should motor carriers be allowed to keep their records out of reach of the inspectors, only to produce them after an enforcement action has been initiated. Accordingly, no mitigation of the assessed penalty is appropriate under these circumstances.

it is hereby ordered that the Regional Director's request for a final order is granted. F & L Oil Co., Inc., is directed to pay $14,700 to the Regional Director within 30 days of the date of this Order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Browning-Ferris Industries of Alabama, Inc., Respondent. Docket No. 93–AL–027–SH.

Order

This case was initiated by a notice of claim received by Respondent Browning Ferris Industries of Alabama, Inc. (BFI), in late March 1993. This notice of claim charged BFI with 20 violations of 49 CFR 177.817(a), transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper, and 9 violations of 49 CFR 395.8(a), failing to require a driver to make a record of duty status. A total penalty of $22,700 was assessed for these 29 violations.

On April 26, BFI filed a motion for immediate appointment of an administrative law judge, for an expedited proceeding, and for extraordinary relief. Attached to this motion was BFI's response to the notice of claim denying the charges and requesting a hearing.

The extraordinary relief requested by BFI was for the Associate Administrator to direct the Director of the Office of Motor Carriers in Montgomery, Alabama, "forthwith to immediately communicate with the Mobile Police Department that no competent determination has been made that BFI is transporting hazardous materials in the course of its medical waste disposal business, and that there is, therefore, so far as is known to FHWA, no reason to prohibit use of tunnels in Mobile, Alabama to BFI."

In my May 18 order granting the Regional Director an extension of time to respond to BFI's motion, I declined to grant BFI the extraordinary relief it requested. Since that order, the Regional Director has filed a motion for a stay of these proceedings; BFI has filed a motion for correction of the record and other appropriate relief, wherein BFI has renewed its request for "emergency relief" or, "in the alternative that a denial that FHWA advised the Mobile, Alabama Police Department that Respondent was transporting hazardous materials through tunnels in Mobile, Alabama, be made on the record;" BFI has moved to dismiss the matter; the Regional Director has replied to Respondent's motions, urging that I deny them all; and BFI has again responded taking issue with the Regional Director's replies. Meanwhile, the pleadings before me indicate that BFI has sought an interpretation of the Hazardous Materials Regulations (HMR) at issue in this case from the Research and Special Programs Administration, which in turn, reportedly, is consulting with the United States Department of Health and Human Services.

The purpose of this order is to dispose of the motions currently pending before me. Despite all the motions and responses to motions submitted to me in this case, I do not see that this case is ready for submittal to an administrative law judge or for final disposition by me, by dismissal or otherwise.

First, I hereby deny BFI's request for extraordinary relief. This case has been submitted to me in my quasi-judicial role as final agency decisionmaker with respect to motor carrier safety enforcement cases. In that role, I do not engage in investigatory or supervisory activities. My responsibility is to decide matters brought before me based on the facts in the record before me. If there are material factual issues in dispute, I will refer the case to an administrative law judge for a hearing. If there are not, I will decide the case in accordance with the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

The extraordinary relief BFI has requested can and, if appropriate, should be obtained elsewhere. In my May 18 order, I suggested that BFI seek relief from the Mobile Police Department which, as I understand it, is the agency denying BFI the use of the Mobile tunnels. If BFI believes that it needs help from the FHWA, it must seek that help from the FHWA's State Director in Alabama, the Regional Director in Atlanta, or the Director of Field Operations in Washington, DC, not from me. These FHWA officials are invested with ample supervisory responsibilities in this area.

I decline to interject myself personally in BFI's dispute with the Mobile Police Department over BFI's use of these tunnels in the manner sought by BFI, because I believe that such action would be inconsistent with my role as final agency decisionmaker in the underlying enforcement case, because I believe that BFI has ample recourse elsewhere for relief, and because, in any event, the decision on the use of the tunnels is not FHWA's to make.

I also hereby deny BFI's request to dismiss the case at hand. The Regional Director has charged BFI with 29 violations of the HMR and the Federal Motor Carrier Safety Regulations (FMCSR). Much has been written by the parties on the subject of the alleged HMR violations, none of it dispositive; little, if anything, has been said about the alleged FMCSR violations.

BFI also filed a "Motion for Correction of Record and Other Appropriate Relief." This latter motion amounts to little more than squabbling and does not move the case forward at all. In fact, it demonstrates how far this case is from being ready for decision. Apparently, BFI cannot agree with itself as to what material factual issues are in dispute in this case.

On the third page of BFI's motion to "correct" the record, counsel for BFI asserts that, "In the Order Granting Extension of Time, the Acting Associate Administrator noted that there are two material factual issues in dispute requiring a hearing for resolution." Counsel follows this sentence by quoting from the order itself: "These are (1) 'whether any witness will testify that they had tendered hazardous material to BFI for shipment' and (2) 'whether BFI drivers transported property in interstate commerce and failed to make a record of duty status'." Counsel then asserts that the quoted statement "indicates a misunderstanding of what factual issues are in dispute." This statement is incredible.

First, I never said these were the material factual issues in dispute in this case. I said that these were the issues identified *by BFI* in asking for a hearing. Order Granting Extension of Time, May 18, at 1 (third sentence); see BFI's response to notice of claim at 2. Thus, in his motion to correct the record, counsel for BFI is arguing with himself.

Given the current posture of this case, it is premature for me to try to decide what material factual issues are in dispute. I am going to leave it to the parties to more clearly identify at a later date the precise material factual issues in dispute, if any.

I consider BFI's motion for correction of record and other appropriate relief to be argumentative and unhelpful. Insofar as it seeks modification of my May 18 order and the emergency relief regarding my personal intervention with the Mobile Police Department, it is denied for the reasons set forth above. In all other respects I am striking this pleading as merely argument with leave to counsel to make these arguments at the appropriate time.

Because I believe that this case is not ready for decision, I am granting the Regional Director's request for a stay of the proceedings, with leave to the parties to move that the portion of the case dealing with alleged FMCSR violations should proceed. However, the parties should be aware that I do not intend to bifurcate this case. I will not send the FMCSR violations to a hearing, if a hearing is warranted, until the parties are prepared to move the HMR violations portion of this case forward. This decision is based on the need to conserve agency resources, including the time and cost for a hearing before an administrative law judge. Thus, I will only deal with the FMCSR violation portion of this case separately, if that portion can be decided by me without a hearing.

Because of my concern that a decision in this case be not unduly delayed, I am hereby directing counsel for the Regional Director to advise me briefly of the status of this case within 120 days of the date of this order and every 120 days thereafter until the matter is resolved. A copy of this status report should be served on counsel for BFI. The status report should briefly advise whether the parties are prepared to move this case forward. If the parties are not so prepared, the Regional Counsel shall briefly state the reason.

If and when this case is ready to move forward, the parties shall, by joint motion if possible, so advise me. At that time, the parties will submit a joint record upon which a decision in this case should be based. If the parties agree that a hearing is required, the material factual issues in dispute shall be succinctly stated.

If a joint motion is not possible because the parties disagree on some issues or point, the party which believes that the case is ready for referral to an administrative law judge or final disposition by me shall submit a motion to that effect. The other party will then have 30 days in which to reply to that motion and the moving party will have 15 days to respond to the reply. No further pleading will be accepted thereafter without leave.

So ordered.

Issued: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the matter of American Diversified Construction, Inc., Respondent. Docket No. 90–TN–043–SA.

Final Order

This matter comes before me upon a renewed motion by the Regional Director, Region 4, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

On May 12, 1992, the Associate Administration for Motor Carriers (Associate Administrator) issue an order denying the Regional Director's motion for a final order on ten charges that the Respondent, American Diversified Construction, Inc. (American Diversified), had violated the Federal Motor Carrier Safety Regulations (FMCSRs). The charges consisted of five counts of failing to preserve a driver's record of duty status for six months, 49 CFR 395.8(k), and five counts of failing to properly maintain driver qualification files, 49 CFR 391.51(a). The Associate Administrator found that American Diversified had denied the charges against it, and that the Regional Director had failed to submit sufficient evidence to support a *prima facie* case. The May 1992 order permitted the Regional Director to renew the motion by submitting affidavits or other evidence tending to show that American Diversified committed the charged violations. American Diversified was advised that if it failed either to respond to the Regional Director's renewed motion, or to produce any evidence rebutting the Regional Director's evidence, that failure might result in a final order for the Regional Director. *In re American Diversified Construction, Inc.*, 58 FR 16,951 (FHWA 1992) (Order).

The Regional Director submitted a renewed motion on August 5, 1992, requesting that the facts be found as alleged in the notice of claim, and seeking a penalty of $3,000. Attached to the renewed motion were a signed declaration of an FHWA safety investigator and several exhibits purporting to document the charges against American Diversified. The carrier has not responded to this evidence.

Discussion

1. The Regional Director's Renewed Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA 1991) (Order). Accordingly, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Because American Diversified denies the allegations against it, but the Regional Director nevertheless seeks to obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish a *prima facie* case of the violations charged. American Diversified bears the burden to rebut a *prima facie* case, and mere assertions, unsupported by evidence, cannot defeat an otherwise justified motion for final order.

The evidence presented by the Regional Director in his renewed motion supports the allegations made in the notice of claim and remains unrebutted by American Diversified. Although American Diversified's failure to rebut does not act to lower the Regional Director's evidentiary burden in this case, American Diversified's failure to fully participate in this proceeding is significant because the carrier has failed to rebut the Regional Director's *prima facie* case.

The first five charges—for allegedly failing to preserve driver's records of duty status—are supported by documentary evidence and the safety inspector's declaration. The documentary evidence consists of copies of shipper's logs for each trip allegedly made in violation of the regulation, each signed by the driver who allegedly made the trip. The declaration, for its part, is signed by the safety inspector and states that for each of these trips "the necessary record of duty status was not kept in [American Diversified's] file[s]." Declaration of Eunice C. Smith at 3.

As for the driver's qualification file charges, all five counts are supported by the safety specialist's declaration. Four of the charges are further buttressed by copies of driver's records of duty status; but for one count, involving a trip allegedly made on August 1, 1990, no

record of duty status has been provided. I find nonetheless that the Regional Director has presented a *prima facie* case for all five driver's qualification charges, because I find that the safety specialist's signed declaration provides the necessary evidence for each count.

In spite of its denial of the charges, American Diversified has failed to produce any evidence supporting its denial and failed to rebut the evidence of these violations. Therefore, I find that American Diversified committed the violations charged in the notice of claim.

2. Penalty Assessment

The Regional Director assessed a penalty of $300 for each of the ten violations charged in the notice of claim, for a total penalty of $3,000. Although American Diversified has not responded to the evidence presented by the Regional Director in his renewed motion for final order, the record before me does contain a document pertaining to the issue of the penalty assessed by the Regional Director.

The document, an undated letter addressed to the FHWA's Headquarters office, makes assertions—unsupported by any other documents in the record—that American Diversified is in bankruptcy [1] and that its "principal" underwent back surgery after which it "[was] determined by the Social Security Administration that he is completely disabled this is the only money or income that this man has" [sic]. The letter is signed "Tammy Wauford," but nothing in the record before me indicates what her connection to American Diversified may be. A copy of this letter was sent to the regional office on October 2, 1992. To date, no response to this letter has been received from the Regional Director.

I must rely on the evidence presented by the parties—which I have already determined amounts to a *prima facie* case for the Regional Director which the carrier has failed to rebut. After review of this evidence in light of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find a $300 penalty for each of the charged recordkeeping violations reasonably calculated to induce American Diversified's compliance with the FMCSRs. Therefore, I grant the Regional Director's motion for final order in the amount of $3,000.

Pursuant to § 386.64 of the Rules of Practice, either party may petition for reconsideration of this final order within 20 days after the date it is issued.

It is hereby ordered that the Regional Director's renewed request for a final order is granted. American Diversified Construction, Inc., is directed to pay $3,000 to the Regional Director within 30 days of the date of this Order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Elkins Distributing Co., Inc., Respondent. Docket No. R3–91–228.

Final Order

Background

This matter is a motor carrier safety civil forfeiture proceeding governed by the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

This civil forfeiture proceeding was initiated by notice of claim dated June 6, 1991. In the notice of claim, the Regional Director, Region 3, charged Elkins Distributing Co., Inc. (Respondent or Elkins), with nine (9) violations of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399). These alleged violations included two (2) instances of using a driver who had not been medically examined each 24 months, as required, and seven (7) violations of various recordkeeping requirements related to incomplete driver qualification files. The Regional Director assessed a total penalty of $3,000 for these violations.

The notice of claim clearly stated that a reply was due within 15 days and failure to request a hearing within 15 days would constitute a waiver of the right to a hearing. Moreover, the notice of claim advised Elkins of the need to comply with the requirements of 49 CFR part 386, especially 49 CFR 386.14 as that section relates to replies to notices of claim.

Mr. Jerry W. Warner, President of Elkins, responded to the notice of claim by letter dated June 19, 1991. This letter does not conform to the requirements of 49 CFR 386.14. In this letter, Elkins did not deny the violations nor did it request a hearing. Rather, Warner indicated an interest in settling this case with the Regional Office.

On March 26, 1992, the Regional Director filed a motion for a final order asking that I find the facts to be as alleged in the notice of claim and assess a total penalty of $3,100. Elkins responded, through counsel, on April 1, 1992, and requested a hearing in this matter. Counsel for Elkins asserted that Elkins "did not fully comprehend the ramifications of failing to request this hearing in a timely manner, absent the advice of counsel." Respondent's Answer to Motion for Final Order at 1.

The Regional Director renewed his motion for final order on July 5, 1993. On July 13, Elkins, through counsel, responded to this renewed motion and reiterated Elkins' request for a hearing.

Request for Hearing

Elkins' request for a hearing is clearly untimely. The notice of claim unambiguously alerted Elkins to the consequences of failing to timely request a hearing. In this case, Elkins first requested a hearing only after the Regional Director moved for a final order, more than 9 months after the notice of claim. The record before me indicates that Respondent Elkins chose to try to negotiate a settlement of this case with the Regional Office rather than contest the matters. I find that Elkins knowingly waived any right it may have had a hearing.

Elkins has also failed to deny the charges against it, nor has it alleged any material factual issues that it believes are in dispute, despite multiple opportunities to do so. See 49 CFR 386.14(b). The only issue raised by Elkins in this proceeding has been the amount of the penalty assessed by the Regional Director. I have repeatedly held that an objection to the amount of the assessed penalty does not constitute a material fact issue warranting a hearing under 49 CFR 386.16(b). *In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (order appointing administrative law judge). Accordingly, I have no basis upon which to order a hearing in this matter.

Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. See, e.g., *In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA Order 1993). The Regional Director has submitted documentary evidence supporting his motion for a final order. This documentary evidence establishes a *prima facie* case that Elkins violated the safety regulations cited in the notice of claim. Despite the long time since this motion was first filed and the additional notice and opportunity presented to Elkins by the Regional Director's July 5, 1993, Request for Immediate Ruling, Elkins has submitted no evidence or argument tending to rebut the Regional Director's *prima facie* case. Accordingly, I find that the Regional Director has met his burden in this case, and I hereby

[1] Under Federal law civil forfeiture amounts are not dischargeable in bankruptcy. 11 U.S.C. 523(a)(7).

grant the Regional Director's request for a final order.

Penalty Determination

The Regional Director assessed a penalty of $500 for each of the two violations of using a driver who has not been medically reexamined within 24 months and $300 for each of the cited recordkeeping violations. These penalties are within the statutory limits. 49 U.S.C. 521(b). Elkins sought to convince the Regional Director that this case should be settled for a lower amount, but, despite repeated opportunities, Elkins has provided me with no basis upon which to lower the assessed penalty. The record before me supports the penalty assessed by the Regional Director, and I hereby affirm that penalty.

It is hereby ordered that Elkins' request for a hearing is denied, the Regional Director's motion for a final order is granted, and Elkins Distributing Co., Inc., is directed to pay the sum of $3,100 of the Regional Director, Region 3, within 30 days of this order for the 2 instances of using a driver who had not been medically examined each 24 months, as required, and the 7 violations of recordkeeping requirements related to incomplete driver qualification files cited in the June 6, 1991, notice of claim.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of L.P. Fleming, Jr., Hauling, Inc., Respondent. Docket No. R3-91-159.

Final Order

This matter is a motor carrier safety civil forfeiture proceeding governed by the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

This civil forfeiture proceeding was initiated by notice of claim dated April 3, 1991. In the notice of claim, the Regional Director cited Respondent L.P. Fleming, Jr. Hauling, Inc. (Fleming), for 35 violations of the Federal Motor Carrier Safety Regulations, including one instance of using a medically (vision) unqualified driver and 34 various recordkeeping violations related to driver qualification files, drivers' records of duty status, and vehicle inspection and maintenance records. A total penalty of $16,600 was assessed for these 35 violations.

This matter comes before me as a result of a motion for a final order by the Regional Director, Region 3, dated March 31, 1992. On July 5, 1993, the Regional Director requested an immediate ruling this matter. Fleming has not responded to either of these pleadings.

The Regional Director has submitted with his motion for a final order documentary evidence supporting each of the violations alleged in the notice of claim. Also attached to this motion is a letter from Fleming dated April 11, 1991, apparently in response to the notice of claim. This letter does not conform to the requirements of 49 CFR 386.14(b) regarding the form and content of a reply. The record before me is devoid of any other submission by Fleming in this matter.

The notice of claim attached to the Regional Director's motion appears to be incomplete in that it has only two pages, the second of which begins with a paragraph number 3, while the first page has no such numbered paragraphs. Nevertheless, it appears that the notice of claim alerted Fleming to the nature of the proceeding, the charges against it, and the applicability of 49 CFR part 386 to this proceeding.

I find that Fleming has waived its right to a hearing in this matter by failing to request one within the required time period. 49 CFR 386.14(b)(2).

The Regional Director has established a *prima facie* case in his submission in support of his motion for a final order. Fleming has failed to respond to this motion, has failed to deny any of the charges against it, and has offered no defense whatsoever in this proceeding. Accordingly, I find the facts to be as alleged in the notice of claim.

The Regional Director has assessed a total penalty of $16,600 in this case. This information cannot be verified from the record before me because of the incompleteness of the copy of the notice of claim submitted to me. Nor can I tell how much of a penalty was assessed for each of the 35 violations charged. The Regional Director's motion sheds no light whatsoever on the basis for the Regional Director's civil penalty assessment. Thus, on the record before me I am unable to make any independent penalty determination.

While I would have appreciated a complete copy of the notice of claim and some support for the penalty assessed in the case, I recognize that the Regional Director has submitted numerous exhibits relevant to a determination that Fleming is liable for the violations alleged. The Regional Director's submission in this case was more than adequate to place Fleming on notice as to the seriousness of this matter, and Fleming had ample opportunity to correct the record or challenge any assertions made by the Regional Director. Accordingly, I view Fleming's non-participation in this civil forfeiture proceeding as a waiver of its right to challenge the Regional Director's penalty assessment, and I hereby affirm that penalty. If Respondent believes that this is unjust or otherwise contrary to law, the FHWA's Rules of Practice provide that Fleming can seek reconsideration within 20 days of this order. 49 CFR 386.64.

It is hereby ordered, that the Regional Director's motion for final order is granted. L.P. Fleming, Jr. Hauling, Inc., is directed to pay $16,600 to the Regional Director within 30 days of the date of this order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of James Kelton, Sr. d/b/a Kelton Tours, Respondent. Docket No. 90-AL-028-SA.

Final Order

This matter is before me upon a renewed motion for final order by the Regional Director, Region 4, in response to the Associate Administrator's May 13, 1992, order calling for the parties in this case to submit supplemental pleadings and evidence on the issues identified in that order. *In re Kelton Tours,* 58 FR 16943 (FHWA 1992) (Final Order).

Background

In the earlier decision in this case, the Associate Administrator found that the Regional Director failed to meet his evidentiary burden in moving for a final order on two false logs charges involving the April 26, 1990, trip by Kelton Tours (Kelton) drivers James Carroll and Robert Nelson. Instead of choosing to send these counts to an administrative law judge for a hearing, he deferred his ruling on Kelton's hearing request and directed the parties to submit pleadings and supporting evidence on these charges. Only the Regional Director complied with this order; I have received no response from Kelton.

In his renewed motion, the Regional Director asserts that although Carroll's and Nelson's logs read that the two spent eight hours off duty in Jennings, Florida, on April 26, 1990, they did not stop there, or anywhere, for the requisite off duty period, and in fact drove straight from Guntersville, Alabama, to Orlando, Florida, in approximately 11 hours. The Regional Director concluded

that the drivers falsified their logs in order to conceal excess hours of service.

Discussion

Hearing Request

In response to the notice of claim, Kelton requested a hearing and offered to provide affidavits and lodging receipts to prove the accuracy of some of its drivers' logs. Despite repeated, extensive opportunities to do so, Kelton has failed to come forward with its promised evidence.[1]

The Regional Director, however, provided a transcript of a telephone interview with bus passenger Danny Lancaster, in which Mr. Lancaster stated that the bus he rode did not stop anywhere for 8 hours on April 26. In addition, the Regional Director responded to the may 13, 1992, order with additional evidence to support the two remaining charges.

The Associate Administrator has held in numerous cases, including the earlier order in this case, that when a carrier seeks a hearing under 49 CFR 386.14(b)(2), but the Regional Director opposes the request with sufficient evidence, the carrier must properly support its hearing request. See, e.g., *In re Bryant Trucking,* 58 FR 16968 (FHWA 1992) (Final Order). Simple denials will not suffice. Therefore, I find that Kelton's bare denial of the allegations in its reply to the notice of claim, its sole response to the charges throughout this proceeding, is insufficient to meet the carrier's burden to establish that there is a material factual issue in dispute warranting a hearing in this case.

For whatever reason, Kelton has not fully participated in this proceeding. The carrier failed to submit the promised evidence in support of its denials, failed to reply to the Regional Director's initial motion for final order, and failed to respond to the May 13, 1992, order as directed. Nothing in the record before me leads me to believe that Kelton would suddenly take a renewed interest in this proceeding if I were to send it to a hearing on the basis of its nearly three-year-old hearing request.

Motion for Final Order

On a motion for final order, like a summary judgment motion, the Regional Director must clearly establish each essential element of his case. Kelton's failure to oppose the motion does not affect this standard. Where the evidence in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no evidence is presented by the non-moving party. *Fed. R. Civ. P.* 56 notes of advisory committee.

In the May 13 order, the Associate Administrator found that the Regional Director's own evidence was conflicting on whether Kelton drivers Carroll and Nelson took the 8-hour break recorded on their logs, and thus he was not able to grant the motion. With his renewed motion, the Regional Director has included a declaration by the safety investigator who initially cited Kelton for the two alleged violations at issue here. This declaration of Mr. LeMaster, however, does not sufficiently dispel this contradiction to allow me to dispose of this case on a motion for final order, where I must view all evidence in a light most favorable to the non-moving party, Kelton Tours. *In re American Pacific Power Apparatus, Inc.,* 58 FR 16977 (FHWA 1992) (Order). The declaration simply repeats sections of the interview transcripts of both bus passenger Danny Lancaster and Kelton driver James Carroll, the first of which states that the bus Lancaster was riding did not make the 8-hour stop, while the second states that Mr. Carroll stopped for 8 hours and that he and driver Robert Nelson always stayed together when driving. Because I cannot find that Carroll and Nelson drove straight through to Orlando, Florida, and did not take an 8-hour break, without discrediting the statement of Mr. Carroll and accepting as accurate the statement of Mr. Lancaster, this case is not properly disposed of by summary judgment.

Two False Log Charges

Having denied Kelton's hearing request and the Regional Director's renewed motion for final order for the reasons discussed above, I now view this case as submitted to me under 49 CFR 386.14(c) for decision on the merits. I recognize that, in some cases, this action might affect a motor carrier's opportunity to fully present its case, but such is not the situation here. Both parties to this proceeding have been afforded ample opportunity to present their views; Kelton has simply failed to do so.

Upon a review of the evidence as a whole, I believe that the Regional Director has proven, by a preponderance of the evidence before me, that Kelton drivers Carroll and Nelson failed to stop for 8 hours in Jennings, Florida, on the morning of April 26, 1990, as recorded in their logs. In his statement, Mr. Lancaster told how the two buses traveled together along the route, leaving Alabama at 9:20 p.m. on April 25, 1990, and arriving in Orlando together at approximately 8:30 a.m. the next morning for day at Disney World. Carroll's claim to have slept for eight hours in the back of his bus full of high school students on their way to Florida is unsupported and unbelievable. This statement being the sole evidence to support the accuracy of the logs, I find that the two buses traveled together on this trip, that neither one stopped in Jennings, Florida, or anywhere else for eight hours, and that the two falsified their records of duty status by recording this 8-hour stop.

Penalty Determination

The Regional Director assessed a penalty of $400 for each false log charge. These two charges were cited in a notice of claim that also included nine other false log charges on which the carrier was found liable and ordered to pay $3,600. Thus, these two violations are not isolated incidents, but a pattern of conduct for this carrier. Upon review of the civil penalty determination factors in 49 U.S.C. 521(b)(2)(C), I find that the penalty amount assessed is fully warranted by the facts of this case and is reasonably calculated to induce compliance. I affirm the admonishment made by the Associate Administrator in his May 13 order; Kelton's conduct of permitting drivers to operate buses full of children on long, non-stop trips presents a dangerous threat to the safety of all involved and will not be tolerated.

It Is Hereby Ordered that Kelton Tours' request for a hearing is denied, the Regional Director's motion for final order is denied, and Kelton Tours is directed to pay the sum of $3,600 to the Regional Director, Region 4, within 30 days of this order for having required or permitted its drivers to make false entries on their records of duty status, in violation of 49 C.F.R. 395,8(e).

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Department of Transportation, Office of Hearings, Washington, DC: In the Matter of National Retail Transportation, Inc., FHWA Docket No. R1–92–03 (Motor Carrier Safety).

Decision of Administrative Law Judge Burton S. Kolko

This case had its germination in a compliance review. On October 18, 1991, two Federal Highway Administration (FHwA) investigators, George Cowan and Susan Drabant, inspected certain NRT records at Respondent's offices in North Bergen,

[1] I have received no response from Kelton to my earlier order. For the purpose of addressing Kelton's hearing request, I assume that the remaining two charges are among those Kelton denied in its reply to the notice of claim.

N.J., to assess its compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). In 1990 NRT owned 137 trucks and utilized 138 drivers, grossing $42 million (CX–7). Finding that Respondent in many cases lacked supporting documents for drivers' logs, the investigators filed a report recommending enforcement (CX–7; Tr. 58, 98). This action followed, in which the Assistant Regional Counsel, Federal Highway Administration (Claimant or Regional Director), has charged Respondent National Retail Transportation, Inc. (NRT), a motor carrier subsidiary of National Retail Systems, Inc., with forty-six violations of the FMCSRs, 49 CFR part 350 *et seq.*, and seeks a civil penalty of $23,000.[1] Respondent denied the charges. A hearing was held, from which I find the violations as charged and assess a civil penalty in the amount of $9,200.

Procedural Background

The Regional Director initiated this proceeding by filing a Notice of Claim (the Notice) under 49 CFR 386.11(b) on January 21, 1992.[2] The Notice cited the Respondent for failing to preserve supporting documents for certain driver records of duty status (driver logs) for six months (*Id.*; CX–17 through –62). The regulation, in pertinent part, states:

(1) Driver's records of duty status for each calendar month * * * shall be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt. (emphasis supplied).

Each proven failure constitutes a violation of 49 CFR 395.8(k) and is subject to a civil penalty of $500 per day, up to a maximum of $2,500 for any single offense. 49 U.S.C. 521(b)(2). Claimant seeks a penalty of $500 for each of the alleged forty-six violations, or a total fine of $23,000.

Discussion

In conducting their compliance review investigators Cowan and Drabant initially saw NRT's safety consultant, Vincent Mariano, its general counsel, Marc Zoldessy, and its dispatcher, Richard Sullivan (Tr. 24–26, 42, 105; CX–7); they later met with its safety director, William Cluver (Tr. 43). The investigators sought certain examples of records NRT is required to maintain under the FMCSRs (Tr. 16, 24–26; CX–8). In response, NRT produced driver logs, drug-testing records, and other files (Tr. 25, 45–46; CX–8), but did not present documents (highlighted in the discussion that follows) that would have tended to support information stated on the drivers' logs, such as records relating to a driver's pay (Tr. 25–26, 95–96, 139, 171).

A. Cowan and Drabant spotted a dispatcher-completed outbound dispatch log—a record of routes to be undertaken, vehicles utilized, money advanced, and anticipated backhaul—on dispatcher Sullivan's desk, but could not obtain one, despite their entreaties. They were instead given a blank copy of the form NRT used, which was entered into evidence as CX–2 (Tr. 27–28, 52, 69–71, 98, 269). The following January, however, NRT did deliver dispatch logs corresponding to the 46 transactions in response to a subpoena. The Claimant's charges do not encompass outbound dispatch logs (Tr. 70–71, 87, 91, 98, 143; *see* R–2).

B. Sullivan told the investigators that drivers are required to prepare and submit upon return a driver's trip report, or DTR, which indicates the driver's origin and destination, his pick-up and delivery points, the routes he took and the mileage involved. To the DTR he attaches toll and fuel receipts and the like, and then submits it all to a payroll clerk for payment purposes. A blank DTR was given to the investigators and entered into evidence as CX–3 (Tr. 32–33, 264).

C. The trip summary, somewhat like the DTR, asks for mileage between stops, expenses and advances, and fuel and oil charges. It is also a document upon which drivers' pay is based, drivers being paid by the mile. The dispatcher enters the information and forwards it to payroll (Tr. 251, 254). Investigators Cowan and Drabant were given a blank copy of the trip summary, which became CX–4 (Tr. 34–35, 37).

D. CX–5 is a blank trip summary report, or trip envelope. The driver places all his documents into a trip envelope and submits it at the end of his trip. The envelope asks for trip mileage, all origins and destinations, road expenses, and advances. It also contains a separate section for fuel purchases. The trip envelope is given to payroll upon return (Tr. 38–40, 210, 266, 268).

E. Sullivan informed the investigators—in response to a specific query—that drivers also submit a delivery manifest following each trip. The manifest recaps the trip: stops, arrival and departure time at each, shipper's name, elapsed miles per stop, and aggregate delivery time and miles. A blank copy of Respondent's delivery manifest was submitted for the record as CX–6.[3]

Cowan and Drabant had attempted to obtain completed DTR's trip summaries, trip summary reports and delivery manifests (*i.e.*, CX–3, –4, –5, and –6 respectively; see Tr. 141–42) (Tr. 98), but were told by both general counsel Zoldessy and company Vice-President George LaFitte either that NRT did not retain them or that they were unavailable (Tr. 34, 43–45, 84, 93, 95–96, 98–99, 103–04, 106–09, 141, 168).

LaFitte explained that any completed forms were kept only until the drivers are paid—about two weeks later—and were then discarded (Tr. 44, 262–63). When Cowan asked for NRT documents pertaining to the most recent two weeks, LaFitte produced one trip envelope (Tr. 44, 168). The carrier's size indicated that several hundred should have been turned in, even for that relatively short period (Tr. 44). Cowan later questioned safety director Cluver about the carrier's retention policy, but again was told that nothing was retained (Tr. 45).

On January 14 or 15, 1992, in response to Claimant's December 10, 1991, subpoena, NRT did deliver some documents to the government, producing bills of lading, dispatch logs, and documents it described as "computerized trip file summaries."[4]

Findings and Conclusions

I conclude that Respondent National Retail Transportation, Inc., violated § 395.8(k) of the FMCSRs in forty-six instances by failing to preserve supporting documents for driver logs for the requisite six-month period on forty-six occasions.

As a threshold matter, I will deal with the meaning of the term "supporting documents." It is nowhere defined or described in the FMCSRs. NRT argues that, as such, it is being held to a formless standard, thus depriving it of fair warning of the kind of conduct the regulation requires or prohibits. This lack of notice amounts to a violation of due process of law, it states; NRT cannot be held to have transgressed a provision whose meaning and parameters are unknown. As a corollary, Respondent asserts that the term cannot be defined

[1] The FMCSRs are issued under the authority of 49 U.S.C. 3102 of the Motor Carrier Safety Act of 1984 (the Act), P.L. 98–554, 98 Stat. 2829.

[2] CX–A. The penalty sought by the Regional Director is erroneously stated in the Notice of Claim. The correct figure is $23,000. Tr. 177.

[3] Tr. 38–41, 104, 108. The manifest's title indicates generation by "National Retail Trucking, Inc." Respondent's in-house counsel represented that National Retail Trucking is an affiliated entity of Respondent. Tr. 285–86.

[4] R–2; Tr. 85–92, 144–45. NRT has also produced bills of lading at the time of the compliance review the previous October. Claimant's investigators asserted, however, that such documents contain little or no information tending to support the accuracy of driver logs, and so did not consider them to be supporting documents. Tr. 84–86, 88–89, 143; see R–2.

by prosecutorial whim. Claimant asserts that "supporting documents" is adequately defined.

On this record I find that the phrase is sufficiently clear and informative to apprise regulated entities of the behavior expected of them. The rule speaks in terms of retaining "supporting documents" for driver records of duty status (see p. 2). The context makes it plain that the quoted phrase contemplates all documents reasonably tending to support the information found in driver logs (see Tr. 147). Since the rule nowhere compels carriers to create supporting documents (see Tr. 119), carriers need retain such documents only if they already deal with them—that is, if in the ordinary course of business, such documents pass through their hands (see Tr. 111–13).

The "supporting-documents" rule is a rule of reason that, by its nature, must be interpreted on a case-by-case basis (*see* Tr. 30). But it does not follow that the rule thus lacks parameters adequate to warn regulated entities of conduct required. I find that the rule is sufficiently clear to pass due-process muster.[5]

I have found that Respondent handled completed DTRs, trip summaries, trip summary reports and delivery manifests. These documents were issued by or transmitted to NRT in the ordinary course of business and passed through its hands. They contained information tending to substantiate the information contained in driver logs. NRT officials failed or refused to turn these documents over to agency investigators (*see* pp. 3–5). The evidence further shows that NRT failed to retain these documents for six months in connection with 46 trips made in interstate commerce (CX–17 through –62). These circumstances impel me to conclude that Respondent violated § 395.8(k) on the forty-six occasions cited.

Respondent, however, also maintains that it preserved supporting documents on its computer system, as 49 CFR 390.31 allows, and in doing so, has in fact complied with the FMCSRs (Resp. Br., p. 10). This contention does not avail Respondent for two reasons. In the first place, although the scope of their request was broad—encompassing *"any and all documents related to payroll* and all the documents * * * that the drivers prepared and the carrier prepares or requires their employees to prepare * * *" (emphasis supplied)—the investigators were never offered or shown any computer-generated or -stored documents.[6] Further, section 390.13(b) requires computer records to contain all information set out in the originals, and NRT's computer records—according to Respondent's own witnesses—do not contain all the information that appears on the hard copies. Respondent's practice was to pull only certain data from the supporting documents for use in its database. For instance, it did not enter individual toll receipts, fuel receipts, and times and dates from Respondent's trip envelopes (CX–5; Tr. 268–69, 274–75). NRT also failed to show that it had entered any information contained in the driver's trip report (CX–3), stating that both copies of the DTR were sent to a third party in order to compute road and fuel taxes incurred (Tr. 205–06, 264–65). Respondent in any event failed to produce any computer-generated documents for the record.[7]

The "computerized trip file summaries" NRT submitted in response to the government's subpoena could not be considered supporting documents. As investigator Cowan pointed out, the summaries were incomplete and their origin uncertain. There was no way to know where the information contained in them came from. In short, their validity as log-supporting documents was dubious and unproven (Tr. 97, 100, 137, 145).

Penalty

The Notice of Claim seeks an assessment of $500 of each of the forty-six violations, for a total civil penalty of $23,000 (CX–A; *see also* p. 1, n. 1). The operative statute, 49 U.S.C. 521(b)(2)(C), states that the determination of civil penalty shall take into account:

> the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

It also states that the assessment "shall be calculated to induce further compliance."

The agency stated in its Notice of Claim that its determination of penalty was based on "the seriousness of your violations, your past history, your financial status, and other factors" (CX–A, p. 1). Fred Gruin, FHwA Federal Program Manager who is responsible for the region's enforcement program and who set the proposed assessment, described it as the "maximum penalty"[8] and explained that it was set in light of two previous audits of the carrier, one in 1981 and the other in 1987, and on agency guidelines (Tr. 179–80; CX–10 and CX–11).

The 1981 audit recommended that the carrier "maintain adequate records to monitor drivers logs for accuracy" (CX–10, p. 2); the 1987 safety review suggested continued monitoring of driver hours of service (CX–11, p. 4). No penalties were assessed as a result of either of these audits (Tr. 192–93). Nor was the carrier cited for violations of § 395.8(k) either time (Tr. 151–53, 185–86). Further, in response to a question on the FHwA form, "Does the carrier have a system to effectively control the driver's hours of service?", the 1987 investigators checked the box marked "Yes" (*See* CX–11, p. 4). In the judgment of FHwA, then, the carrier generally hewed to the regulatory line in each instance, at least in the area of driver logs and hours of service.

These considerations warrant an assessment lesser than that suggested by the Regional Director. While NRT's violations were continuing and hampered the agency in carrying out its safety responsibilities, past audits showed that it had generally complied with agency directives Additionally, in light of the fact that Respondent has begun to save toll receipts (Tr. 257–59), I will exercise my discretion to lower the suggested penalty in order to

[5] Respondent argues that because it did not use the documents to verify driver logs, it cannot be held in violation of § 395.8(k). Tr. 210; Resp. Br., p. 9. However, the use to which regulated entity put the documents is not dispositive of the question of their status as supporting documents. The purpose of the rule is to determine, by enabling FHWA investigators to cross-check the accuracy of log entries, whether drivers are complying with hours-of-service regulations. *See* Tr. 12, 121. Thus the critical inquiry is whether the documents themselves reasonably tend to verify driver-log entries, not whether Respondent used those documents for that purpose.

[6] Tr. 139. Respondent contends that the investigators' failure to inquire specifically whether supporting data was stored in computers sinks Claimant's case (Resp. Br. pp. 10–11), but it places responsibility on the wrong actors. NRT officials should have understood Cowan and Drabant's broad request to include all manner of document generation or storage. To put the investigators to a guessing game in these circumstances, as Respondent would, is little short of ludicrous.

[7] In these circumstances, I need not determine whether a carrier that enters supporting documents into a computer and stores them for six months, destroying the hard copies, has complied with § 395.8(k). *See* Tr. 133–34. 166. In light of modern technology and business practice, nonetheless, it might be worthwhile for the agency to determine in advance of an enforcement proceeding whether and how it would find compliance in these circumstances. *See* Tr. 134.

[8] While the maximum civil penalty per offense is $500, each day of a violation is considered a separate offense, except that the total civil penalty per violation cannot exceed $2,500. 49 U.S.C. 521(b)(2). In this case, then, the maximum allowable penalty may be $2,500 per violation.

provide an incentive to further compliance.[9]

I find and conclude that a civil penalty of $9,200, or $200 per violation, fairly accounts for the mix of factors the statue and agency policy considers in determining an appropriate fine. I further find and conclude that it will encourage future compliance as well, by this carrier and others.

National Retail Transportation, Inc. is hereby ordered to pay a civil penalty in the amount of $9,200 for violating Federal Motor Carrier Safety Regulation 49 CFR 395.8(k) in forty-six instances.[10]

Burton S. Kolko,

Administrative Law Judge.

Before the Federal Highway Administration: In the Matter of Trailer Shuttle Systems, Inc., Respondent, Docket No. R1–92–425.

Order Granting Time to Respond to Motion

This mater comes before me on a motion by the Regional Director, Region 1, for a final order finding Respondent Trailer Shuttle Systems, Inc. (TSS), liable for 14 violations of the Federal hours of service regulations (49 CFR part 395) and assessing a penalty of $7,000 (United States). This motion was served on TSS by mail on May 3, 1993. TSS responded to me by letter dated May 7, 1993, expressing its "sincere hope" that it would be extended the opportunity to express its views in this matter. This letter has been placed in the docket.

The notice of claim which underlies this enforcement case is dated August 22, 1992. Enclosed with that letter was a copy of the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. I also note that TSS has been the subject of previous contact by the FHWA, including an enforcement case in 1991 that was settled.

Section 386.35(c) of the FHWA's rules of practice expressly provide that answers to motions, such as the Regional Director's motion for a Final Order, shall be served within 7 days. I do not consider Respondent's May 7 letter to me to be responsive.

In deference to the "health sabbatical" of its President apparently from May 7 through May 26, I am granting Respondent TSS until June 2, 1993, to respond to the Regional Director's Motion for Final Order, that is, seven (7) days from the date of the President's scheduled return. Respondent TSS is reminded that copies of all communications with me regarding pending enforcement cases must be served on the Regional Director. Respondent is also advised that on or after June 3, 1993, I will formally rule on the Regional Director's motion.

Issued on: May 25, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Browning-Ferris Industries of Alabama, Inc., Respondent. Docket No. 93–AL–027–SH.

Order Granting Extension of Time

This matter arises as a result of a notice of claim issued to Respondent Browning-Ferris Industries of Alabama, Inc. (BFI), citing it for 29 violations of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. BFI responded to the notice of claim denying the alleged violations and requesting the immediate appointment of an administrative law judge. BFI asserted that there are two material factual issues in dispute requiring a hearing for resolution. These are (1) "whether any witness would testify that they had tendered hazardous material to BFI for shipment" and (2) "whether BFI drivers transported property in interstate commerce and failed to make a record of duty status."

On April 28, 1993, BFI moved for the immediate appointment of an administrative law judge, for an expedited proceeding, and for extraordinary relief. Specifically, BFI requests that the Director of the Federal Highway Administration's (FHWA) Office of Motor Carriers in Montgomery, Alabama, "be directed forthwith to immediately communciate with the Mobile Police Department that no competent determination has been made that BFI is transporting hazardous materials in the course of its medical waste disposal business, and that there is, therefore, so far as is known to FHWA, no reason to prohibit use of tunnels in Mobile, Alabama to BFI." This request is based on BFI's assertion that it has been denied use of a tunnel by the Mobile Police Department based on information received by that Department from the FHWA. BFI apparently believes that the information provided to the Mobile Police Department is the same information that forms the basis of the instant enforcement case, and that that information is incorrect.

On May 10, the Regional Director requested an extension of time until May 24, 1993, to respond to BFI's motion. The Regional Director states that BFI has submitted a petition for exemption to the Research and Special Programs Administration of the Department of Transportation (DOT) which might have a direct bearing on this enforcement case. The Regional Director further argues that the question of what materials are permitted to pass through tunnels in Mobile, Alabama, is not properly before the FHWA.

I am granting the Regional Director's request for an extension of time until May 24. First, I believe that the decision on whether to send this enforcement case to an administrative law judge should await clarification of the nature and scope of any related petition submitted to one of FHWA's sister agencies within the DOT. Second, I believe that if BFI has been barred from using a tunnel under the authority of the Mobile Police Department, then BFI must take that matter up with that Department. I cannot tell whether the FHWA provided incorrect information to the Mobile Police Department without conducting an investigation or resolving the dispute raised in the underlying enforcement case. In any event, State and local governments are responsible for making decisions within their respective spheres of authority. If BFI believes that the Mobile Police Department does not have sufficient basis upon which to deny BFI the use of a tunnel, BFI should make that case to the Mobile Police Department.

It Is Hereby Ordered that the Regional Director's request for an extention of time to respond to BFI's April 28 motion is granted. The Regional Director shall respond to BFI's April 28 motion on or before May 24, 1993.

Dated: May 18, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the Matter of PGT Trucking, Inc., Respondent. Docket No. R3–92–278.

Order Denying Motion for Reconsideration

By motion dated March 24, 1993, Respondent PGT Trucking, Inc., moved for reconsideration of my Order of March 19, 1993. That Order appointed an Administrative Law Judge to consider issues raised by a notice of claim issued against Respondent on September 10, 1992. But the Order further denied Respondent's March 2,

[9] *See In the Matter of Frotzmann, Inc.*, Docket No. R10–89–11, Final Order of the Associate Administrator dated June 20, 1990.

[10] This decision is issued pursuant to 49 CFR § 386.61. This decision becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under 49 CFR § 386.62.

1993, motion to expand the jurisdiction of the Administrative Law Judge to also consider a 1991 enforcement case. Order at 7. Respondent now seeks reconsideration of my March 19 Order insofar as it denied Respondent's request to expand the jurisdiction of the Administrative Law Judge to include review of the 1991 notice of claim against Respondent.

The instant case, Docket No. R3–92–278, has been assigned to Chief Administrative Law Judge John J. Mathias. I note that by Order served April 5, 1993, Chief Judge Mathias also denied Respondent's motion to expand the jurisdiction of the Administrative Law Judge in Docket No. R3–92–278 to include issues raised in the 1991 enforcement case, Docket No. R3–91–302.

In its March 24 motion, Respondent again seeks to re-open the earlier enforcement case, settled between the parties in September 1991. Respondent relies on arguments apparently first made by Counsel for Respondent in a letter to the Federal Highway Administration's (FHWA) Director of Motor Carrier Field Operations dated January 11, 1993, approximately 16 months after the 1991 settlement. These arguments include Respondent's alleged lack of counsel in settling the 1991 case.

Whether Respondent engaged the services of counsel in settling the 1991 enforcement case against it is a matter within Respondent's control. The FHWA's notice of claim dated August 23, 1991 (attached as Exhibit B to Respondent's March 2 motion), expressly provided that the carrier or its "representative" could contact the FHWA Regional Office to discuss or settle the 1991 enforcement case.

Respondent also takes issue with my finding that Respondent had not alleged any facts which would suggest that the settlement agreement was reached through a miscarriage of justice. Counsel for Respondent states that it is apparent from my March 19 Order that the entire record was not before me at that time. Counsel is reminded that letters and conversations with other FHWA personnel regarding a particular case are not brought to my attention, except by a party to the case with notice to the other party.

I find nothing in the materials attached to Respondent's March 24 motion, including Counsel's January 11, 1993, letter to the Director of Motor Carrier Field Operations, that persuades me that the principle of finality a agency decisions should be abandoned by reopening Docket No. R3–91–302 at this time. The FHWA's Rules of Practice for Motor Carrier Safety and hazardous Materials Proceedings (49 CFR part 386) set forth the procedural steps a respondent must follow to seek review, whether reconsideration or appeal, and the time limits that apply. In my view, the September 1991 settlement agreement between the Regional Director and PGT was a final agency order disposing of Docket No. R3–91–302, and the time has run for either reconsideration or appeal of it.

Moreover, I am not persuaded by Respondent's argument that, as a contractual matter, the 1991 settlement agreement is null and void for lack of consideration. While not holding that a settlement agreement in a civil forfeiture case is a matter of simple contract between parties, I believe that avoidance of litigation risk can adequately support an agreement such as this, if nothing else.

Counsel essentially argues that, if he had been counsel to Respondent in 1991, he would have advised against accepting the bargain Respondent then accepted. I believe that Respondent cannot now come in and say it is unhappy with the bargain it struck. Section 386.16(c)(3) plainly states that an executed settlement agreement is binding according to its terms. Counsel's assertions that Respondent was misled as to the regulations it was charged in 1991 with violating, including Counsel's assertions that FHWA employees misstated the requirements of the regulations, rest both on Counsel's argument as to the "true" facts of the case and on Counsel's interpretation of the requirements of the regulations. Counsel for Respondent seek to argue both the facts underlying the 1991 enforcement case and their legal significance. It is too late for that now.

Finally, Counsel for Respondent appears to dispute my assertion that the record before me at the time of my March 19 Order did not include a denial by Respondent of nineteen charges leveled in the 1992 notice of claim. I find Respondent's point moot since I expressly referred these nineteen counts to the Administrative Law Judge in my March 19, Order.

I believe that settlement of the 1991 enforcement case represents final agency action in that case, and for the reasons set forth in my March 19 Order and Chief Judge Mathias' April 5 Order Denying Motion Respondent, as well as the reasons set forth here, I hereby deny Respondent's motion to reconsider my March 19 Order. The Administrative Law Judge assigned to Docket R3–92–278, may, of course, consider matters related to the 1991 case, including its settlement and the continuing effect of the Notice of Abatement, to the extent such matters are relevant to Docket R3–92–278 as discussed in my March 19 Order and Judge Mathias' Order of April 5.

It Is Hereby Ordered that PGT's motion for reconsideration of the Associate Administrator's Order of March 19, 1993, is denied.

Dated: May 18, 1993.

John P. Eicher,

Acting Associate Administrator.

Department of Transportation, Office of Hearings, Washington, DC, Served May 10, 1993: In the matter of John Steven Johnson, in his individual capacity as President of Steve Johnson & Sons Trucking, Inc.; and Steve Johnson & Sons Trucking, Inc., a corporation., FHWA Docket No. R9–89–058 (Motor Carrier Safety).

Order Granting Agency Motion for Summary Judgment and Denying Respondent Counter-Motion for Summary Judgment

A motion for summary judgment or, in the alternative, for partial summary judgment, with a supporting memorandum, and a motion to compel discovery were filed by the Regional Director, Office of Motor Carriers, Federal Highway Administration ("Agency") on October 19, 1992. An opposition to the summary judgment motion and a counter-motion for summary judgment were filed by John Steven Johnson ("Respondent") on December 4, 1992. On December 16, 1992, Agency filed a reply to the opposition and on January 7, 1993, Respondent filed a rejoinder to the reply.

I have considered the pleadings and all other documents presently in the record before me and for the following reasons, Agency's Motion for Summary Judgment is hereby granted and Respondent's Counter-Motion for Summary Judgment is hereby denied. In light of this disposition of the case, no ruling is made on Agency's Motion to Compel Discovery.

I. Procedural Background

Procedural events leading up to this point in the proceeding are complicated and have been set out in various orders previously entered in the record and cited, *passim*. They also have been summarized in Agency's Memorandum at 1–13 and Motion to Compel Discovery at 1–4.

The proceeding arises by way of a Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit dated July 12, 1991, remanding in part the Final Order of the Federal Highway Administration ("FHWA") Associate Administrator for Motor

Carriers dated September 20, 1989, imposing a $19,700 civil penalty against Respondent and Steve Johnson & Sons Trucking, Inc. ("Corporation"). The Court affirmed the fine against Corporation, but found "that the FHWA may have exceeded its statutory and regulatory authority in imposing this fine against *Johnson individually* * * *." The Court, therefore, directed "further consideration of the appropriateness of the fine against Johnson * * *." (Memorandum Opinion at 5 (emphasis added)).

By Order dated December 11, 1991, the FHWA Associate Administrator for Motor Carriers instituted this proceeding under the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings in 49 CFR part 386 for the limited purpose of reviewing the appropriateness of imposing the fine against Mr. Johnson *in his individual capacity.*

The record, to date, in the proceeding is extensive. Among other things, by agreement of both sides the administrative record upon which the FHWA Associate Administrator issued the September 1989 Final Order and the judicial record upon which the Ninth Circuit issued the July 1991 Memorandum Opinion have been admitted in evidence. See Order served May 26, 1992.[1] Discovery has resulted in matters admitted and deemed admitted by Respondent, and in Respondent's production of documents.

II. Established Violations

The Ninth Circuit's ruling held that no violations are in issue. The $19,700 civil penalty Agency seeks to assess against Respondent, therefore, is a total amount for the following violations:

Five instances of operating a motor vehicle in interstate commerce without having the required minimum level of financial responsibility in violation of 49 CFR 387.7(a), at $2,000 per instance ("*financial responsibility*" violations).

Two instances of failing to timely report reportable motor vehicle accidents in violation of 49 CFR 394.9(a), at $350 per instance ("*recordkeeping*" violations).

Four instances of requiring or permitting drivers to make false entries on their records of duty status in violation of 49 CFR 395.8(e), at $500 per instance ("*recordkeeping*" violations).

Five instance of requiring or permitting drivers to drive in interstate commerce more than ten hours without having eight consecutive hours off duty in violation of 49 CFR 395.3(a)(1), at $700 per instance ("*safety*" violations).

Five instances of requiring or permitting drivers to drive in interstate commerce after having been on duty more than 70 hours in eight consecutive days in violation of 49 CFR 395.3(b), at $700 per instance ("*safety*" violations).

III. Statutory and Regulatory Provisions

The *financial responsibility* requirement in 49 CFR 387.7(a)[2] was promulgated by the FHWA pursuant to the Motor Carrier Act of 1980 ("1980 Act"). Specifically relevant therein to this proceeding is 49 U.S.C. 10927 note providing that:

> Any *person* (except an *employee* who *acts without knowledge*) who is determined by the Secretary * * * to have *knowingly violated* this section or *a regulation issued under this section* shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. [Emphasis added].[3]

The *recordkeeping* requirements in 49 CFR 394.9(a)[4] and 395.8(e)[5]; and the *safety* requirements in 49 CFR 395.3(a)(1) and (b)[6] were promulgated by the FHWA pursuant to the Motor Carrier Safety Act of 1984 ("1984 Act"). Specifically relevant therein to this proceeding is 49 U.S.C. § 521(b)(2)(A) providing that:

> [A]ny *person* who is determined * * * to have *committed an act which is a violation* of a *recordkeeping* requirement issued by the Secretary pursuant to * * * the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense * * *. If the Secretary determines that a serious pattern of *safety violations, other than recordkeeping requirements,* exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000 * * *. Notwithstanding any other provision of this section * * *, *except for recordkeeping violations,* no civil penalty shall be assessed under this section against an *employee* for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. [Emphasis added].[7]

IV. Issue To Be Resolved

The issue to be resolved is that framed by the Ninth Circuit: whether the FHWA exceeded its statutory and regulatory authority in imposing the $19,700 fine against Respondent individually. *Accord* December 11, 1991 FHWA Order. For the sake of clarity, I stress that it is in this *individual* capacity that the case is to be decided.

As the case was originally begun by the FHWA, the grounds for Respondent's alleged liability, distinct from Corporation's appears to be two-fold; namely, "in his individual capacity as President of" Corporation, the terminology which continues to appear in the caption of the proceeding (*supra*) and, simply, "in his individual capacity". *See* Index No. 23, Tab J (Notice of Claim at case caption and 1). The Ninth Circuit acknowledged this fact (Memorandum Opinion at 1 ("John Steven Johnson ('Johnson'), in his individual capacity *and* as president" of Corporation (emphasis added)). But, in remanding the case, the Court expressly limited the liability question to the individual capacity (*id.* at 5 ("Petitioners finally contend that the FHWA erred in holding both Johnson, *in his individual capacity,* and the company liable for the $19,700 fine." (emphasis added)).

I shall not, therefore, be deciding the issue of whether "a corporate officer may be held jointly and severally liable with the corporate entity for the violations," as suggested by Agency. See Memorandum at 14–15. Although, as shortly to be found, Respondent was president of Corporation, this is only one of a number of capacities he acted in at Corporation. Moreover, the 1980 and 1984 Acts, in terms, require resolution of Respondent's liability as an individual for the violations at Corporation on the basis of whether,

> Respondent was a "person" who knowingly violated the financial responsibility regulations or an "employee" who acted without knowledge of them within the meaning of 49 U.S.C. 10927 note; and
>
> Respondent was a "person" and was an "employee" within the meaning of 49 U.S.C. 521(b)(2)(A).

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[1] Documents in the records are designated Index Nos. 1, 2, etc.

[2] 49 CFR 387.7(a) provides that: "No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart."

[3] This provision of 49 U.S.C. 10927 note is in Section 30(d)(1) of the 1980 Act.

[4] 49 CFR 394.9(a), in relevant part, provides that: "Within 30 days after a motor carrier learns or should have learned that a reportable accident occurred, the motor carrier must file the original and two copies of Form * * * with * * *."

[5] 49 CFR 395.8(e), in relevant part, provides that: "Failure to complete the record of duty activities * * * or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution."

[6] 49 CFR 395.3(a)(1), in relevant part, provides that: "[N]o motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive * * * [m]ore than 10 hours following 8 consecutive hours off duty * * *."

49 CFR 395.3(b) provides that: "No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after * * *"

[7] 49 U.S.C. 521(b)(2)(A) is in Section 213(b) of the 1984 Act.

V. Summary Judgment Requirements

The FHWA's procedural rules in 49 CFR part 386 do not refer to motions for summary judgment. I am empowered, however, "[t]o consider and rule upon all procedural and other motions * * *." 49 CFR 386.54(b)(6). The rules also provide that "[a]n application for an order or ruling not otherwise covered by these rules shall be by motion * * *" and that "[a]ll motions filed after the matter is called for hearing shall be to the administrative law judge." 49 CFR § 836.35(a). *See also Woodbury Horse Transportation, Inc.*, 55 FR 43272 (October 26, 1990).

The FHWA's procedural rules further provide that evidence presented at hearings conducted under Part 386 is subject to the Federal Rules of Evidence. I shall similarly apply requirements and case law applicable to motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Accordingly,

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [Fed. R. Civ. P. 56, 28 U.S.C.].

VI. Respondent's Counter-Motion for Summary Judgment Without Merit

In the instant proceeding, Respondent has relied on essentially one argument in virtually every pleading filed: the proceeding is allegedly being conducted contrary to the Ninth Circuit's remand order, and the controlling statutes and agency regulations. Respondent has maintained that conducting an oral evidentiary hearing is impermissible because "[t]he plain meaning * * * [of the Ninth Circuit's remand order] is that the hearing is to be on the record as made by the AGENCY *in the past* for the fine *imposed in the past*, and not some new one-sided augmentation by a new investigation." (Pleading filed March 19, 1992, at 4 (emphasis in original)). Respondent has maintained that the statutory and regulatory schemes for civil forfeitures require all evidentiary matters to be in the possession of the agency in advance of its issuance of a notice of claim involving such a forfeiture. (Pleading filed June 18, 1992, at 2).

I have held that the latter contention is "patently false," there being nothing in the underlying statutes or the agency's rules of practice which requires the Associate Administrator to have in his possession, when issuing a notice of claim, every piece of evidence necessary to prove the charges therein. Indeed, I emphasized that the rules of practice specifically set out the scope and means of discovery that parties may conduct after the commencement of such actions, see 49 CFR 386.37–45. (Order served July 2, 1992, at 2.)

As to the former contention, I have held that:

> [T]he Court found the record before it inadequate to support the agency's action finding Respondent liable for the fine and, in terms, remanded that action 'for further consideration by the FHWA.' (Memorandum Opinion at 2.) Respondent, therefore, is not presently liable and will only become liable for the fine, if at all, on the basis of *the evidentiary record to be established in this proceeding.* [Order served May 26, 1992, 8 n.11 (emphasis added)].[8]

I concluded, furthermore, at the outset of the proceeding that although admission of the administrative and the judicial records into the proceeding's evidentiary record would be permitted, neither contained sufficient factual information for determining Respondent's liability for the fine, with the *possible* exception of establishing liability for the recordkeeping violations. (Order served May 26, 1992, at 5–6, 8). Throughout the proceeding I also stressed that the legal issue of Respondent's liability involves "the factual question of the relationship between Respondent and Corporation and of the duties and activities Respondent performed in relation to Corporation." Order served March 3, 1992, at 5. See also Orders served June 24, 1992, July 8, 1992, September 1, 1992.

Despite all the foregoing, Respondent has elected to proceed with a counter-motion for summary judgment based solely on the ground that no "amendment" to the Notice of Claim is proper and the evidentiary record, closed as of the agency's final action on the Notice of Claim, is factually sufficient to demonstrate Respondent's nonliability for the $19,700 civil penalty. I deny the countermotion.

VII. Agency's Motion for Summary Judgment

A. Respondent's Opposition Without Merit

In opposing Agency's Motion for Summary Judgment, Respondent reiterates the above contentions. I find them wholly without merit as a defense against the motion. But, Respondent also proffers one new argument. By means of an affidavit attached to the opposition, Mr. Johnson asserts: "I can categorically declare that *I was not actively involved in the day to day running of the company;* I was operating a wholesale produce company, and left the management and operation of the trucking company [Corporation] to others. (*Id.* at 3 (emphasis added)). Ostensibly, Respondent argues that the affidavit is provided to counter "the new contentions" in an affidavit attached to the agency's motion. (Opposition at 4; Rejoinder at 12–14).[9]

Respondent has been well aware from the start of the proceeding that Agency considered the fact established that Respondent ran the day-to-day operations of Corporation, *see* Notice of Claim at Index No. 23 at Tab I, yet, as shown above, Respondent has not only had abundant opportunity to have an oral evidentiary hearing concerning his duties and activities at Corporation, a hearing he has repeatedly argued against, but he has, through his refusal to answer certain requests of admission, effectively admitted the facts which show his personal involvement and responsibility. See page 10 below.

"The doctrine of judicial estoppel * * * is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process." *Religious Tech. Ctr., Ch. of Scientology*, 869 F.2d 1306, 1311 (9th Cir. 1989). See also *Russell* v. *Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). The basis for the doctrine of judicial estoppel and the basis for preventing the use of inconsistent assertions is "to protect against a litigant playing 'fast and loose with the courts' * * *." *Rockwell Intern.* v. *Hanford Atomic Metal Trades*, 851 F.2d 1208, 1210 (9th Cir. 1988).

I consider Respondent's litigating tactics in this proceeding well within the category of playing "fast and loose" with the administrative hearing process. I will not permit Respondent, at this late

[8] It is to be noted that no evidentiary hearing has ever been held to date, in this case. When first before the FHWA, Respondent failed to make a timely request for a hearing and the agency's subsequent refusal to conduct a hearing, along with the alleged impermissibility of imposing the fine against Respondent, were the matters appealed by Respondent and Corporation to the Ninth Circuit.

[9] The Agency's affidavit is from FHWA Safety Specialist Mark D. Gilmore, who declares:

> During the latter part of April 1989 (April 26 and 27) and on May 9, 1989, I conducted a compliance review of STEVE JOHNSON & SONS TRUCKING, INC., a closely-held corporation which listed JOHN STEVEN JOHNSON (President) and his wife, Colleen R. Johnson (Secretary Treasurer) as officers of the corporation. To the best of my recollection and knowledge, Harlan W. Huber, the dispatcher, and a female employee were the only employees other than drivers who were employed by the corporation. Based upon my observations during the investigation of STEVE JOHNSON & SONS TRUCKING, INC., *these employees reported directly to Mr. Johnson who was actively involved in running the company.* [*Id.* at ¶ 3 (emphasis added)].

date, to plead a change in his position. Moreover, the overwhelming factual information provided by Respondent, as a result of Agency's discovery, is entirely contrary to any notion that during the relevant time period Respondent's full-time occupation was something other than running Corporation or even, indeed, that there were any *others* responsible for the management and operation of Corporation.

B. Facts Deemed Admitted May be the Basis for Summary Judgment

Agency served Respondent with 20 requests for admission on June 11, 1992. See Appendix. On June 18, 1992, Respondent filed objections on grounds of relevance to all but two of the requests (Request Nos. 3 and 16). By Order served July 8, 1992, the objections were overruled. In the meantime, on June 22, 1992, Respondent had filed a response admitting Request No. 3 and denying Request No. 16. In a second response filed July 21, 1992, submitted in compliance with the July 8, 1992 Order directing Respondent to file an answer to the outstanding requests, Respondent stated that he "will elect to answer * * * with silence." By Order served September 1, 1992, I held that Respondent's answer was deemed admission of the matters and facts set forth in the 18 outstanding requests.

The FHWA's procedural rule on requests for admission in 49 CFR 386.44(a) provides that "(2) Each matter for which an admission is requested * * * is admitted unless within 15 days after service of the request (or such alternate date as may be set by the administrative law judge), the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party of his/her attorney"; and that "(3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons."

This agency rule mirrors Rule 36 on requests for admission in the Federal Rules of Civil Procedure, 28 U.S.C., and it is well settled that "admissions obtained under rule 36, *including matters deemed to be admitted,* can form the basis for granting summary judgment [under rule 56]." *First Nat. Bank Co., Etc. v. Insurance Co.*, 606 F.2d 760, 766 (7th Cir. 1979) (emphasis added). Furthermore, unanswered requests for admissions constitute matters deemed to be admitted and they "may properly serve as an uncontroverted basis for purposes of summary judgment, *Bowles v. Batson*, 61 F. Supp. 839 (D.S.C. 1945), *aff'd Batson v. Porter*, 154 F.2d 566 (4th Cir. 1946)." *Kirkland v. Cooper*, 438 F. Supp. 808, 811–12 (D.S.C. 1977). *See also Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 176 n.7 (3d Cir. 1990); *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038; *U.S. v. Kasuboski*, 834 F.2d 1345, 1350 (7th Cir. 1987); *Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 548–49 (5th Cir. 1985); *Donovan v. Carls Drug Co., Inc.*, 703 F.2d 650, 651 (2d Cir. 1983).

The justification given by Respondent for his "silence" answer to Agency's 18 requests for admission was the oft repeated argument of "the clear invalidity of the present Post-Notice of Claim investigation," coupled with an alleged "implicit right" of the receiver of a request for admission "to remain silent" under 49 C.F.R. 386.44(a)(2). (Response filed July 21, 1992, at 1–2). My September 1, 1992 Order pointed out, once again, that Respondent's questioning of the "validity" of the proceeding had been previously considered and rejected. I further held that Respondent was reading into the agency's rules of practice governing requests for admission an "implicit right" that did not exist.

In any event, revisiting Respondent's answer merely reinforces the conclusion that it failed to comply with the procedural requirement, common both to the agency's rule and Rule 36 of the Federal Rules of Civil Procedure, that the only means by which a party can avoid "admitting" a request for admission is to file an answer specifically denying the request, in whole or in part, or detailing why the request cannot be admitted or denied. Then, as now, Respondent's "silence" answer leaves no question but that the Agency's 18 requests for admission must be and are deemed admitted for purposes of the proceeding and, at this time, for purposes of ruling on the agency's summary judgment motion.

I reiterate, furthermore, that Respondent's ill-conceived attempt to argue here, for the first time, a new factual position on his duties at Corporation will not be permitted. The rules of practice provide that "[a]ny matter admitted is *conclusively established* unless the * * * administrative law judge permits withdrawal or amendment." 49 CFR 386.44(b) (emphasis added). Respondent has made no request for such relief and the time has long passed when I would consider such a request to be timely made.

C. No Material Facts in Issue

I find that when the violations occurred, Steve Johnson & Sons Trucking, Inc., was an authorized for-hire carrier of general freight under Interstate Commerce Commission Docket No. 182717. (Index No. 23 at Tabs I, K).

I find that at such time, at Steve Johnson & Sons Trucking, Inc. Respondent and his wife were the only officers, directors, and shareholders. Respondent was president; his wife was secretary/treasurer. (Appendix at Request Nos. 2–3, 10–14, 17–18). All profits and losses from the business accrued to Respondent and his wife. (Appendix at Request No. 15).

I find that the dispatcher was Harlan W. Huber and that Respondent supervised Mr. Huber. (Index No. 23 at Tab K; Appendix at Request No. 19).

I find that Respondent was manager and supervised daily operations. (Appendix at Request Nos. 1, 4). Respondent was responsible for hiring, firing, training, and directly supervising all employees, including dispatchers and drivers; and for directly supervising any persons involved in hiring, firing, and training the employees. (Appendix at Request Nos. 5–9, 19). Respondent supervised accident reporting. (Appendix at Request No. 20).

I find that Respondent devoted all of his working time to carrying out the foregoing duties and activities. (Production of Document No. 4).[10]

In light of the statutory and regulatory provisions to be applied in this case, as now discussed, I conclude that there are no material facts in issue.

D. Agency Entitled to Summary Judgment as a Matter of Law

1. Respondent is Liable for the Financial Responsibility

In the Motor Carrier Act of 1980, Congress provided that "any person" who "knowingly violates" a financial responsibility regulation promulgated by the FHWA is liable for a civil penalty. Congress excepted from such liability, "an employee who acts without knowledge." 49 U.S.C. 10927 note.

In answering the Notice of Claim, Respondent did not dispute the facts relating to the financial responsibility charge; *i.e.*, that five interstate trips were operated by Corporation in which Ammonium Nitrate Fertilizer, a

[10] Production of Documents No. 4 contains the 1988 (tax year, April 1, 1988–March 31, 1989) U.S. Corporation Income Tax Return of Steve Johnson & Sons Trucking, Inc., and it gives the percentage of time Respondent—listed as the only "Officer" of Corporation—"devoted to business" as "ALL".

hazardous material, was transported without the minimum level of liability insurance required by 49 CFR 387.7(a), see Index No. 23 at Tab K, Nos. 1–5, but he now denies that he "knew" Corporation was transporting the product, see Appendix at Request No. 16. In his answer to the Notice of Claim Respondent also denied that he "knowingly" violated 49 CFR 387.7(a), see Index No. 23 at Tab I.

Respondent's current position, that he did not know about the trips and the transporting of Ammonium Nitrate Fertilizer, is not credible. I have before me a written statement signed by Respondent, dated April 27, 1989, which he provided to the FHWA during its investigation of Corporation. Respondent states therein:

> Since January 1, 1989 to the present date, Steve Johnson & Sons Trucking, Inc., has transported eleven (11) shipments of hazardous materials * * * The reason that we failed to have the required $1,000,000.00 of public liability for transporting hazardous materials is that even though the trailers were placarded oxidizer, I didn't think it was considered a hazardous material. [Index No. 23 at Tab K (Exhibit No. 1, Document 6)].

Where transportation of hazardous materials is concerned, "a civil penalty may be imposed only upon proof that the defendant knowingly committed the act which constitutes the violation (*it is not necessary to show that he knew the act constituted a violation*) * * *." S. Conf. Rep. No. 1347, 93d Cong., 2d Sess. 23, *reprinted in* 1974 U.S. Code Cong. & Admin. News 7669, 7686 (emphasis added). The Supreme Court has also recognized that where offenses involving dangerous products are concerned, while strict or absolute liability is not imposed, "the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them *must be presumed to be aware of the regulation*." *United States* v. *International Min'ls Corp.*, 402 U.S. 558, 565 (1971) (emphasis added). See also *TCI Corporation*, FAA Order No. 92–77 (December 22, 1992).

Respondent, therefore is properly charged with the requisite knowledge that hazardous materials were being transported. As discussed below, he must also be charged not only with the requisite knowledge that a minimal level of liability insurance was needed for its transportation by interstate motor carrier but also with personal liability for the illegal transportation, pursuant to 49 U.S.C. 10927 note and 49 CFR 387.7(a).

The word "person" is not defined in the 1980 Act, however, Congress has provided, as an overall rule of statutory construction, that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise," the word "person" includes "*corporations* * * *, as well as *individuals*. 1 U.S.C. 1 (emphasis added). Consistent therewith, Congress expressly provided in the Motor Carrier Safety Act of 1984 that the word "person" means "any *individual*, partnership, association, *corporation*, business trust, and any other organized group of individuals * * *." 49 App. U.S.C. 2503(6) (emphasis added). As a general rule of statutory construction, Congress also directed that "words importing the singular include and apply to *several persons*, parties or things * * *." 1 U.S.C. 1 (emphasis added).

I conclude, therefore, that Congress did not limit the FHWA, in enforcing financial responsibility requirements, to citing one "person" for a violation; a corporation and an individual may both be cited, as in this case. Furthermore, given Respondent's position at the co-respondent corporation as officer, director, shareholder, full-time manager of all employee hiring, firing, and training, and full-time supervisor of all employees and daily operations, I also conclude that Respondent falls into the category of "individual" in relation to the corporate respondent. "The best indicator of what statutory words mean is what they say." *Finnegan* v. *Matthews*, 641 F.2d 1340, 1344, (9th Cir. 1981). See also *Rivera* v. *Becerra*, 714 F.2d 887, 893 (9th Cir. 1983). There remains, then, the question of "knowingly" and Respondent's status as an "employee" at Corporation acting "without knowledge" within the meaning of 49 U.S.C. 10927 note.

The legislative history of the 1980 Act indicates that it effected changes in the Interstate Commerce Act which had governed regulation of the motor carrier industry in the United States since 1935. H.R. Rep. No. 1069, 96th Cong., 2d Sess. 2, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2283, 2284. Also indicated is Congressional concern that the changes "might have some impacts on safety" and, specifically, concern "that minimum financial responsibility requirements were needed whether or not any change was made in the economic regulatory scheme." Hence, the 1980 action by Congress on financial responsibility was "to encourage *the carriers* to engage in practices and procedures that will enhance the safety of their equipment so as to afford the best protection to the public." *Id.* at 42, 2324 (emphasis added).

The FHWA, accordingly, was directed "to establish regulations to require minimal levels of financial responsibility sufficient to satisfy liability amounts * * * covering public liability, property damage, and environmental restoration for the transportation of property for hire by motor vehicle in the United States * * *." 49 U.S.C. § 10927 note. And Congress provided that failure to adhere to the agency's regulations would result in civil penalty liability. *Id.*

The foregoing resulted in the regulation here in issue, 49 CFR 387.7(a), which obligates *motor carriers* to have certain minimum levels of financial responsibility, see note 2, *supra*. By regulation, the definition of a "motor carrier" is "a for-hire motor carrier * * * of property" and the term includes "a motor carrier's agents, *officers* and representatives as well as *employees responsible for hiring, supervising, training, assigning, or dispatching of drivers* * * *." 49 CFR 390.5 (emphasis added).

Respondent, at Corporation, not only was an officer but also clearly falls within the category of an employee responsible for hiring, supervising, and training drivers. He was also responsible for directly supervising the person dispatching drivers. In sum, at Corporation, Respondent was an *individual* who can be regarded as a *motor carrier* charged with the duty to maintain minimum levels of financial responsibility, as contemplated by statute and regulation.

As for Respondent's knowledge or lack thereof of the financial responsibility obligation, it is well settled that in a regulated industry such as interstate commerce—the first Interstate Commerce Act having been enacted in 1887—Congress frequently intends penalties to be the effective means of regulation and, thus, "[s]uch legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." *United States* v. *Dottevweich*, 320 U.S. 277, 280–81 (1943). *See also United States* v. *Balint*, 258 U.S. 250 (1922); *United States* v. *Freed*, 401 U.S. 601 (1970); *United States v. International Min'ls Corp., supra*, 402 U.S. 558.

It is also well settled that all citizens are charged with knowledge of the United States Statutes at Large, *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 384 (1947); and, more significantly, that those who deal with the Government are expected to know the law, *Heckler* v. *Community Health Services*, 467 U.S. 51, 63 (1984). Moreover, Congress has provided that "the appearance of rules

and regulations in the **Federal Register** gives legal notice of their contents." *Federal Crop, supra* 332, U.S. at 385. See also 44 U.S.C. 1507.

I conclude, therefore, that Respondent, in the individual capacities he held at Corporation as indicated above, was by law on notice of Federal requirements for insurance in transporting in interstate commerce the hazardous materials which, in fact and by express acknowledgment of Respondent, were transported without the proper insurance. *Cf. Wisconsin Protein Carriers, Inc.*, 55 Fed. Reg. 43277, 43278 (October 26, 1990).

Furthermore, Respondent cannot be regarded as unfamiliar with regulatory obligations imposed on interstate motor carriers. Prior to Respondent's association with Steve Johnson & Sons Trucking, Inc., he had been an officer and director of W.L. Davis Trucking, Inc., an interstate common carrier investigated by the FHWA in 1977, and found to be in violation of agency regulations. In addition, Steve Johnson & Sons Trucking, Inc., had been earlier investigated by the FHWA, in May 1988, at which time it received a conditional safety rating.[11] *See* Index No. 23 at Tab K (Exhibit Abstract A).[12] *Cf. Trinity Transportation*, 57 FR 28737, 28742 (June 26, 1992); *Yankee Trails, Inc.*, 55 FR 43274, 43276 (October 26, 1990).

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $10,000 civil penalty assessed by the FHWA for the five instances when improperly insured transportation of hazardous materials occurred.

2. Respondent is Liable for the Recordkeeping Violation

In the Motor Carrier Safety Act of 1984, Congress provided that "any person" who commits an act which violates a recordkeeping regulation promulgated by the FHWA is liable for a civil penalty. Congress made no exception for persons who are employees. 49 U.S.C. 521(b)(2)(A).

The recordkeeping violations in issue against Respondent involved two kinds of violations: failure to timely report accidents as required by 49 CFR 394.9(a); and requiring or permitting false driver records of duty status in violation of 49 CFR 395.8(e). In answering the Notice of Claim, Respondent admitted the failure to report accidents, but asserted that "I personally did not know the violation[s] took place and furthermore was not aware of the requirement to report such accidents." As to the driver record violations, Respondent denied personal liability "for every driver who makes a mistake." (Index No. 23 at Tab I).

Congress intended the 1984 Act to:

> [P]romote the safe operation of commercial motor vehicles, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act. [49 U.S.C. 2501].

Issued by the FHWA thereunder were the recordkeeping regulations in 49 CFR 394.9(a), obligating *motor carriers* to file accident reports, *see* note 4, *supra;* and in 49 CFR 395.8(e), obligating *drivers and/or carriers* to ensure that drivers' records of duty status were accurate, see note 5, *supra*.

The nexus between required reporting of accidents and motor carrier safety is obvious. The falsification of driver records is equally a matter of safety.

> Congress recognized that interstate highway safety is a national problem and that excessive hours spent in driving over the road endangers others using the highways as well as the individual driving; that the only practical way to exercise control over independent day and night around the clock truck drivers is to limit their continuous hours of operation; that to enforce such, a log showing time on and off duty, time spent in driving as well as time spent in the sleeper berth is required to be kept and filed each day or at the completion of each trip with the *employing motor carrier*. Congress did not deem it an undue burden * * * *to impose on the motor carrier the burden of policing such to determine their truth or falsity.* [*United States* v. *Sawyer Transport, Inc.*, 337 F. Supp. 29, 30 (D. Minn. 1971), *aff'd*, 463 F.2d 175 (8th Cir. 1972) (emphasis added)].

See also United States v. *E. Brooke Matlock, Inc.*, 149 F. Supp. 814 (D. Md. 1957).

The interplay between the statute's designation of a *person's* liability for such recording violations and the regulations' *motor carrier* liability is the same as found in connection with the financial responsibility violations. In the 1984 Act, as noted above, Congress defined "person" as, among other things, an *individual* and a *corporation*. 49 App. U.S.C. 2503(6). I conclude, therefore, for the same reasons given above in Section VII.D.1., that Respondent, in relation to Corporation, is an individual within the meaning of 49 U.S.C. 521(b)(2)(A) and that the FHWA is empowered by Congress to assess liability against both Respondent and Corporation for the recordkeeping violations. Furthermore, Respondent as an "individual" in relation to Corporation also clearly falls within the category of motor carrier/carrier for purposes of 49 CFR 394.9(a) and 395.8(e). The reasons are the same as for the financial responsibility violations; namely, by definition a "motor carrier" means, among other things, an *officer* and an *employee responsible for hiring, supervising, training, assigning, or dispatching of drivers, see* 49 CFR 390.5. In this instance, moreover, it is expressly established that Respondent supervised accident reporting, see Appendix at Request No. 20.

I conclude that there is no question as to "knowingly" with regard to Respondent's liability as an individual for the recordkeeping violations in issue. The reasons are the same as for the financial responsibility violations, see Section VII.D.1. Respondent's individual status at Corporation placed him on notice as a matter of law as to the regulatory requirements for accident and driver reports. And, because of Respondent's prior relationship to another interstate trucking company with regulatory compliance problems and the fact that at the time of the recordkeeping violations at Corporation, the company had a conditional safety rating issued barely a year before which cited recordkeeping as a problem, see note 11, *supra*, disavowal by Respondent of actual knowledge of such regulatory requirements is virtually impossible to accept under any circumstances he might argue. *Cf. A. Weinfeld & Sons, Inc.*, 55 FR 43283 (October 26, 1990); *Horizon Transportation, Inc.*, 55 FR 43292 (October 26, 1990).

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $700 civil penalty assessed by the FHWA for the two instances when motor vehicle accidents were not timely reported and for the $2,000 civil penalty assessed by the FHWA for the four instances when driver records of duty status had false entries.

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[11] 49 CFR 385.3(2) provides that a *conditional safety rating* means "a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in [49 CFR] 385.5(a) through (h)."

49 CFR 385.5(a) through (h) includes, "(b) Inadequate levels of financial responsibility (part 387)"; "(f) Nonreporting of accidents (part 394)"; and "(g) The use of fatigued drivers (part 395)".

[12] I note that the FHWA's compliance review report on Steve Johnson & Sons Trucking, Inc., dated May 20, 1988, lists as "persons interviewed during this review": Paul Martin, with the title "safety director"; and Steve Dement, with the title "vice president."(Index No. 23 at Tab K (Exhibit Abstract A). At the time of the violations here in issue, however, I must consider it established, through Respondent's deemed admission, that Respondent and his wife were the company's only officers and directors, see Appendix at Request No. 13.

3. Respondent is Liable for the Safety Violations

The statutory basis for Respondent's liability for the safety violations comes from the same section of the Motor Carrier Safety Act of 1984 as does his liability for the recordkeeping violations except that while "any person" who commits an act which violates a safety regulation promulgated by the FHWA is liable for a civil penalty, Congress did limit such liability for persons who are employees[13] unless their actions constituted gross negligence or reckless disregard for safety. 49 U.S.C. 521(b)(2)(A).[14]

Respondent's answer to the safety violations was not to deny that they happened, but to disclaim personal responsibility: "I can not [sic] ride with every driver and *force* them to obey the law." (Index No. 23 at Tab I (emphasis in original)). There is also some indication in pleadings before me that Respondent considers himself an *employee* for purposes of 49 U.S.C. 521(b)(2)(A) and the safety violations. See Pleading filed February 6, 1992, at 3 (Respondent, "as an individual person—was somehow, by some unexplained and undetected manner, converted into an '*EMPLOYER*,' * * *." (emphasis in original)).

The legislative history of the 1984 Act indicates why Congress distinguished between *persons/employers* and *employees* for purposes of their liability for safety violations.

The Committee believes that an employee who is operating a commercial motor vehicle in a grossly negligent manner or with reckless disregard for safety and in violation of this title should be subject to a civil penalty. At the same time, the Committee recognizes the fact that employees and employers enjoy a different financial status. The level of penalty necessary to provide a deterrent to an employer could have the effect of financially bankrupting an employee. The different levels of penalties for employers and employees are designed, therefore, to create adequate incentives to assure compliance with the act. [S. Rep. No. 424, 98th Cong., 2d Sess. 11, *reprinted in* 1984 U.S. Code Cong. & Admin. News 4785, 4795].

Simply applying the terms employer and employee as used in the foregoing statement and in furtherance of the public policy contained therein, I must find that Respondent is an "employer" at Steve Johnson & Sons Trucking, Inc. Respondent, along with his wife, was the only shareholder in the corporation; they alone received all profits/losses from the business. Respondent, furthermore, was the person at Steve Johnson & Sons Trucking, Inc., who hired, trained, supervised, and fired all of the employees—including all of its drivers—who carried out the company's business. He was also the manager of the company and supervised its daily operations. It would defy common sense and logic to conclude that, simply because the company was a corporation, thereby rendering the corporate entity the employer, that Respondent is not also an employer who is required by Federal statute to assume responsibility for safety infractions committed by the corporation's interstate truck drivers.

In any event, I am not limited to common sense and logic in this instance. The specific FHWA safety regulations in issue, and promulgated pursuant to the Congressional mandate in 49 U.S.C. 521(b)(2)(A), are in 49 CFR 395.3(a)(1) and (b). These regulations, in terms, provide that a *motor carrier* shall not permit or require drivers to exceed certain hours of service limitations, *see* note 6, *supra*. Moreover, 49 CFR 390.11 provides that "[w]henever . . . a duty is prescribed for a driver or a prohibition is imposed upon the driver, *It shall be the duty of the motor carrier to require observance of such duty or prohibition* * * *." (Emphasis added).

I have found Respondent to be a *person/individual* within the meaning of 49 U.S.C. 521(b)(2)(A) and *motor carrier* within the meaning of the FHWA's regulations issued thereunder, which would include 49 CFR 395.3(a)(1) and (b). See Section VII.D.2., *supra*. For purposes of 49 U.S.C. 521(b)(2)(A), Respondent must be considered an *employer* as defined in 49 App. U.S.C. § 2503(3), given his overall management responsibility at Corporation, including assigning employees to operate its commercial motor vehicles, see note 13, *supra*.

I find, again, that Respondent's responsibility for assigning employees placed him on notice as a matter of law as to the regulatory requirement for driver hours of service limitations. And, I find that Respondent must be considered as having actual notice of the requirements, see Section VII.D.2.; note 11, *supra*.

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $7,000 civil penalty assessed by the FHWA for ten instances when drivers were required or permitted to drive in interstate commerce in violation of hours of service limitations.

Conclusion

Having granted Agency's motion for summary judgment, Respondent is jointly and severally liable with Corporation for the total amount of the civil penalty involved herein, $19,700.[15]

My decision in this Order becomes the final decision of the Associate Administrator 45 days after the Order is served unless a petition or motion for review is filed under 49 CFR 386.61 and in compliance with the requirements set out in 49 CFR 386.62.

So ordered.

John J. Mathias,

Chief Administrative Law Judge.

Attachments—Appendix—Agency Requests for Admission

Appendix—Agency Requests for Admission

Request No. 1

Admit or deny that John Steve Johnson supervised the daily operations of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

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[13] Congress defined "employee", in 49 App. U.S.C. 2503(2), as:

(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; and

(D) *any individual other than an employer;*

who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety . . . . [Emphasis added].

Congress defined "employer", in 49 App. U.S.C. § 2503(3), as:

[A]ny person engaged in business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or *assigns employees to operate it* . . . . [Emphasis added].

[14] 49 U.S.C. 521(b)(2)(A) also provides that a civil penalty, not to exceed $1,000 for each violation, may be assessed against "any person" and if a "serious pattern" of safety violations exists, the total amount may not exceed $10,000. In the case of an employee, the civil penalty may not exceed $1,000.

Here, the ten safety violations were assessed by the FHWA at $700 each; the total $7,000 fine, therefore, would comply with the statutory requirement for serious pattern violations if Respondent is found to be a *person* subject to such liability. If Respondent is found to be an *employee*, the assessed fine would, of course, exceed the permissible limit.

In light of my conclusion below that Respondent is not an employee vis-á-vis the ten safety violations for statutory and regulatory purposes, the $7,000 fine is appropriate. Moreover, there is no basis for otherwise considering whether a "serious pattern" of safety violations in fact existed, *see* Agency Memorandum at 33–36, since, pursuant to the Ninth Circuit's ruling, the violations are not in issue.

[15] Agency, in the alternative in its motion for summary judgment, requests partial summary judgment on Respondent's liability for the financial responsibility and recordkeeping violations, alone. Agency provides no argument for differentiating between his liability for these violations and the safety violations. Respondent did not address the question. I see no basis for such distinction either in fact or law in this case.

Request No. 2

Admit or deny that John Steven Johnson served as a director of Steven Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 3

Admit or deny that John Steven Johnson served as president of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Admitted.

Request No. 4

Admit or deny that John Steven Johnson served in the capacity of manager of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 5

Admit or deny that John Steven Johnson was responsible for the hiring of employees of Steven Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 6

Admit or deny that John Steven Johnson was responsible for the firing of employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 7

Admit or deny that John Steven Johnson was responsible for the training of employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 8

Admit or deny that John Steven Johnson was directly responsible for supervising any person involved in any of the activities described in Requests for Admission Numbers 5, 6, and 7 above.

Deemed admitted.

Request No. 9

Admit or deny that John Steven Johnson was directly responsible for supervising dispatchers, drivers, and other employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 10

Admit or deny that John Steven Johnson was married to Colleen Johnson during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 11

Admit or deny that Colleen Johnson was a co-director of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 12

Admit or deny that Colleen Johnson was the secretary/treasurer of Steve Johnson and Sons Trucking, Inc., during the period October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 13

Admit or deny that there were no other officers or directors of Steve Johnson and Sons Trucking, Inc., other than John Steven Johnson and Colleen Johnson, during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 14

Admit or deny that John Steven Johnson and Colleen Johnson were the sole shareholders of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 15

Admit or deny that the profits and losses of Steve Johnson and Sons Trucking, Inc., accrued to John Steven Johnson and Colleen Johnson during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 16

Admit or deny that John Steven Johnson knew that Steve Johnson and Sons Trucking, Inc., transported Ammonium Nitrate Fertilizer, UN 2067, Class 5.1, Oxidizer during the period between February 1, 1989, and April 30, 1989.

Denied.

Request No. 17

Admit or deny that at any time during the period between October 1, 1988, and May 31, 1989, Steve Johnson and Sons Trucking, Inc., was a corporation whose shares were held by a single shareholder or a closely-knit group of shareholders.

Deemed admitted.

Request No. 18

Admit or deny that at any time during the period between October 1, 1988, and May 31, 1989, there were no public investors in Steve Johnson and Sons Trucking, Inc.

Deemed admitted.

Request No. 19

Admit or deny that John Steven Johnson supervised Harlan Huber during the period between October 1, 1988, and May 31, 1989, while Mr. Huber was employed by Steve Johnson and Sons Trucking, Inc.

Deemed admitted.

Request No. 20

Admit or deny that John Steven Johnson supervised the accident reporting responsibilities of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Department of Transportation, Served April 12, 1993: In the Matter of Northeastern Poly Products, Inc., Respondent. Docket 92–207, FHWA (Motor Carrier Safety), Honorable John J. Mathias.

Order

The parties have agreed to settle this matter prior to hearing and having entered into a settlement agreement, IT IS HEREBY ORDERED, that the above matter is dismissed in accordance with the terms of the Stipulation of Compromise and Settlement attached hereto.

Honorable John J. Mathias,

Chief Administrative Law Judge.

Department of Transportation: In the matter of Northeastern Poly Products, Inc., Respondent. Docket No. 92–207, FHWA (Motor Carrier Safety) Hon. John J. Mathias.

Stipulation of Compromise and Settlement

It is hereby stipulated by the Regional Director, Office of Motor Carriers and respondent, Northeastern Poly Products, Inc., through their respective attorneys as follows:

1. The Regional Director, Office of Motor Carriers (hereinafter "Regional Director") made a claim for $2,700 against Northeastern Poly Products (hereinafter "Respondent") under subtitle IV of title 49, United States Code, 49 U.S.C. 501. Notice of Claim was sent to Respondent on January 30, 1992.

2. Pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 3701 et seq. and the regulations of the Regional Director in 49 CFR part 386, the parties desire to settle the claim. This agreement for settlement of the claim is made pursuant to 49 CFR 386.14 and the Federal Rules of Civil Procedure.

3. Respondent shall pay the sum of Two Thousand Dollars and 00/100's ($2,000) in full satisfaction of any and all claims arising out of the January 30, 1992 Notice of Claim which is the subject of this action.

4. Respondent shall pay the agreed settlement in five monthly installments of Four Hundred Dollars ($400) each, commencing on April 1, 1993, by Certified Bank or Teller checks, payable to the Federal Highway Administration.

5. Should Respondent fail to abide by the terms described in paragraph four (4), Respondent acknowledges that the entire amount of the civil penalty assessment cited in the Notice of Claim dated January 30, 1992 shall become due and payable immediately.

6. Respondent acknowledges that it has received adequate notice of the Regional Director's claim and waives any and all rights it may have to further details of the violations that gave rise to the claim and a decision containing findings of fact and conclusions of law.

7. Respondent also acknowledges that a safety compliance review may be

conducted in the near future and, should sufficient violations be discovered, the Regional Director reserves the right to initiate any and all actions permitted under the Motor Carrier Act, the Interstate Commerce Act and as authorized by 49 App. U.S.C. 521(5)(A).

Dated: March 19, 1993.

Richard Balter,

Northeastern Poly Products, Inc.

Dated: March 22, 1993.

Lawrence Lowen,

Attorney for Northeastern Poly Products, Inc.

Dated: April 7, 1993.

Stephen P. Crane,

Regional Director, Office of Motor Carriers.

Dated: April 7, 1993.

Sheila D. O'Sullivan,

Attorney for the Regional Director.

Department of Transportation, Office of Hearings, Washington, DC, Served April 5, 1993 In the matter of PGT Trucking, Inc., FHWA Docket No. R3–92–278 (Motor Carrier Safety).

Order Denying Motion of Respondent

By motion dated March 2, 1993, Respondent moved to expand the jurisdiction of the administrative law judge and requested further that an administrative law judge be immediately appointed and that the judge's jurisdiction include the power to rule on this matter. FHWA Counsel, by pleading dated March 8, 1993, opposed the motion and moves to strike it. On March 19, 1993, the Office of the Acting Associate Administrator for Motor Carriers requested the appointment of an administrative law judge to conduct a hearing and render an initial decision in this matter. No mention was made in the request of Respondent's motion to expand the jurisdiction of the administrative law judge. By order dated March 25, 1993, this proceeding was assigned to the undersigned Administrative Law Judge.

Having reviewed the pleadings of the parties I find no need for an expansion of my authority to rule on the issues raised therein. The present proceeding is in no way a re-opening of the proceedings in Docket No. R3–91–302. The charges in the present Notice of Claim deal with alleged violations which post-date the settlement agreement of September 18, 1991, in Docket No. R3–91–302.

It is also my determination that the request for reinstatement of a portion of a previously suspended penalty, as set forth in the Notice of Claim, is not a rescission of the settlement agreement of September 18, 1991. Such request is based on 49 CFR 386.82 and Appendix A to Part 386. As such, it constitutes a separate charge of violation, albeit one that depends on the Notice of Abatement in Docket No. R3–91–302. On the other hand, this request in the Notice of Claim does raise the legal question as to whether the Notice of Abatement survived the Settlement Agreement of September 18, 1992. That agreement did provide for the payment of the full amount of the original penalty of $83,600 in the event PGT Trucking failed to make payments on the due date, but is silent as to any continuing effect of the Notice of Abatement included with the Notice of Claim in that matter. The agreement does, however, state that "In consideration of the *full compromise and settlement of the claim*, the CARRIER agrees to pay the ADMINISTRATION, and the ADMINISTRATION agrees to accept the sum of $62,400 * * *." (Emphasis added). Thus, Respondent's motion does raise a legal question as to the continuing effect of the Notice of Abatement in Docket No. R3–91–302, and calls into question and support for $17,500 of the civil forfeiture penalty requested in the present case. This question can be addressed on brief at the conclusion of any hearing on the issues raised in the Notice of Claim in the present case.

The other issues raised in Respondent's motion must fail in view of my findings on the above issues. It is clear, however, that I would have no jurisdiction to find the earlier settlement agreement to be null and void or to order restitution to Respondent of the amount paid under that agreement. Any error of law or fact that may have preceded that agreement is not at issue in this proceeding. The settlement agreement in that matter constituted a final agency decision therein, as well as a surrender of any rights Respondent might have had to contest the allegations of the Notice of Claim therein. To the extent any right to contest the penalty survived in that proceeding, it was extinguished when Respondent failed to file a Motion for Reconsideration within 20 days under 49 CFR 386.64.

So Ordered.

John J. Mathias,

Chief Administrative Law Judge.

Before the Federal Highway Administration: In the Matter of PGT Trucking, Inc., Respondent, Docket No. R3–92–278.

Order Appointing Administrative Law Judge

This matter comes before me on a motion for the immediate appointment of an administrative law judge by the Regional Director, Region 3. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

By notices of claim and investigation dated September 10, 1992, the Regional Director charged PGT Trucking, Inc. (PGT), with 24 violations of the Federal Motor Carrier Safety Regulations, 49 CFR parts 350–399, and assessed a total penalty of $44,350. Specifically, PGT was cited for 1 violation of 49 U.S.C. 521(b)(7), failure to comply with an August 23, 1991, notice of abatement; 1 violation of 49 CFR 391.11(a) and 391.11(b)(6), use of a physically unqualified driver; 4 charges under 49 CFR 391.11(a) and 391.11(b)(6), use of a driver not physically reexamined every 24 months; 1 violation of 49 CFR 391.11(a) and 391.95, use of a driver after he tested positive for a controlled substance; 3 violations of 49 CFR 391.11(a) and 391.105(a), use of a driver without requiring the driver to submit to a biennial controlled substance test and before the carrier received negative results of the biennial controlled substance test; and 14 instances in which PGT failed to ensure that entries on records of duty status were correct, in that PGT drivers made false entries on their records of duty status, in violation of 49 CFR 395.8.

In its initial response to the charges, PGT requested a hearing and denied that it used a driver after he had tested positive for a controlled substance. In two later pleadings, PGT requested additional information regarding the 24 charges, asserting that the notices of claim and investigation were not sufficiently specific to permit the carrier to prepare a reply. Although it received additional detailed descriptions of the violations cited in the notices, including documentary evidence supporting 21 of the charges, PGT's supplemental responses to the notices addressed only 5 of the counts.

In his November 23, 1992, reply to PGT's Request for Particulars, the Regional Director provided a more detailed description of the facts constituting the basis of several of the driver qualification charges. PGT did not respond. On February 11, 1993, the Regional Director filed a request for the immediate appointment of an administrative law judge.

By motion dated March 2, 1993, PGT requested that an administrative law judge be appointed and that the administrative law judge's jurisdiction include reexamination of an enforcement case brought against PGT by the Federal Highway Administration (FHWA) in 1991. The 1991 enforcement case was settled by agreement of the parties. Counsel for Respondent argues that this settlement did not constitute a final disposition, and that the Associate Administrator should reexamine this earlier matter, including whether FHWA had a legal claim against PGT in the first place. On March 8, 1993, the Regional Director objected to this "motion to expand the jurisdiction of the administrative law judge," and moved to strike. PGT replied to this motion on March 12, 1993, again arguing that the settlement agreement was not a final order in the case and therefore the earlier case is still subject to administrative review.

Discussion

This case presents several major issues. First, I must determine whether a material factual issue is disputed and warrants a hearing. In this case, both the Regional Director and the Respondent motor carrier have requested the immediate appointment of an administrative law judge. In this regard, I note that PGT claims it is exempt from the biennial controlled substances testing requirements under 49 CFR 391.105(c) because its drivers have been tested at least once under either a pre-employment test or a 50 percent random drug testing program and the carrier has repeatedly denied that it used a driver after he tested positive for a controlled substance. Upon review of the pleadings, I find that these assertions by the carrier raise a material factual issue in dispute with regard to these four charges, namely, whether PGT committed these offenses, which should be addressed in an administrative hearing.

Next, PGT has denied that it used a driver after the driver tested positive for use of a controlled substance. In responding to the Respondent's request for particulars on this charge, the Regional Director attempted to modify the charge of operating a commercial motor vehicle after testing positive for a controlled substance by stating that the notice of claim should read that a PGT driver operated a commercial motor vehicle in interstate commerce but had not been drug tested in accordance with the provisions of 49 CFR 391.11(a), 391.41(c), and 391.95. This proceeding, however, is defined and limited by the allegations made in the claim letter. The Regional Director cannot alter the notice of claim as he has attempted in this case. He must amend the notice of claim or file an additional notice of claim to include the new charge. Such new claim letter or amendment must comply with the provisions of 49 CFR 386.11(b).

Because the Regional Director employed neither of these two methods, his attempt to modify the notice of claim is without effect. I find that PGT remains charged with using "an unqualified driver to operate commercial motor vehicles, in interstate commerce, after the driver had tested positive for a controlled substance," as stated in the September 10, 1992, notice of claim.

This alleged violation presents a further issue for resolution. In his notice of claim, the Regional Director has asserted that, in addition to constituting a substantial health or safety violation for which the Regional Director has assessed the maximum penalty of $10,000, the alleged illegal use of this driver constitutes a violation of the notice of abatement included with the 1991 notice of claim against the Respondent. For this latter infraction, the Regional Director assessed a penalty of $17,500.

It is in response to this latter position of the Regional Director that PGT now seeks to reopen the 1991 case. The 1991 settlement agreement provided that the payment of the settlement amount was "in consideration of full compromise and settlement of" the charges made in the notice of claim. PGT claims that because the current charge of violating the August 23, 1991, notice of abatement seeks to reinstate a portion of the penalty assessed in the earlier enforcement action, the Regional Director violated this term in the settlement agreement. Therefore, PGT asserts, the settlement agreement is "null and void" and the 1991 action is still in dispute.

Reinstatement of a portion of the suspended or deferred penalty, although not expressly provided for in the settlement agreement, was not prohibited by it. I do not believe that the Regional Director's attempt to reinstate a portion of the suspended or deferred penalty violates the settlement agreement, thus making it null and void.

Section 386.82 provides that civil penalties are chargeable for violations of notices and orders, including notices of abatement, and that such penalty claims shall be made through a civil forfeiture proceeding. "The issues to be decided in these proceedings will be limited to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part." 49 CFR 386.82(c). In this regard, I further note that Appendix A to part 386 expressly provides that the penalty for violating a notice to abate shall be "reinstatement of any deferred assessment or payment of a penalty or portion thereof."

PGT has also argued that the parties can only consent to dispose of a case via a consent agreement under 49 CFR 386.22 and 386.23. The carrier further claims the 1991 agreement reached between PGT and the Regional Director does not comply with the provisions set forth in §§ 386.22 and 386.23, in large part because it was not signed by the Associate Administrator. Therefore, it claims, this case has not been finally disposed of by the Associate Administrator, and the provisions of § 386.82, requiring a final adjudication, would not apply to bar reopening the 1991 case.

The agreement reached between PGT and the Regional Director is a settlement agreement, not a consent order, and it constitutes the final disposition of the action by the Associate Administrator under 49 CFR 386.16(c) and is binding on both of the signatories according to its terms, as provided in § 386.16(c)(3). There is no requirement in § 386.16(c), as PGT argues is required in § 386.23, that the settlement agreement expressly provide that it becomes final in the same manner as other orders issued.

The Associate Administrator's authority to dispose of civil forfeiture proceedings on behalf of the Federal Highway Administration via settlement agreement was delegated to him in FHWA Order M 1100.1, part 1, ch. 7, par. 5, and was redelegated to the Regional Directors in a February 8, 1991, Memorandum by the Associate Administrator to the Regional Directors. The agreement was executed by the Regional Director as the Associate Administrator's delegatee under § 386.16, not §§ 386.22 and 386.23. Therefore, PGT's reliance on §§ 386.22 and 386.23 is misplaced. In accordance with § 386.16(c), the settlement agreement became a final agency decision when signed by both parties in September 1991.

PGT's claim that the Associate Administrator must review all settlement agreements to ensure consistency in all cases is an opinion of the carrier and not a requirement of the regulations. Moreover, PGT makes no showing that there has been any impermissible inconsistency which has adversely affected the carrier.

PGT also purports to withdraw its consent to the settlement agreement. Section 386.16(c)(3) provides, however, that "an executed settlement agreement is binding on the respondent and the claimant according to its terms." Therefore, PGT cannot withdraw its consent to this agreement; under § 386.16(c), it remains a final and binding disposition of the 1991 enforcement action. Similarly, unless the settlement agreement provides otherwise, the time to comply with the notice to abate begins at the time the settlement agreement is executed.

In addition, by entering into the settlement agreement, PGT has waived, at least implicitly, any right it may have to further contest the alleged violations. Although the record before me does not contain a complete account of the earlier proceeding, I note that PGT has failed to allege any facts which would suggest that the settlement agreement was reached through a miscarriage of justice.

Accordingly, I find that the citation for violating the August 23, 1991, notice of abatement neither rescinds the September 1991 settlement agreement which disposed of the case nor warrants reopening of that action. What remains, however, is whether PGT's conduct constitutes a violation of the notice of abatement, and if so, what is the appropriate penalty? Because Respondent argues that its conduct did not violate an operative notice to abate, I am referring this issue to the administrative law judge. I recognize that in the 1991 settlement agreement PGT neither admitted nor denied the violations, and insofar as that is relevant to the penalty assessment for the instant case, the administrative law judge is authorized to consider this fact in determining the penalty, if any, for the alleged violation of the notice to abate.

I also note that PGT failed to deny or otherwise contest the remaining 19 charges against it, and therefore the carrier apparently does not dispute these charges. Yet the Regional Director has not moved for a final order on any of the 19 counts, and instead seeks a hearing on all 24 violations cited. Had the Regional Director sought a final order on these 19 charges, I would have considered that motion. In the absence of a motion for final order, I refer these 19 charges to the administrative law judge.

Finally, counsel for PGT Trucking requests a conference with counsel for the Regional Director and me. I believe it is unnecessary to hold a conference with counsel for the parties in this case before I issue this order, and because I am referring this case to an administrative law judge for consideration, I believe it would be inappropriate to meet with them at this time.

It is hereby ordered that PGT Trucking's request for a conference with counsel for the Regional Director and me is denied; the Regional Director's motion to appoint an administrative law judge is granted; and PGT Trucking's motion to expand the jurisdiction of the administrative law judge is denied. I hereby appoint an administrative law judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the presiding judge in this matter. The appointed judge is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: March 19, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of WDP Transportation, Inc., Respondent, Docket No. 91–KY–027–SA.

Final Order

This matter comes before me on a motion to dismiss by the Regional Director, Region 4. In the June 24, 1992, order in this case, the Associate Administrator declined to grant either the Regional Director's motion for a final order or WDP Transportation's (WDP) hearing request after finding several deficiencies in the record. He ordered the parties to submit pleadings and supporting evidence addressing the issues identified in the order.

In response to the order, the Regional Director moved that this enforcement action be dismissed because he believes "that there are deficiencies within the record that the submission of affidavits * * * could not correct." WDP has not responded to either the June 24 order or the Regional Director's motion to dismiss. By its silence, I find that WDP has no objections to the motion for dismissal.

It is hereby ordered that this case is dismissed.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Owings Transport, Inc., Respondent, Docket No. R3–91–196.

Final Order

This matter comes before me upon a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

After an April 30, 1991, compliance review of Respondent Owings Transport, Inc.'s (Owings), operations revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399, the Regional Director issued a notice of claim to the carrier on May 9, 1991. The notice of claim charged Owings with 28 violations of § 395.8(a), failing to require drivers to prepare and submit records of duty status. The notice of claim assessed a penalty of $300 for each violation, for a total penalty of $8,400.

Owings replied to the notice of claim on June 10, 1991. This untimely reply did not request an administrative hearing and did not deny the charges in the notice of claim. Instead, Owings requested that the parties begin settlement negotiations and claimed the carrier had reached an agreement in principle with a third party under which the third party would "buy out" Owings. The reply also stated that it enclosed "documents outlining our actions taken to rectify the violations found in the [compliance review] * * *." The record before me does not contain these documents, however.

After attempts to reach a compromise with Owings proved unsuccessful, the Regional Director submitted a Motion for Final Order on March 12, 1992. The Regional Director submitted a Supplemental Motion for Final Order on January 25, 1993. Owings did not respond to the Regional Director's initial motion, but did submit a response to the supplemental motion dated February 8, 1993. The supplemental motion and the carrier's response are discussed below.

Discussion

1. The Regional Director's Motion for Final Order

In an analogy to a motion for summary judgment, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and is entitled to a judgment as a matter of law. *E.G., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Owings in this case.

Along with his motion for final order, the Regional Director submitted evidence documenting each of the trips Owings' drivers allegedly made in

violation of the records of duty status provisions of the FMCSRs. Owings, as already stated, submitted an untimely reply, did not request an administrative hearing, did not deny the charges in the notice of claim, and did not respond to the Regional Director's initial motion for final order. I find Owing's failure to respond to or otherwise defend the 28 records of duty status charges to constitute a default, and therefore these allegations will be taken as true. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2688 (1983).

As discussed earlier, in its reply Owings claimed that it intended to sell its business to another company. Attached to the Regional Director's supplemental motion, however, is evidence tending to show that Owings was still operating as a motor carrier as recently as September 16, 1992. This evidence, consisting of an FHWA Driver Vehicle Inspection Report signed for by Owings' President, also tends to show continuing violations of the same regulations cited in the notice of claim. In its response to the supplemental motion, Owings denied that it was operating as a motor carrier on September 16, 1992.

Notwithstanding the parties' disagreement over Owings' current status as a motor carrier, the record before me contains no remaining issues of fact or law concerning Owings' liability for the violations charged in the notice of claim which would cause me to deny the Regional Director's motion. Accordingly, for the reasons set forth above I hereby grant the Regional Director's motion for a final order for all 28 counts listed in the notice of claim.

2. Penalty Determination

The Regional Director assessed a penalty of $300 for each violation charged in the notice of claim, for a total penalty of $8,400. Title 49, United States Code, § 521(b)(2)(C), provides none factors to be considered in assessing the propriety of such a penalty.

Reviewing the record before me in light of these nine factors, I note first that there is no indication that Owings was the subject of any prior enforcement action resulting in either an admission of liability by the carrier or a formal finding against it. I also note that all 28 counts leveled against Owings' are for violations of record-keeping requirements.

Nevertheless, the record before me demonstrates that the Regional Director brought this action only after both a safety and a compliance review revealed violations of the FMCSRs. Owings' cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews. Also, nothing in the record before me indicates that Owings cannot pay the assessed penalty, or that such payment would impair the carriers' ability to continue to do business. Further, I note that the $300 per violation penalty assessed by the Regional Director is well below the maximum allowed by law. See 49 U.S.C. 521(b)(2)(A).

While Owings' reply did contain a statement that it had taken steps to rectify the violations cited in the notice of claim, the carrier should have been in compliance with the regulations *before* the initiation of this action. See *In the Matter of Stanford & Inge*, 55 FR 43,296 (F.H.W.A. 1990) (Order Upon Reconsideration). The carrier had several contacts with the agency before the notice of claim was issued, and was put on notice of the deficiencies in its operations. No mitigation of the penalty is appropriate under these circumstances.

It is hereby ordered that the Regional Director's request for a final order is granted. Owings Transport, Inc., is directed to pay $8,400 to the Regional Director within 30 days of the date of this Order.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Otto Brehm, Inc., Respondent, Docket No. R1–92–132.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 1, in opposition to the hearing request of Otto Brehm, Inc., seeking a final order finding the facts to be as alleged by the Regional Director, and imposing a $5,500 civil penalty on the carrier. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

The Regional Director issued a notice of claim on December 13, 1991, charging Otto Brehm with eleven violations of 49 CFR 395.8, failure to require drivers to make and submit records of duty status. The carrier responded to the charges by requesting a hearing, stating that "the problem created by our driver's [sic] failure to maintain current log books has been internally resolved and we feel we are now in 100% compliance with DOT regulations." In addition, the carrier stated that it considered the fine for "these unintentional violations" to be excessive.

In response to Otto Brehm's hearing request, the Regional Director wrote to the carrier on February 19, 1992, informing Otto Brehm, "[y]our letter requesting a hearing does not comport with the regulations which were furnished to you with the Notice of Claim," because the letter failed to contain an admission or denial of each charge, a statement of the factual issues in dispute, and a concise statement of the carrier's defenses to the charges, as required under 49 CFR 386.14(b). The Regional Director offered Otto Brehm an additional ten days to respond and cure its hearing request.

The carrier did not respond until March 27, 1992, after the Regional Director filed a motion for final order. In that response, Otto Brehm asserted that it had never received the Regional Director's February 19, 1992, letter. The carrier also claimed that even through it did not require drivers to record their trips on records of duty status, the carrier did keep documents similar to the required records of duty status and thus had substantially complied with the regulation. Otto Brehm included copies of these "driver manifests" for the 11 trips for which it was cited. The carrier also repeated its hearing request and its objection to the penalty amount.

Discussion

Otto Brehm's Hearing Request

If a motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of the facts constituting each defense * * *." 49 CFR 386.14(b)(1). In addition, "[a] request for a hearing must list all material facts believed to be in dispute." 49 CFR 386.14(b)(2).

Although the Regional Director listed these requirements in the notice of claim and repeated them in his February 19, 1992, letter, Otto Brehm failed to comply with these provisions. Instead, the carrier's replies simply contest the amount of the penalty and concede that the carrier failed to keep proper records of duty status.

I have repeatedly held that an objection to the amount of the assessed penalty does not constitute a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b). *In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge). Therefore, Otto Brehm's assertion that the penalty amount is excessive is insufficient to merit a hearing.

In addition, Otto Brehm's claim that it substantially complied with the record of duty status regulation by keeping driver manifests is insufficient grounds for a hearing. As I have concluded in earlier cases, I again hold that the question of whether mitigating circumstances are present is not a material factual issue. *In re Tonawanda Tank Transport Service, Inc.*, 55 Fed. Reg. 43279 (FHWA 1990) (Final Order).

I find that Otto Brehm has failed to deny the charges or otherwise allege any material factual issue in dispute. The carrier has, in fact, admitted to the charges in its March 27 letter, stating "our records do not show compliance with the Federal Motor Carriers [sic] Safety Regulations on the use of formal 'trip logs' * * *." Therefore, Otto Brehm's hearing request is denied.

The Regional Director's Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. See e.g., *In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–007, at 2, (FHWA December 5, 1991) (Order). Accordingly, the Regional Director, as the moving party, bears the burden of clearly establishing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. All evidence presented must be viewed in a light most favorable to Otto Brehm, the non-moving party; all inferences must be drawn in its favor.

Otto Brehm's assertion that maintaining driver manifests substantially complies with the record of duty status regulation is an invalid defense to the violations cited in the notice of claim. The concept of substantial compliance is closely related to the question of whether a regulation is mandatory or directory. Proof that 49 CFR 395.8 is mandatory is clear and unambiguous from the language of the section. "Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section." (Emphasis added.) In addition, where a regulation includes a penalty for failure to comply, as § 395.8 does here, the regulation is usually found to be mandatory.

Moreover, I believe the essential objective sought to be achieved by § 395.8 would be defeated if I were to find literal compliance unnecessary in this case. Although this section is considered to be a recordkeeping provision, the goal of § 395.8 is a substantive one. The data on driver duty status provided through this regulation is essential for determining whether drivers are complying with the hours of service provisions. The absence of records of duty status can mask serious hours of service violations. The driver manifests maintained by Otto Brehm, which do not contain any record of Brehm's drivers' duty statuses, provide little useful information on this subject. For example, regarding the first count, Jake Smith's July 2, 1991, driver manifest states only that he departed at 6:28 a.m. and then made 17 deliveries, covering 317 miles. A separate document, a "Duplicate Card Report," shows Mr. Smith arriving at Otto Brehm, Inc., at 5:54 a.m. on July 2 and leaving for the day at 9:11 p.m. Even when taken together, these documents do not reveal Mr. Smith's duty status for any part of July 2. Therefore, the documents supplied by Otto Brehm fail to advance the ultimate objective of the record of duty status regulation—to ensure that drivers who have driven for as long as the hours of service regulations permit do not continue to operate commercial motor vehicles and thereby endanger themselves and other motorists.

In addition, Otto Brehm's claim that the violations were unintentionally committed is not relevant in determining liability. "The mental state or intent element is not a part of the burden faced by an auditing agency in enforcing civil penalty statutes," where, as in this case, neither the regulation itself nor the penalty provision contains an intent requirement. *In re Horizon Transportation, Inc.*, 55 FR 43292 (FHWA 1990) (Final Order). I do note, however, that Otto Brehm was the subject of a compliance review in June 1991, 4 months before the compliance review that led to the 11 charges in this case. Although Otto Brehm was not cited for record of duty status charges as a result of the June review, the carrier was advised of its duties under the regulations at that time. In spite of this general knowledge of the regulations, Otto Brehm failed to require its drivers to make and submit records of duty status, as required under 49 CFR 395.8.

Therefore, I conclude that Otto Brehm's defenses to the 11 charges are without merit. Based on Otto Brehm's March 27, 1992, admission to the 11 charges of failing to require drivers to prepare and submit records of duty status and its failure to present a valid defense to the charges, I find that Otto Brehm has committed these violations.

Penalty Determination

The Regional Director assessed a civil penalty of $500 per violation, the maximum amount permitted for these recordkeeping violations under 49 U.S.C. 521(b)(2). Although Otto Brehm objected to the penalty amount, claiming it was excessive, the Regional Director provided no evidentiary support for this assessment in its pleadings.

Otto Brehm also argued that it had substantially complied with the record of duty status regulation. While I have held in this case that substantial compliance will not exculpate Otto Brehm, I believe this issue may be relevant in determining the civil penalty amount. But the Regional Director's pleadings did not address the carrier's claim of substantial compliance. The burden of proof is on the Regional Director to establish the justification for and amount of the penalties assessed in an enforcement action. I do not believe the Regional Director has met his burden in this case. Therefore, I decline to assess a penalty for these 11 violations at this time, and I find that the parties must further address the penalty assessment issue before I can determine whether the maximum $5,500 assessed by the Regional Director is reasonable. To assist the parties, I direct their attention to the extensive discussion of the 9 penalty determination factors of 49 U.S.C. 521(c) and the Revised Civil Penalty Guidelines in the Decision of Administrative Law Judge Barton in *Used Equipment Sales*, No. R1–91–03, (FHWA May 6, 1992) *petition for review pending*.

It is hereby ordered that the hearing request of Otto Brehm, Inc., is denied, the Regional Director's motion for final order is granted as to the use of liability, and the Regional Director and Otto Brehm, Inc., shall submit pleadings and supporting evidence within 30 days of the date of entry of this order, addressing the penalty assessment issues identified in this order. Submissions shall be served in accordance with 49 CFR 386.61.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Lakeview Farms, Inc., Respondent, Docket No. R3–91–157.

Final Order

This matter comes before me upon a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In an April 22, 1991, notice of claim, the Regional Director charged Lakeview Farms, Inc. (Lakeview), with 11 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, Lakeview was cited for seven violations of 49 CFR 395.8(a), failing to require drivers to prepare and submit drivers' records of duty status; three violations of 49 CFR 387.7(a), operating a motor vehicle without having in effect the minimum level of financial responsibility; and one charge of failing to maintain the required proof of financial responsibility at the carrier's principal place of business, in violation of 49 CFR 387.7(d).

In its response to the notice of claim, Lakeview did not deny the charges or request a hearing, but did present information to be considered in reducing the penalty amount.[1] The Regional Director filed a motion for final order on January 23, 1992. Lakeview did not reply to this motion.

Discussion

Lakeview's Reply to the Notice of Claim

As I have noted, an appendix to the motion for final order stated that Lakeview's reply to the notice of claim was lost by the Regional Director. I am concerned that the text of the motion did not reveal this fact, but presumably the Regional Director served the carrier with all appendices and evidence in support of his motion for final order. Therefore, the motor carrier was put on notice that its reply was misplaced, but it neither resubmitted the reply nor responded to the motion for final order. Absent an objection by Lakeview to the Regional Director's characterization of the carrier's reply, I find no reason to question his depiction of the pleading at this time. I note that under 49 CFR 386.64, Lakeview may petition the Associate Administrator for reconsideration of this final order, within 20 days after the order is issued, should Lakeview believe that the Regional Director mischaracterized its response.

The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order must show that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 6, 1992) (Order). All inferences must be drawn in favor of the non-moving party, Lakeview in this case.

In its response to the notice of claim, Lakeview did not deny any of the 11 charges against it. The evidence before me includes Lakeview President Lacey Givens' pre-notice of claim admissions to all charges but the count of permitting a driver to operate a commercial motor vehicle on January 18, 1991, while Lakeview did not have in effect the required amount of financial responsibility. While I do not deem this statement to constitute an admission to the charges made in the notice of claim that followed, I note that in its reply to the notice of claim, Lakeview did not recant these admissions. Nor has Lakeview replied to the motion for final order.

When a carrier denies the allegations against it but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish at least a *prima facie* case. See, *e.g., In re Forsyth Milk Hauling Co.*, No. R3–90–037, at 2, (FHWA Dec. 5, 1991) (Order). But in the absence of a denial by the carrier, I do not believe that the Regional Director must submit affidavits or other evidence in support of his motion for final order. *In re Bill Carter Trucking, Inc.*, No. R3–91–279, at 5, (FHWA June 22, 1992) (Final Order). If Lakeview had denied any of the charges against it, then the Regional Director would have been required to submit documentary or other evidence supporting his charges. *Id.*

I do not believe Lakeview can complain that the Regional Director has not produced substantive evidence in support of the violations alleged. Lakeview has failed to deny any of the charges cited and ignored repeated opportunities to rebut the Regional Director's allegations, most recently by failing to respond to the Regional Director's motion for final order.

For the purpose of the Regional Director's motion for final order, and determining whether the Regional Director must provide evidence of the violations charged, I deem Lakeview's silence to be an admission to the charges. Therefore, I find that Lakeview committed the 11 violations cited in the notice of claim. Accordingly, I find there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

Penalty Determination

The Regional Director assessed a penalty of $300 for each of the seven charges of failing to require drivers to make and submit records of duty status, $500 for the charge of failing to maintain proof of financial responsibility, and $1,000 for each of the three charges of operating a motor vehicle without maintaining the minimum level of insurance. In its reply to the notice of claim, Lakeview apparently objected to the penalty amount, and presented evidence to be considered in reducing the penalty, but I do not have this evidence before me. As I stated above, the carrier was put on notice by the Regional Director's motion for final order that this information was lost, yet Lakeview neither resubmitted the evidence nor replied to the motion, citing why it believes the sum is excessive or claiming that it would be unable to pay the assessed penalty of $5,600.

After a review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), and based upon the record before me, I find that the $2,100 assessed for the seven records of duty status violations is reasonably calculated to induce Lakeview's compliance with these regulations. The compliance review which revealed the current violations was conducted because the carrier had been operating with an "unsatisfactory" motor carrier safety rating since May 1989. Lakeview cannot ignore applicable safety regulations, nor can it assign such a low priority to compliance with these regulations that, after two reviews, no significant progress has been made to bring the carrier into compliance. See *In re Kerr Drug Stores, Inc.*, 57 FR 28720 (FHWA 1992) (Final Order).

Similarly, upon review of the record and the nine penalty assessment factors of 49 CFR 381.17 and 49 U.S.C. 10927 note, I also find that Lakeview knowingly violated the financial responsibility provisions and that the $3,500 assessed for these four violations is reasonable. Due in part to the serious economic threat posed by uninsured drivers, the maximum penalty under these provisions is $10,000. The $1,000 and $500 penalties assessed against Lakeview are therefore well below the maximum permitted, despite Lakeview's conduct of permitting its insurance to lapse and failing to renew it for a period of up to three months, while still dispatching drivers in interstate commerce.

[1] This information on the contents of Lakeview's response is derived from the Regional Director's motion for final order. As Appendix B to that motion reveals, the regional office lost Lakeview's reply and penalty information and was therefore unable to forward them to me. Lakeview has not resubmitted the missing documents.

It is hereby ordered that the Regional Director's motion for a final order is granted, and Lakeview Farms, Inc., is directed to pay the sum of $5,600 to the Regional Director, Region 3, within 30 days of this order, for failing to require drivers to prepare and submit records of duty status, operating motor vehicles without having in effect the required level of financial responsibility, and failing to maintain proof of the required amount of financial responsibility.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Bill Carter Trucking, Inc. Respondent, Docket No. R3–91–279.

Order In Response to Motion for Reconsideration

This matter comes before me on a "Notice of Appeal" by Bill Carter Trucking, Inc. (Carter), appealing the June 22, 1992, final order in this case. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In the June 22 final order, the Associate Administrator found Carter liable for 25 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessed a penalty of $10,400. Carter filed its notice of appeal of this decision on August 20, 1992, stating in an attached letter that the "trucking company has never been offered an opportunity for a hearing" in violation of its due process rights. The notice of appeal, however, objected to the final order solely "for the reasons that the assessed penalty is excessive and contrary to the normal amounts assessed by the Federal Highway Administration."

The Regional Director replied to the notice on August 24, stating that Carter had failed to file either a timely motion for reconsideration within 20 days of issuance of the final order or a timely appeal of the final order within 30 days of issuance. In addition, the Regional Director noted the final order found that Carter's December 16, 1991, hearing request was also untimely, coming more than four months after the notice of claim. I have received no further responsive pleading from Carter.

Discussion

The June 22, 1992, decision in this case is a final agency order. Accordingly, any party may, within 20 days after the issuance of the final order, petition the Associate Administrator for reconsideration of the order under 49 CFR 386.64, or may appeal the final order to the United States Court of Appeals within 30 days of issuance under 49 CFR 386.67 and 49 U.S.C. 521(b)(8). Because Carter's notice of appeal was submitted to me, I consider it to be a petition for reconsideration. This petition was filed almost two months after the date of entry of the June 22, 1992, final order; well past the 20-day time limit under § 386.64. Therefore, Carter's petition for reconsideration is untimely.

If Carter's petition were timely, it still does not raise any issue which warrants reconsideration of the final order. Carter argues that the penalty awarded was excessive and that the denial of its hearing request violated its due process rights. Both arguments are without merit.

Denial of Carter's Hearing Request

The final order addressed Carter's hearing request at length. See *In re Bill Carter Trucking, Inc.*, No. R3–91–279, at 2–4, (FHWA June 22, 1992) (Final Order). Therefore, I will not repeat that analysis here, where Carter's allegation of a due process violation is unsupported by evidence. I do note, however, that the June 22 final order contained a detailed discussion of the provisions of 49 CFR 386.14(b) by which a carrier may request a hearing. But the Associate Administrator found that Carter's hearing request was untimely under 49 CFR 386.14(b)(2), and that the carrier therefore waived any right it may have had to a hearing.

In addition, the Associate Administrator found that if Carter's request were viewed as timely, the carrier failed to deny the charges against it or allege any material issue of fact warranting a hearing under 49 CFR 386.16(b). Carter had requested a hearing only "to determine whether or not the [penalty] assessment is excessive." The Associate Administrator has repeatedly held that an objection to the penalty amount does not constitute a material factual issue in dispute which would merit a hearing. *E.g., In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge).

Penalty Determination

Carter has provided no evidence or cited any legal error to support a reversal of the June 22 decision based on its allegation that the penalty is excessive. Nor has the carrier's motion for reconsideration cited any cases or other evidence showing that the penalty is "contrary to the normal amounts assessed by the Federal Highway Administration," as it now alleges.

Carter claims that its penalty total should be in line with the sums awarded in other cases, but at best, this factor is simply one component of the penalty assessment. The amount of any civil penalty is determined by taking into account the "nature, circumstances, extent, and gravity of the violation committed, and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance." 49 U.S.C. 521(b)(2)(C). As stated in the final order, the Associate Administrator carefully considered all of these factors when ordering payment of the $10,400 penalty.

In addition, the final order specifically addressed the issue of whether the penalty assessment was excessive. The Associate Administrator found that it was reasonably calculated to induce Carter's compliance with the FMCSRs under 49 U.S.C. 521(b)(2)(C). Carter has provided no new evidence which would lead me to view the penalty determination differently now. Therefore, I affirm the Associate Administrator's finding that the penalty of $500 for each of the four drug testing charges, constituting 2 serious patterns of safety violations, is reasonable. I also affirm the earlier finding that the $400 penalty for each of the four charges of failing to preserve records of duty status and 16 violations for falsified logs is reasonable under the statutory factors for determining civil penalties.

Conclusion

I have reviewed the record in this proceeding, and I find that Carter's petition for reconsideration is not timely and does not present any new evidence or persuasively argue any error of law which would warrant a modification of the earlier order finding Carter liable for 25 violations of the FMCSRs and directing the carrier to pay a penalty of $10,400.

It is hereby ordered that the June 22, 1992, final order in this case is affirmed, and the terms of that final order remain in effect.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Allen A. West, Driver Disqualification, Docket No. 91–196.

Final Order

This matter comes before me on a petition to review a letter of disqualification (letter) issued by the Regional Director, Region 1, on October 31, 1991. See 49 CFR 386.13. The letter charged that Allen A. West (West), a driver of commercial motor vehicles in interstate commerce, failed to meet the requirements of visual acuity contained in the Federal Motor Carrier Safety Regulations. 49 CFR 391.41(b)(10). The Regional Director submitted a motion in opposition to the petition on March 5, 1992, asking me to deny West's request for a hearing on the matter and to affirm the letter.

Since the filing of the Regional Director's motion in March, the FHWA has initiated a program to grant waivers of the vision requirements to drivers who meet certain conditions. *See* 57 FR 31,458 (1992). West applied for such a waiver on May 18, 1992, and his application was granted on August 4, 1992. This matter is now moot, and it is hereby dismissed.

It is hereby ordered that both Allen A. West's Petition for Review and the Regional Director's Motion in Opposition to Petition for Review are denied, and this matter is dismissed.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Northeastern Poly Products, Inc., Respondent, Docket No. 92-207.

Order Appointing Administrative Law Judge

This matter comes before me upon Northeastern Poly Products, Inc.'s (Northeastern), request for an administrative hearing under 49 CFR 386.14(b)(2) of the Federal Motor Carrier Safety Regulations. Both Northeastern and the Regional Director assert that Northeastern's hearing request raises a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b).

Background

By notice of claim dated January 30, 1992, the Regional Director cited Northeastern with three violations of 49 CFR 391.51, failure to maintain a complete driver qualification file for each driver used or employed; three charges under 49 CFR 395.8(a), failure to require a driver to make and submit records of duty status; and three counts of failing to require drivers to prepare vehicle inspection reports, in violation of 49 CFR 396.11(a). Northeastern replied to the notice of claim on February 26, 1992, specifically denying all of the charges, and requesting a hearing at which it would "present physical evidence to support [its] denials of the violations."

Northeastern's reply was not made within 15 days after the notice of claim was served as specified under 49 CFR 386.14(b). Regional Director has stated in his March 12, 1992, reply to this response, however, that he "does not wish to contest the timeliness of [Northeastern's] request for a hearing," and he concurred in Northeastern's hearing request.

Conclusion

Upon review of the pleadings, I find that Northeastern's hearing request raises a material factual issue in dispute, namely, whether the carrier committed the nine violations, which should be addressed in an administrative hearing.

It is hereby ordered that Northeastern Poly Products, Inc.'s, request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The appointed Judge is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Twenty-eight Motor Carrier Safety Cases.

Final Order

Before me are 28 motor carrier safety enforcement cases (see Appendix), each the subject of a request for dismissal from an appropriate Regional Director. The requests take various forms (Motions for Voluntary Dismissal, Notifications of Settlement, etc.). In all but one case, however, the evidence before me indicates that the parties have reached a settlement. In the remaining case, *In re James F. Irwin, Inc.*, No. R3-91-227, the Regional Director has withdrawn his Motion for Final Order because he has been unable to make good service on the Respondent.

Nothing in the record before me indicates that any respondent motor carrier has objected to the dismissal of its case. Therefore, in accordance with the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386, I hereby dismiss the motor carrier safety enforcement proceedings listed in the attached appendix.

It is hereby ordered that the 28 motor carrier safety enforcement proceedings listed in the attached appendix are dismissed.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Appendix

1. All Freight Distribution Co., Inc.
   Docket No. R3-91-263
2. Browning-Ferris Industries of Mississippi, Inc.
   Docket No. 90-MS-026-SA
3. Charapata Trucking, Inc.
   Docket No. R5-91-084
4. Davis Water & Waste Industries, Inc.
   Docket No. 91-GA-024-SH
5. Eslinger Contracting Co., Inc.
   Docket No. 92-GA-017-HF
6. Faulk & Son, Inc.
   Docket No. R-91-007-NOI
7. Furniture Distributors, Inc.
   Docket No. 91-NC-031-SA
8. Gem Stone Coal, Inc.
   Docket No. R3-91-121
9. George K. Groff, Inc.
   Docket No. R3-91-270
10. Gunther's Leasing Transport, Inc.
    Docket No. R3-90-104
11. H B Tour and Travel, Inc.
    Docket No. R3-91-020
12. Hammond Lumber Co., Inc.
    Docket No. R1-91-148
13. Hobart Stone Dealers, Inc.
    Docket No. 92-102
14. James F. Irwin, Inc.
    Docket No. R3-91-227
15. J.B. Hunt Transport, Inc.
    Docket No. R6-91-15
16. Joseph J. Sarcona Trucking
    Docket No. R1-92-122
17. King Furniture Distributors, Inc.
    Docket No. 91-FL-087-SASY
18. Manchester Movers, Inc.
    Docket No. R1-90-344
19. NAFCO Wholesale Seafoods, Inc.
    Docket No. R3-91-326
20. Neely Truck Line, Inc.
    Docket No. 91-AL-005-SH
21. Olin Wooten Transport Co., Inc.
    Docket No. GA-89-041-SA
22. Perry B. Duryea & Son, Inc.
    Docket No. R1-92-320
23. Pridgen and Sons, Inc.
    Docket No. R-91-004-NOI
24. Rainbow Charter Service, Inc., T/A Lynne A. Gehouskey
    Docket No. R3-91-0234
25. Rogers Trucking, Inc.
    Docket No. 91-KY-017-SA
26. Sunnyland Refining Co.
    Docket No. 92-AL-054-SA
27. Technical Ordnance, Inc.
    Docket No. R5-90-289
28. Willis Roofing Consulting, Inc.
    Docket No. R9-90-017

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federal register

Friday
November 26, 1993

Part IV

Department of Education

Administrative Dispute Resolution In Connection With Agency Actions: Administrative Dispute Resolution Act; Final Policy Statement; Notice

DEPARTMENT OF EDUCATION

Administrative Dispute Resolution in Connection With Agency Actions: Administrative Dispute Resolution Act; Final Policy Statement

AGENCY: Department of Education.

ACTION: Final policy statement.

SUMMARY: The Department of Education (ED) issues a policy statement under section 3(a) of the Administrative Dispute Resolution Act. The statement discusses the policy of the Department with respect to the use of alternative means of dispute resolution with regard to its administrative proceedings and certain other agency actions under Department programs.

EFFECTIVE DATE: This notice takes effect November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Theodore Sky, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, FOB-6, Washington, DC 20202. Telephone (202) 401-2603. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public Law 101-552, the Administrative Dispute Resolution Act (ADR Act) amends chapter 5 of Title 5 of the United States Code, to authorize the use of alternative means of dispute resolution in lieu of adjudication to resolve issues in controversy. These means include settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration. Certain legal obstacles to the use of alternative means of dispute resolution are removed. The ADR Act, for example, repeals a longstanding prohibition on arbitration where arbitration can be used consistently with the public interest. Administrative Law Judges are given authority to require attendance at prehearing conferences of parties authorized to negotiate the resolution of issues in controversy. Other provisions are made to ensure that administrative dispute resolution is carried out in a fair, efficient, and effective manner.

The Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," observes that it is often cheaper to resolve disputes through alternative dispute resolution and recommends that agencies "expand their use of alternative dispute resolution techniques."

In enacting the ADR Act, Congress found, among other things, that "administrative proceedings have become increasingly formal, costly, and lengthy"; that "alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;" that "such alternative means can lead to more creative, efficient, and sensible outcomes;" and that "the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public." (ADR Act, Section 2, 5 U.S.C. 571 note). The ADR Act is intended to bring about these advantages for federal agencies through the expanded use of alternative means of dispute resolution.

The Department's efforts to make greater use of alternative means of dispute resolution pre-date the ADR Act. For example, the procedures of the Office of Administrative Law Judges (OALJ), which is vested with authority in the Department to consider a wide range of disputes arising under ED programs, make explicit provision for the mediation of cases. See 20 U.S.C. 1234(h) and 34 CFR 81.13 (1992). Mediation is one of the alternative means of dispute resolution recognized in the ADR Act.

A substantial number of cases under the General Education Provisions Act closed by the OALJ since its inception have been closed by settlement. In a number of these cases, mediation contributed to the resolution. In others, settlement negotiations without mediation played the key role. It is estimated that the Department is resolving approximately 75 percent of its OALJ cases short of full adjudication. The Department has thus been consistently successful in resolving adjudicatory matters through techniques identified in the ADR Act before as well as after the enactment of that legislation.

The Department has supported legislation to facilitate the use of alternative means of dispute resolution. In 1988 the Department proposed, and Congress enacted, legislation that permits the Department to compromise cases before the OALJ where the difference between the original claim and the settlement amount is less than $200,000. 20 U.S.C. 1234a(j). In these cases, this measure encourages greater use of alternative means of dispute resolution by simplifying the approval procedures connected with it.

The ADR Act specifically requires each agency to appoint an administrative dispute resolution specialist to assist in implementation of the ADR Act and to adopt a policy regarding the use of alternative means of dispute resolution (Sections 3 (a) and (b)). The Department already has accomplished the first step. This document marks the achievement of the second step. It applies to administrative dispute resolution with respect to formal and informal administrative adjudication, enforcement proceedings, contract administration, and other actions of the Department. To the extent relevant, in developing this policy statement, the Department has examined the matters specified in section (a)(2) of the Act.

On November 27, 1992, the Secretary published in the **Federal Register** a notice of proposed policy statement under the ADR Act. (57 FR 56424).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed policy statement, two parties submitted letters of comment. An analysis of the comments and of the changes in the policy statement since publication of the notice follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter commended the Department for its dedication to the use of the ADR and recognized the integrity of the Department's enforcement and regulatory responsibilities. The commenter encouraged the Department to consider the use of ADR on a small, measured scale or pilot basis in some of the more controversial issues, such as early complaints resolution. The commenter also encouraged the Department to consider using ADR in employee-related disputes, such as EEO matters and grievances, as well as procurement and contracts.

Discussion: The Secretary agrees with the commenter that ADR should be used in attempting to resolve controversial issues involving the administration of grant programs, as well as in resolving employee-related disputes and procurement. The Department is studying the increased use of ADR techniques in grievance proceedings. To the extent practicable and appropriate, the Department will seek to obtain early resolution in grant-related audit cases after an appeal has been filed but before administrative proceedings have begun.

Changes: The policy statement has been revised to acknowledge the

potential use of ADR in employee-related disputes and procurement matters.

Comment: One commenter urged that the policy statement provide greater emphasis on arbitration, rather than mediation, and that the Department design a process for deciding before a dispute arises which methods of dispute resolution will be used. The commenter also expressed concern regarding the application of sufficient resources to implement the policy.

Discussion: Mediation, rather than arbitration, has been the means of alternative dispute resolution used most frequently in the Department's audit appeal procedures. As indicated above, mediation is the ADR method particularly authorized by Congress in part E of the General Education Provisions Act relating to enforcement of grant requirements in education programs. For this reason, particular focus was placed on that method. However, the Department will consider the use of other methods if appropriate. The selection of the appropriate method for dispute resolution when a dispute arises generally will be made by the responsible Department employee. At this stage in the administration of the ADR Act, the development of a fixed schedule of ADR methods to be applied to particular types of disputes is neither appropriate nor useful. The Department will, however, continue to evaluate this suggestion as it gains experience in administering the policy statement.

Changes: None.

Policy of the Department

It is, and has been, the policy of the Department to support fully the goals and objectives of the ADR Act, as set forth in section 2 of the ADR Act, and to seek to attain those goals and objectives wherever feasible through the Department's dispute resolution procedures. The Department's implementation of the ADR Act will be carried out in a manner consistent with E.O. 12778, Civil Justice Reform.

The Department is fully committed to implementing the ADR Act through steps already taken, steps listed below, and other actions to be pursued in accordance with the principles and goals set out in this policy statement. At the same time, the Department recognizes that some or all of the alternative dispute resolution techniques may be inappropriate where formal adjudication is necessary to achieve accountability or to protect the fiscal interests of the United States from illegal or wasteful practices or expenditures.

For example, the Department believes that use of alternative dispute resolution techniques may not be successful, and may serve to delay rather than expedite resolution of disputes, where the issue in controversy pertains to the initial or continued eligibility of an entity to participate in a program administered by the Department, such as those arising under the Higher Education Act of 1965, as amended, or title VI of the Civil Rights Act of 1964. The degree to which an institution has already been provided with an opportunity to propose informal resolution of a claim or a finding of violation is another factor that can affect the availability of alternative means of dispute resolution techniques during an administrative hearing. However, in these areas, the Department will consider the use of alternative means of dispute resolution where practicable and consistent with the above-described considerations.

The Department is committed to striking a proper balance between the formal adjudication of cases where necessary and their resolution through alternative means of dispute resolution where practicable and in the public interest.

This policy is consistent with and in furtherance of the recommendation of the Report of the National Performance Review quoted above.

Further Steps To Be Taken

In furtherance of the policies of the ADR Act, the Department plans to take the following additional steps:

(1) Each departmental office will be asked to assign an ADR liaison officer to consider administrative dispute resolution issues within that office and to encourage the expanded use of all appropriate alternative means of dispute resolution in resolving disputes arising in administrative proceedings involving that office. These ADR liaison officers will serve as points of contact for matters pertaining to alternative means of dispute resolution within the Department and will collectively study procedural issues pertaining to alternative dispute resolution that affect the Department generally, including the proper stage of a dispute at which to invoke alternative means of dispute resolution and the appropriate distribution of mediation costs among the parties to a dispute. The Department will provide the liaison officers with appropriate training regarding administrative dispute resolution and the ADR Act.

(2) The Department will continue to design and implement procedures to ensure that all parties are aware of existing opportunities for alternative means of dispute resolution for cases before the OALJ. It will be the practice of the Department's Office of the General Counsel to suggest mediation in appropriate cases where mediation holds promise for early resolution without undue delay or impairment of the public interest.

(3) The Department will work to continue to extend the availability of mediation to other administrative proceedings and functions not presently governed by Part E of the General Education Provisions Act or part 81 of title 34 of the Code of Federal Regulations.

(4) The Department will seek to continue and expand the use of all appropriate alternative means of dispute resolution in employee-related disputes and procurement matters, as well as in connection with audit resolution processes. Appropriate staff training in those areas will be pursued.

(5) The Department will conduct a study of its standard contract and other terms to determine if they need amendment to comply with the ADR Act.

(6) The Department will develop and maintain a system for keeping statistics related to alternative dispute resolution in its administrative proceedings.

(7) The Department will continue to coordinate with the Administrative Conference of the United States on alternative means of dispute resolution matters and to avail itself of training provided by the Conference.

(8) The Department will continue to determine what other agency actions will lend themselves to implementation of the ADR Act and to study how it may encourage the appropriate use of alternative dispute resolution techniques by educational agencies, institutions, and organizations that it serves to the end of achieving resolution of education related disputes without the need for unnecessary litigation.

Authority: Pub. L. 101–552, Section 3 (1990).

Dated: October 22, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–28930 Filed 11–24–93; 8:45 am]

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federal register

Friday
November 26, 1993

Part V

The President

Executive Order 12881—Establishment of the National Science and Technology Council

Executive Order 12882—President's Committee of Advisors on Science and Technology

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

Presidential Documents

Title 3—

The President

Executive Order 12881 of November 23, 1993

Establishment of the National Science and Technology Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Science and Technology Council ("the Council").

Sec. 2. *Membership.* The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;

(b) Vice President;

(c) Secretary of Commerce;

(d) Secretary of Defense;

(e) Secretary of Energy;

(f) Secretary of Health and Human Services;

(g) Secretary of State;

(h) Secretary of the Interior;

(i) Administrator, National Aeronautics and Space Administration;

(j) Director, National Science Foundation;

(k) Director of the Office of Management and Budget;

(l) Administrator, Environmental Protection Agency;

(m) Assistant to the President for Science and Technology;

(n) National Security Adviser;

(o) Assistant to the President for Economic Policy;

(p) Assistant to the President for Domestic Policy; and

(q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Sec. 3. *Meetings of the Council.* The President or, upon his direction, the Assistant to the President for Science and Technology ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

Sec. 4. *Functions.* (a) The principal functions of the Council are, to the extent permitted by law: (1) to coordinate the science and technology policy-making process; (2) to ensure science and technology policy decisions and programs are consistent with the President's stated goals; (3) to help integrate the President's science and technology policy agenda across the Federal Government; (4) to ensure science and technology are considered in development and implementation of Federal policies and programs; and (5) to further international cooperation in science and technology. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate science and technology policy through the Council and shall share information on research and development budget requests with the Council.

(c) The Council shall develop for submission to the Director of the Office of Management and Budget recommendations on research and development budgets that reflect national goals. In addition, the Council shall provide advice to the Director of the Office of Management and Budget concerning the agencies' research and development budget submissions.

(d) The Assistant will, when appropriate, work in conjunction with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the National Security Adviser.

Sec. 5. *Administration.* (a) The Council will oversee the duties of the Federal Coordinating Council for Science, Engineering, and Technology, the National Space Council, and the National Critical Materials Council.

(b) The Council may function through established or ad hoc committees, task forces, or interagency groups.

(c) To the extent practicable and permitted by law, executive departments and agencies shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as requested by the Assistant.

(d) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

William J. Clinton

THE WHITE HOUSE,
November 23, 1993.

[FR Doc. 93–29263
Filed 11–24–93; 11:50 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12882 of November 23, 1993

President's Committee of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to establish an advisory committee on science and technology, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Committee of Advisors on Science and Technology ("PCAST"). PCAST shall be composed of not more than 16 members, one of whom shall be the Assistant to the President for Science and Technology ("Assistant"), and 15 of whom shall be distinguished individuals from the nonfederal sector appointed by the President. The nonfederal sector members shall be representative of the diverse perspectives and expertise in this Nation's investments in science and technology. The Assistant to the President for Science and Technology shall co-chair PCAST with a nonfederal sector member selected by the President.

Sec. 2. *Functions.* (a) The PCAST shall advise the President, through the Assistant, on matters involving science and technology.

(b) In the performance of its advisory duties, PCAST shall assist the National Science and Technology Council ("Council") in securing private sector involvement in its activities.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide PCAST such information with respect to scientific and technological matters as required for the purpose of carrying out its functions.

(b) In consultation with the Assistant to the President for Science and Technology, PCAST is authorized to convene ad hoc working groups to assist the Council.

(c) Members of PCAST shall serve without any compensation for their work on PCAST. However, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(d) Any expenses of PCAST shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(e) The Office of Science and Technology Policy shall provide such administrative services as may be required.

Sec. 4. *General.* (a) I have determined that the Committee shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to PCAST shall be performed by the Office of Science and Technology Policy in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) PCAST shall terminate 2 years from the date of this order unless extended prior to that date.

(c) Executive Orders Nos. 12700, 12768, and Section 2 of Executive Order No. 12869 are hereby revoked.

THE WHITE HOUSE,
November 23, 1993.

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