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December 23, 1993

Briefings on How To Use the Federal Register
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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: January 13 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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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by establishing a special grade for aromatic (scented) rice.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION: The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Executive Order 12291

We are issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Background

On January 11, 1993, FGIS proposed in the **Federal Register** (58 FR 3511) to revise the United States Standards for Rice. Specifically, FGIS proposed to revise the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by establishing a special grade for aromatic (scented) rice and eliminating the requirement that rough rice and brown rice for processing must contain more than 25 percent of whole kernels in order to be classed as long grain, medium grain, short grain, or mixed rough rice or brown rice for processing.

Comment Review

During the 90-day comment period ending April 12, 1993, FGIS received a total of 14 comments from various segments of the rice industry, including producers, researchers, inspectors, millers, and foreign buyers. The following paragraphs address comments received regarding the proposed changes.

Special Grade for Aromatic Rice

Twelve individuals or groups commented on the proposal to establish a special grade for aromatic rice. Most of the commenters expressed concern about the effect that establishing a special grade for aromatic rice would have on the eligibility of aromatic rice for price support loans. In the March 18, 1993, **Federal Register** (58 FR 14495), the Agricultural Stabilization and Conservation Service (ASCS) published an interim rule that made a number of regulatory changes with respect to price support loans. One change provided that rice assigned a special grade would no longer be eligible for warehouse support loans. As a result of ASCS' interim rule, commenters urged FGIS to postpone establishing a special grade for aromatic rice until it becomes clear that aromatic rice producers would not be denied price support loans.

On November 4, 1993, ASCS published a final rule in the **Federal Register** (58 FR 58739) that exempted aromatic rice from the price support loan restrictions for rice with a special grade designation. This action effectively resolves the outstanding questions regarding aromatic rice. Accordingly, the proposed special grade for aromatic rice is adopted as a final rule without change.

Revising the Class Definitions for Rough Rice and Brown Rice for Processing

FGIS received three comments regarding the proposal to eliminate the requirement that rough rice and brown rice for processing must contain more than 25 percent of whole kernels in order to be classed as long grain, medium grain, short grain, or mixed rough rice or brown rice for processing. Only one commenter supported the proposal. The other two commenters were strongly opposed to the proposed action. They felt that eliminating the requirement may "worsen the quality" of U.S. rice. FGIS believes that the proposed action would not have a noticeable effect on rice quality or marketability. But, FGIS is concerned that the action may inadvertently harm the reputation of the U.S. rice. To avoid any such negative consequences, FGIS has determined that this proposal should not be adopted at this time.

Final Action

Based on current market needs, FGIS is revising:

1. Section 68.212 by adding a new paragraph (e) that defines aromatic rough rice.
2. Section 68.213 by adding a new paragraph (f) that defines aromatic rough rice.
3. Section 68.263 by adding a new paragraph (d) that defines aromatic brown rice for processing.
4. Section 68.264 by adding a special grade designation for aromatic brown rice for processing rice.
5. Section 68.315 by adding a new paragraph (f) that defines aromatic milled rice.

6. Section 68.316 by adding a special grade designation for aromatic milled rice.

List of Subjects in 7 CFR Part 68

Administration practice and procedures, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.).

Subpart C—United States Standards for Rough Rice

Subpart D—United States Standards for Brown Rice for Processing

Subpart E—United States Standards for Milled Rice

2. Section 68.212(e) is added to read as follows:

§ 68.212 Special grades and requirements.

* * * * *

(e) *Aromatic rough rice.* Aromatic rough rice shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

3. Section 68.213 is revised to read as follows:

§ 68.213 Special grade designation.

The grade designation for infested, parboiled, smutty, glutinous, or aromatic rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," "Smutty," "Glutinous," or "Aromatic," as warranted, and all other information prescribed in § 68.211.

4. Section 68.263(d) is added to read as follows:

§ 68.263 Special grades and special grade requirements.

* * * * *

(d) *Aromatic brown rice for processing.* Aromatic brown rice for processing shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

5. Section 68.264 is revised to read as follows:

§ 68.264 Special grade designation.

The grade designation for parboiled, smutty, glutinous, or aromatic brown rice for processing shall include, following the class, the word(s) "Parboiled," "Smutty," "Glutinous," or "Aromatic," as warranted, and all other information prescribed in § 68.262.

6. Section 68.315(f) is added to read as follows:

§ 68.315 Special grades and special grade requirements.

* * * * *

(f) *Aromatic milled rice.* Aromatic milled rice shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

7. Section 68.316 is revised to read as follows:

§ 68.316 Special grade designation.

The grade designation for coated, granulated brewers, parboiled, undermilled, glutinous, or aromatic milled rice shall include, following the class, the word(s) "Coated," "Granulated," "Parboiled Light," "Parboiled," "Parboiled Dark," "Undermilled," "Glutinous," or "Aromatic," as warranted, and all other information prescribed in § 68.314.

Dated: December 16, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–31296 Filed 12–22–93; 8:45 am]

BILLING CODE 3410–EN–M

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD31

Price Support Loan Requirements; Farmer Owned Reserve Program Eligibility Requirements; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations concerning the Farmer Owned Reserve (FOR) program. Two final rules were published for Commodity Credit Corporation (CCC) which affected the time period for producers to declare their intentions for the 1992 feed grains FOR Program. Through an administrative error the text was not published as intended; therefore, a correction is necessary to revise the text in 7 CFR 1421.203.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Overbo, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–8223.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction in 7 CFR 1421.203 intended to provide greater flexibility for the FOR intention sign-up period by providing a date determined and announced by CCC rather than specific dates as stated in the text of another final regulation published on Thursday, November 4, 1993, (58 FR 58747). Because two final regulations were in clearance at the same time and contained changes to the text in § 1421.203, an administrative error occurred when the two regulations were published in final.

Need for Correction

As published, the final regulations do not provide the program flexibility as intended when the interim of this regulation was published on Thursday, August 26, 1993, (58 FR 45039).

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.203 is revised to read as follows:

§ 1421.203 Reserve Quantity.

The maximum quantity of wheat and feed grains stored under the FOR program shall be determined and announced annually by CCC by the date specified in § 1421.201(b). In order to assure that such quantities are not exceeded and to ensure regional equity, CCC may require producers to file with CCC, on a form prescribed by CCC, an offer which includes a statement of the quantity of grain which is pledged as collateral for a regular price support loan which such producers intend to place in the FOR program. If the quantities on such forms show that the quantity intended to be entered into the

FOR program by producers will likely exceed the maximum quantity allowed, CCC may apply a uniform factor to the offered quantity. If such a form is required, failure to file such form with respect to a commodity that would otherwise be eligible for entry into the FOR program, will result in ineligibility of the commodity for FOR entry. All such forms, if required by CCC, must be filed by a producer with the ASCS county office that disbursed the qualifying regular price support loan by the date determined and announced by CCC for the applicable commodity.

Signed in Washington, DC, on December 17, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-31366 Filed 12-22-93; 8:45 am]

BILLING CODE 3410-05-P

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7 CFR Part 1464

RIN 0560-AD53

Tobacco; Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) was enacted on August 10, 1993. Section 1106 of the 1993 Act amended sections 106, 106A, and 106B of the Agricultural Act of 1949 (the 1949 Act) to require, with respect to any unmanufactured burley or flue-cured tobacco imported in 1994 and subsequent years, that the importer pay a "no net cost assessment" (which defrays the cost of the federal tobacco price support program) and to require, with respect to the 1994 through 1998 crops of any tobacco, that an importer of any tobacco shall remit a nonrefundable marketing assessment to the Commodity Credit Corporation (CCC) on each pound of unmanufactured tobacco that is imported by the importer. This interim rule amends the regulations to address the amount of the assessments, the remittance of assessments, penalties for failure to remit or timely remit assessments, importer reporting requirements, the retention of records by importers of tobacco, the examination of records and reports pertinent to importers, and the penalty for failure to keep records and make reports.

DATES: Comments must be received on or before January 24, 1994 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415. All written submissions made pursuant to this notice will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-7562.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; or

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

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

Executive Order 12372

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

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collection requirements contained in these regulations (7 CFR part 1464) will be submitted to the Office of Management and Budget (OMB) for expedited approval. ASCS is requesting OMB to review the information collection requirements by December 31, 1993 (see appendix A).

1. Marketing Assessments on Imported Tobacco

A. Statutory Provisions

Section 1106(b)(1) of the 1993 Act amended section 106 of the 1949 Act by adding a new paragraph (h) to require, effective for each of the 1994 through 1998 crops of tobacco, that importers of tobacco that is produced outside the United States shall remit to CCC a nonrefundable marketing assessment in an amount equal to the product determined by multiplying the number of pounds of tobacco imported by the importer, by the sum of the respective per pound marketing assessments imposed on purchasers of domestic burley tobacco and domestic flue-cured tobacco pursuant to section 106(g) of the 1949 Act. Currently, section 106(g) of the 1949 Act imposes a marketing assessment of one-half of one percent of the respective national price support levels for burley and flue-cured tobacco

on any purchaser who purchases the respective kind of such tobacco from any of the 1991 through 1995 crops. The amended section 106 provides that the importer of tobacco shall remit the marketing assessment at such time and in such manner as prescribed by the Secretary. Further, the amended section 106 imposes a marketing penalty against such importer who fails to remit, or timely remit, the marketing assessments as prescribed by the Secretary.

B. Interim Regulations

For subpart B of part 1464 as it would be added in the interim regulations, "imported tobacco" is defined as "Any unmanufactured tobacco, including Oriental and Turkish tobacco, that was not produced in the United States if such tobacco is considered in accordance with rules of the United States Customs Service to have entered into the commerce of the United States or is otherwise determined to have entered the United States." "Importer" for all purposes under the interim rule is defined to be any person who is an owner of the tobacco or is otherwise responsible for the importation of the tobacco.

Section 408 of the 1949 Act (7 U.S.C. 1428) adopts, for the 1949 Act, definitions which are contained in the Agricultural Adjustment Act of 1938 (the 1938 Act), 7 U.S.C. 1281 *et seq.* Section 301 of the 1938 Act defines "tobacco" by reference to Service and Regulatory Announcement 188 of the U.S. Department of Agriculture (USDA) Bureau of Agricultural Economics. Section 301 defines "tobacco" to mean certain specified types of tobacco by type number. The specified types are identified in Announcement 188 as domestic tobacco. Foreign tobaccos are assigned other numbers. However, the amendments to the 1949 Act implemented in this interim rule are clearly designed to cover imported tobacco and the rule had been drafted accordingly by using a broader definition of "tobacco".

As provided for in the statute, the interim regulations would impose a marketing assessment on each pound of imported tobacco if such tobacco is imported during the 1994 through 1998 calendar years. The amount of the marketing assessment per pound of imported tobacco would be, as provided in the statute, an amount equal to the sum of the marketing assessments that are imposed on purchasers of burley tobacco and flue-cured tobacco, respectively, and, under the rule, that calculation would be made on the basis of the assessments for the current marketing year for those tobaccos. The marketing year for domestic flue-cured tobacco starts on July 1 of the year in which the crop is produced and ends on June 30 of the next year. The marketing year for domestic burley tobacco starts on October 1 of the year in which the crop is produced and ends on September 30 of the next year. Accordingly, since the assessment levels are, by statute, a set percentage of price support levels that can change by marketing year, the marketing assessment rate per pound for imported tobacco under the interim rule would change, in all likelihood, on July 1 and October 1 of each year. That is, it is likely one rate would be applicable for importers for the period July 1 through September 30 and a different rate for the period October 1 through June 30. The national price support level for burley tobacco for the 1993–1994 marketing year is $1.683 per pound and the national price support level for flue-cured tobacco for the 1993–1994 marketing year is $1.577 per pound. As indicated, the existing purchaser marketing assessment on purchases of domestic burley and flue-cured tobacco during the 1993–94 marketing year is one-half of one percent of the respective national price support levels for those tobaccos. One-half of one percent of the applicable national price support level is .8415 cent for burley tobacco and .7885 cent for flue-cured tobacco. Accordingly, under the terms of the interim rule, 1.63 cents (the sum of .8415 and .7885) would be the per pound assessment rate for tobacco that is imported during the period January 1 through June 30, 1994. This assessment applies to all tobacco that is imported, and is uniform; this assessment is not limited to imported burley or imported flue-cured tobacco alone. The national levels of price support for burley or flue-cured tobacco are announced annually and, generally, well in advance of the beginning of the applicable marketing year. For this assessment and the limited no net cost assessment, the rule prescribes that the coverage of the assessment will extend to any tobacco which is imported as unmanufactured tobacco, that is, as defined in the rule, tobacco which has not been converted into a product ready for use by consumers.

The interim regulations provide that each importer of tobacco must remit the marketing assessments to Commodity Credit Corporation in care of Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415 by the tenth calendar day following the date for which such imported tobacco was entered into the United States. However, in order to allow for the transition to these new assessments, the remittance of fees for entries during the period January 1 through February 28, 1994, will not be due until March 10, 1994. Each importer who fails to timely remit a marketing assessment shall be subject to a late payment charge as well as liable for the penalty provided for in section 1106 of the 1993 Act. Such late payment shall be calculated and assessed in accordance with 7 CFR part 1403. In order to show proof that a marketing assessment has been timely and accurately remitted, the importer shall submit a copy of the Customs Form 7501 (entry summary) or Customs Form 7505 (warehouse withdrawal for consumption-duty paid), with Form CCC–100, Importer Entry and Assessment Worksheet, in order to establish the date of entry into the commerce of the United States of such tobacco. Such documentation must accompany the remittance of the marketing assessment. Additional information may also be requested by the Director, Tobacco and Peanuts Division, ASCS, who shall be principally responsible for the administration of these regulations.

With respect to penalties, as regards to the marketing assessment, section 1106 of the 1993 Act provides that any importer who fails to remit the marketing assessment on imported tobacco shall be liable, in addition to any assessment or late payment charge due, for a marketing penalty on the quantity of tobacco as to which such failure occurs, at a rate per pound equal to 37.5 percent of the sum of the average market prices for flue-cured and burley tobacco for the year immediately preceding the year in which such tobacco was imported. Under the interim rule, the penalty could be applied to any failure to pay the assessment in a timely manner and the necessary market price determinations would be made on the basis of prices for the domestic marketing years ending in the calendar year preceding the year of the importation. For example, the average market prices per pound for burley and flue-cured tobacco for the 1992–1993 marketing year were $1.815 and $1.726, respectively. Accordingly, the penalty that would be applicable with respect to the failure of an importer to remit any marketing assessment on imported tobacco entered into the commerce of the United States during 1994, would be $1.328 per pound ($1.815 + $1.726 = $3.541 × .375 = $1.328). Such penalty shall be assessed after the importer has been notified of

the pending assessment of the penalty and has been afforded an opportunity for a hearing with the Director, Tobacco and Peanuts Division, ASCS, with respect to such assessment.

2. No Net Cost Assessments on Imported Burley or Flue-Cured Tobacco

A. Statutory Provisions

Pre-existing provisions of sections 106A and 106B of the 1949 Act impose on domestic producers of any kind of tobacco for which domestic quotas are in place (as established under the 1938 Act), as well as on purchasers of domestic burley and domestic flue-cured tobacco, "no-net-cost" assessments to defray the cost of the federal price support program for tobacco. The amounts of these assessments are based on the amount of expected losses that might otherwise occur with respect to price-supported tobacco.

Section 1106 (b)(2) and (3) of the 1993 Act amended sections 106A and 106B of the 1949 Act to require that each importer of burley or flue-cured tobacco shall also pay a no-net-cost assessment on each pound of burley or flue-cured tobacco that is imported by such importer. The pre-existing provisions of section 106A of the 1949 Act allow, for covered tobaccos, for the establishment of no net cost Funds whereas section 106B provided, alternatively, for no net cost Accounts. These Funds or Accounts are operated in cooperation with special producer marketing associations which perform various functions in connection with the price support program. Sections 106A and 106B alternatively refer to producer inputs into the Fund or Account as "contributions" or "assessments." Under the 1993 Act amendments, the importer of burley or flue-cured tobacco is required to pay into the respective Account or Fund for the applicable producer association an amount equal to the sum of the current producer and purchaser no net cost assessments or contributions. That is, for imported flue-cured tobacco, for example, the importer is required by the 1993 amendments to pay a no net cost assessment equal to the amount of the combined current no net cost assessments paid by purchasers of domestic flue-cured tobacco and by domestic producers of flue-cured tobacco. While the amendments to section 106B, unlike those for section 106A, do not as such limit the importer assessments to the combination of the producer and purchaser payments for the "respective" kind of domestic tobacco (burley or flue-cured tobacco), it nonetheless appears clear, even if section 106A applies, that the assessment should not be the sum of the producer and purchaser current assessments for both domestic burley and flue-cured tobacco together. It must be presumed that Congress did not intend the amount of the assessment to depend on the fortuity of whether section 106A or section 106B applied. Further the section 106A formulation calls for the funds to go to the "applicable" association, indicating that the amount of the importer assessment was to match the total no net cost assessment normally collected by that association and not that also normally collected by an association for a different kind of tobacco. One additional difficulty is that there are two producer associations for domestic burley tobacco but there is just one domestic producer association with price support functions for flue-cured tobacco. This problem is resolved, however, by requiring, under the interim rule, that all of the no net cost assessments on imported tobacco must be paid, for burley and flue-cured tobacco, to the Director, Tobacco and Peanuts Division, ASCS. In turn, the Director will distribute the funds to the appropriate association and will decide, for burley tobacco, how the funds should be reasonably apportioned between the two special producer associations. In short, for purposes of this interim rule, the statutory provisions have been construed to provide that in all cases the amount of the assessment for the subject tobacco (imported burley tobacco or imported flue-cured tobacco) will be the amount which is equal for the current marketing year to the addition of: (1) The current producer no net cost contribution or no net cost assessment for the respective tobacco and (2) the current purchaser no net cost assessment for the respective tobacco.

The 1993 Act also provides that the importer of burley or flue-cured tobacco shall pay the importer no net cost assessments (INNCA) at such time and in such manner as may be prescribed by the Secretary and provides for a marketing penalty against such importer who fails to timely remit the INNCA as prescribed by the Secretary. The penalty rate set by the statute is 75 percent of the average market price for the respective tobacco for the preceding year.

B. Interim Regulations

The interim regulations would impose an INNCA on each pound of burley or flue-cured tobacco that was not produced in the United States if such tobacco is entered into the commerce of the United States, on or after January 1, 1994. As indicated above, the interim rule provides that the importer no net cost assessment, which is in addition to the marketing assessment but which (unlike the marketing assessment) applies only to imported burley and flue-cured tobacco, will be the amount which is equal to the sum of the producer and purchaser assessments or contributions for the current marketing year for the respective domestic tobacco and shall be required to be paid by the importer to the Director, Tobacco and Peanuts Division, ASCS. As with the marketing assessment, this assessment will apply to unmanufactured tobacco which is entered into the commerce of the United States and, as with the marketing assessment, unmanufactured tobacco will be considered to be tobacco which is not packaged, at the time of entry, for sale to the ultimate consumers. With respect to the coverage of this assessment, the same definitional problem exists with respect to the normal meaning assigned to the term "tobacco" in the 1938 Act and incorporated for use in the 1949 Act. In fact, section 106B contains its own definition of "tobacco" which refers to the definition of "tobacco" as contained in section 301 of the 1938 Act. For the same reasons as apply to the marketing assessment, the interim rule, for the no net cost assessment, treats "tobacco" as used alone and in "imported tobacco" to include all that which is normally considered in the trade to be tobacco. With respect to determining the actual amount of the assessment due for the no net cost assessment from the importer, the rule provides that the domestic assessments which will be used to determine the level of payment will be those of the respective domestic tobacco for the same marketing year in which the importation occurs. That is, for example, if flue-cured tobacco is imported during the 1993–1994 domestic marketing year, then the importer assessment will be the sum of the producer and purchaser no net cost assessment or contribution levels for domestic flue-cured tobacco for such domestic marketing year.

For the 1993–94 domestic burley marketing year the producer assessment is .1585 cent per pound and the purchaser assessment is 2.6585 cents per pound, and with respect to domestic flue-cured tobacco marketed during the 1993–94 marketing year, the producer assessment is .2115 cent per pound and the purchaser assessment is 2.2115 cents per pound. Therefore, the INNCA on burley tobacco imported during the 1993–94 marketing year after December

31, 1993, would be 2.817 cents per pound (the sum of .1585 and 2.6585) and the INNCA on flue-cured tobacco imported during the 1993–94 marketing year after December 31, 1993, would be 2.423 cents per pound (the sum of .2115 and 2.2115). Corresponding to the beginning of new marketing years for domestic burley and flue-cured tobacco, the INNCA will likely change on July 1 of each year for imported flue-cured tobacco and on October 1 of each year for imported burley tobacco. The domestic burley and flue-cured assessments are announced annually before the beginning of the applicable marketing year.

The interim regulations provide that each importer of burley or flue-cured tobacco must remit the INNCA to: Director, Tobacco and Peanuts Division, ASCS, USDA, PO Box 2415, Washington, DC 20013–2415 by the tenth calendar day following the date for which such imported tobacco was entered into the commerce of the United States. However, in order to allow for the transition to these new assessments, the remittance of fees for entries during the period January 1 through February 28, 1994, will not be due until March 10, 1994. Each importer who fails to timely remit an INNCA will be subject to a late payment charge and a penalty, in addition to the INNCA. Such late payment shall be calculated and assessed in accordance with 7 CFR part 1403. In order to show proof that an INNCA has been timely and accurately remitted, the importer shall submit a copy of Customs Form 7501 or 7505, or other document that conclusively shows the date of entry of the tobacco into the commerce of the United States. Such documentation, under the interim rule, would be required to accompany Form CCC–100, Importer Entry and Assessment Worksheet, with the remittance of the INNCA.

As indicated, the 1993 Act amendments provide that any importer who fails to remit an INNCA on imported burley or flue-cured tobacco shall be liable, in addition to any late payment or assessment due, for a marketing penalty at a rate equal to 75 percent of the average market price for the respective kind of tobacco as to which such failure occurs for the year preceding the year in which such tobacco was imported. Under the interim rule, such determinations would be made using market prices from the preceding marketing year. The average market prices for the 1992–93 marketing year were $1.815 per pound for burley tobacco and $1.726 per pound for flue-cured tobacco. Accordingly, the per pound penalty rate that would be applicable with respect to the failure of an importer to remit in a timely manner any applicable INNCA on imported burley or flue-cured tobacco that is imported after December 31 of the 1993–94 marketing years for those tobaccos would be $1.361 ($1.815 × .75) for burley tobacco and $1.295 ($1.726 × .75) for flue-cured tobacco. The penalty rates are identical to the marketing quota penalty rates that apply against domestic producers of burley and flue-cured tobacco for marketing excess tobacco (tobacco that exceeds the amount of the producer's quota). The producer penalty rates are published annually by notice in the **Federal Register.**

3. Importer Records

The interim regulations provide that each importer of tobacco shall maintain records relevant to all unmanufactured tobacco entered into the commerce of the United States. For each entry of such tobacco, the importer shall, consistent with the meanings assigned by Customs to these terms, maintain entry summary data that identifies the Entry Filer Code/Entry Number, Importer of Record Number, Importer of Record Name and Address, Ultimate Consignee Number, Entry Date, District/Port of Entry, Harmonized Tariff Schedule (HTS) Numbers, Quantity (Net Weight in kilograms). The importer shall also maintain data for each such entry of the owner of the tobacco, if different from the Importer of Record, and the amount of the marketing assessment and INNCA remitted. The interim regulations provide that each importer of tobacco shall maintain such records for a period of three years following the date of entry of such tobacco into the commerce of the United States. However, any destruction of records at any time will be at the party's own risk.

4. Refund of Assessments

As a means of monitoring compliance with the importer assessments, the Tobacco and Peanuts Division plans to obtain relevant data from Customs with respect to imported tobacco. The quantities of tobacco identified under Chapter 2401 of the HTS will be compared with the quantity of tobacco on which assessments are paid by the importer. It is not the intent of the CCC that the importer pay assessments on tobacco that is brought into the United States solely for the purpose of processing and subsequent delivery as unmanufactured tobacco to a customer outside the United States. The interim regulations would not exempt such tobacco from the payment of marketing assessments and INNCA, but would allow a refund if the Director determines, upon proof supplied by the importer, that such tobacco has been subsequently processed and re-exported as unmanufactured tobacco by the importer.

5. Miscellaneous

The interim regulations provide, with respect to imported burley and flue-cured tobacco, that separate remittances shall be made for the marketing assessment and the INNCA.

USDA plans to enter into an agreement with Customs for Customs to provide the information applicable for USDA to verify the amount of marketing assessments on any imported tobacco and the INNCA on imported burley and flue-cured tobacco. Further, the interim rule prohibits the marketing, processing or use of tobacco that has entered into the commerce of the United States for which assessment(s) were not remitted by the importer and for which the assessments are required by the statute and interim rule. The rule would allow, if appropriate arrangements could be made, to have the procedure for the collection of assessments changed so as to be made upon entry of the tobacco into the United States. Any such change would be preceded by notice to importers.

List of Subjects in 7 CFR Part 1464

Assessments, Loan programs/agriculture, Price support program, Tobacco, Warehouses.

For the reasons set out in the preamble, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C 714b, 714c.

2. Part 1464 is amended by adding subpart B to read as follows:

Subpart B—Importer Assessments

Sec.
1464.101 Definitions.
1464.102 Importer marketing assessments.
1464.103 Importer no net cost assessments.
1464.104 Remittance of importer assessments.
1464.105 Refund of assessments.
1464.106 Marketing penalties.
1464.107 Recordkeeping.
1464.108 Reconsideration and appeal.
Appendix A to part 1464—Importer Entry and Assessment Worksheet.

Subpart B—Importer Assessments

§ 1464.101 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable

for purposes of administering the provisions of this subpart.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

Customs. The United States Customs Service of the United States Department of the Treasury.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Entered. The term used to identify tobacco that has been released by Customs for entry into the commerce of the United States.

Entry date. The date in which the tobacco was released by Customs into the commerce of the United States unless the tobacco entered the United States without such a release.

Imported tobacco. Any unmanufactured tobacco, including Oriental and Turkish tobacco, that was not produced in the United States if such tobacco is considered in accordance with rules of the United States Customs Service to have entered into the commerce of the United States or is otherwise determined to have entered the United States.

Importer. A person who at the time of the entry of imported tobacco into the United States, owns or controls the tobacco.

Person. An individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, when applicable, a State, a political subdivision of a State, or any agency thereof.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product.

§ 1464.102 Importer marketing assessments.

(a) *General.* The importer of any unmanufactured imported tobacco shall pay a marketing assessment on each pound of such imported tobacco if such tobacco is imported during any of the 1994 through 1998 calendar years.

(b) *Amount of assessment.* The marketing assessment is the amount determined by multiplying the number of pounds of imported tobacco by the sum of the per pound marketing assessments imposed in accordance with § 1464.11 on purchasers of domestically produced burley tobacco and flue-cured tobacco, respectively, for the marketing year for those domestic tobaccos during which such tobacco was imported.

§ 1464.103 Importer no net cost assessments.

(a) *General.* The importer of any unmanufactured imported burley or flue-cured tobacco shall pay a no net cost assessment on each pound of such tobacco that is imported after December 31, 1993.

(b) *Amount of assessment.* The amount of the no net cost assessment which shall apply under this section shall be the amount determined by multiplying:

(1) For imported burley tobacco, the number of pounds of unmanufactured imported burley tobacco by the sum of the per pound no net cost producer contribution or assessment, as applicable, and the per pound purchaser assessment that apply, as determined in accordance with subpart A, for domestic burley tobacco that is marketed during the domestic marketing year during which the imported tobacco was imported.

(2) For imported flue-cured tobacco, the number of pounds of unmanufactured imported flue-cured tobacco by the sum of the per pound no net cost producer contribution or assessment, as applicable, and the per pound purchaser assessment, as determined in accordance with subpart A, for domestic flue-cured tobacco that is marketed during the domestic marketing year during which the imported tobacco was imported.

§ 1464.104 Remittance of importer assessments.

(a) *Where to remit.* Importer assessments shall be remitted to Commodity Credit Corporation, in care of Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415.

(b) *When to remit.* (1) Unless the Director, in consultation with other agencies, shall require that the assessments be paid and collected by the United States prior to entry of the tobacco into the commerce of the United States, importer assessments shall be remitted within 10 calendar days after the date on which the imported tobacco is entered.

(2) Notwithstanding the requirement in paragraph (b)(1) of this section, importer assessments shall be remitted not later than March 10, 1994, for tobacco that is entered during the period January 1, 1994, through February 28, 1994.

(c) *Separate remittances.* When burley or flue-cured tobacco have been imported, the applicable importer marketing assessments and importer no net cost assessments shall be remitted by separate remittances.

(d) *Documentation.* Each remittance of an importer assessment shall be accompanied by Form CCC–100, Importer Entry and Assessment Worksheet, and a Customs Form 7501 or Customs Form 7505, or any other documentation that, based on the documentation and codes normally required or used by the United States Customs Service, includes the following with respect to each entry of imported tobacco:

(1) Entry filer code/entry number,

(2) Importer of record number,

(3) Importer of record name and address,

(4) Ultimate consignee number,

(5) Entry date,

(6) District/port of entry,

(7) Harmonized Tariff Schedule Number,

(8) Quantity Entered (net weight in kilograms), and

(9) Amount remitted.

(e) *Late payment charge.* Any importer who fails to timely remit any assessment required by this subpart shall be subject to a late payment charge. Such late payment charge shall be calculated and assessed in accordance with part 1403 of this chapter and shall be in addition to any penalty due or other charge.

§ 1464.105 Refund of assessments.

Assessments that were paid on imported tobacco may be refunded to the importer if the importer establishes to the satisfaction of the Director that the tobacco on which the assessment was made has been re-exported as unmanufactured tobacco.

§ 1464.106 Marketing penalties.

(a) *Failure to remit assessments.* An importer who fails to remit an assessment shall be subject to a marketing penalty.

(1) *Marketing assessments.* If an importer fails to remit a marketing assessment according to the provisions of this subpart, such importer shall be subject to a marketing penalty, in addition to any marketing assessment due and any late payment charges, at a rate equal to 37.5 percent of the sum of the per pound average market prices (calculated to the nearest whole cent) of domestic flue-cured and domestic burley tobacco for the respective domestic marketing year that ends during the calendar year immediately preceding the calendar year during which such tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(2) *Importer no net cost assessment.* If an importer of burley or flue-cured tobacco fails to remit a no net cost assessment in accordance with the provisions in this subpart, such importer shall be liable, in addition to any no net cost assessment due and any late payment charges, to a marketing penalty at a per pound rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of domestic tobacco (burley or flue-cured) for the respective domestic marketing year, in which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(b) *Exception to marketing penalty.* A marketing penalty otherwise required by this paragraph may be forgiven if the assessment for which nonpayment of the penalty could be assessed is remitted not later than 15 days after the date otherwise required for the remittance by this subpart.

(c) *Notification of marketing penalty.* Before a marketing penalty is assessed, the importer shall be notified of the pending assessment of the penalty and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be with, the Director.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and such reduction would not damage the tobacco program.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; Other remedies.* The use, processing, or marketing of tobacco in the commerce of the United States of any tobacco for which an assessment required by this subpart is due, is prohibited. The penalties and other remedies provided in the section shall be in addition to, and not exclusive of, other remedies that may be available.

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco; however, the destruction of such records shall be at the party's own risk.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Deputy Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such importer's control and that may be relevant to imported tobacco that is subject to an assessment in accordance with this subpart. Upon a failure to provide access or records, the Director shall presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request that the Director reconsider any determination of the amount of any assessment due or any marketing penalty assessed in accordance with this subpart. Any request for reconsideration shall be made within 15 calendar days after the date of the notification of such assessment or marketing penalty. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division. Any appeal shall be handled in accordance with the provisions of 7 CFR part 780.

Appendix A to Part 1464—Importer Entry and Assessment Worksheet

BILLING CODE 3410-05-P

REPRODUCE LOCALLY. Include form number and date on all reproducitons. *(See reverse for Privacy Act and Public Burden statements.)* Form Approved - OMB No. 0560-XXXX

CCC-100 (Proposal 2)
U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

IMPORTER ENTRY AND ASSESSMENT WORKSHEET
(Unmanufactured Tobacco Entered for Consumption)

1. IMPORTER OF RECORD NAME AND ADDRESS

2. ASSESSMENT RATES *(per kg)*:
Marketing _____
INNC *(Flue-Cured)* _____
INNC *(Burley)* _____

3. ENTRY FILER CODE/ ENTRY NO.	4. ENTRY DATE	5. IMPORTER OF RECORD NO.	6. ULTIMATE CONSIGNEE NO.	7. DISTRICT/PORT CODE

PART II - DESCRIPTION OF MERCHANDISE

8. TYPE(s) OF TOBACCO	9. HTS NUMBER(s)	10. DESCRIPTION OF MERCHANDISE	11. NET QUANTITY (per kg)	12. MARKETING ASSESSMENT AMOUNT	13. INNC ASSESSMENT AMOUNT
FLUE-CURED				$	$
		DRAFT		$	$
				$	$
				$	$
				$	$
				$	$
		14. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED		$	$
BURLEY				$	$
				$	$
		DRAFT		$	$
				$	$
				$	$
				$	$
		15. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED		$	$
OTHER				$	
				$	
		DRAFT		$	
				$	
				$	
				$	
		16. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNT REMITTED		$	

PART III - CERTIFICATION OF DECLARANT

I certify, under penalty of law, that the information in this document is true, correct and complete to the best of my knowledge. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

17A. SIGNATURE	17B. TITLE	17C. DATE

18. RETURN TO:
United States Department of Agriculture
Agricultural Stabilization and Conservation Service
KCMO/AOD/CMB
P.O. Box 419205
Kansas City, MO 64141-6205

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

Signed at Washington, DC, on December 16, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-31367 Filed 12-22-93; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS No. 1606-93; AG Order No. 1815-93]

RIN 1115-AC83

Addition of Provision for the Registration and Fingerprinting of Nonimmigrants Designated by the Attorney General; Removal of the Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Kuwaiti Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds the provision for the registration and fingerprinting of certain nonimmigrants of specific countries designated by the Attorney General. It also removes the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents who apply for admission to the United States, which was promulgated in response to a specific political situation and is no longer necessary due to changes in the political environment and the decrease in the need to collect this information. This rule is necessary to remove restrictive procedures.

DATES: This interim rule is effective December 23, 1993. Written comments must be submitted on or before January 24, 1994.

ADDRESSES: Please submit written comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1606-93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Andrea P. Sickler, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone (202) 514-3275.

SUPPLEMENTARY INFORMATION: On January 16, 1991, a final regulation was published in the **Federal Register** at 56 FR 1566, codified at 8 CFR 264.3, requiring the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents. The requirement was promulgated in response to the United States condemnation of Iraq's invasion of Kuwait, United States sanctions against Iraq, and the theft of thousands of Kuwaiti passports during Iraq's occupation of Kuwait, all of which heightened the potential for domestic anti-United States terrorist activities. Due to the withdrawal of Iraqi forces from Kuwait, and the Government of Kuwait's requirement that all old Kuwaiti passports be replaced with a new version, this requirement is no longer necessary.

However, future political situations which elevate concern for United States's security may again necessitate the registration and fingerprinting of certain nonimmigrants. In order to facilitate the implementation of this procedure, this rule adds the provision that the Attorney General may require, by public notice in the **Federal Register**, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, pursuant to section 263(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1303(a)(5).

This additional provision is a procedural change which affords the Attorney General more flexibility in responding to specific political situations than was formerly available only through time-consuming changes in the regulation. Elsewhere in this issue of the **Federal Register**, a notice is published requiring certain nonimmigrants from Iraq and the Sudan to be registered and fingerprinted upon arrival in the United States.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the foreign affairs exception found at 5 U.S.C. 553(a) and the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and necessity for immediate implementation of this interim rule without prior notice and comment are based on recent terrorist activities perpetrated on United States soil. In response to similar security-related emergencies, it is imperative that the Attorney General have the immediate ability to designate certain nonimmigrants from specific countries as being required to be registered and fingerprinted upon arrival in the United States.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. Insofar as this rule merely effects a limited number of individuals, it will have, at most, a nominal impact on small entities. This rule does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612 and was reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

1. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301-1305.

2. In § 264.1, paragraphs (f) through (h) are redesignated as paragraphs (g) through (i), and a new paragraph (f) is added to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(f) *Registration and fingerprinting of certain nonimmigrants.* Notwithstanding the provisions included in paragraphs (e)(1) and (e)(2) of this section, the Attorney General may designate, by a comprehensive public notice in the **Federal Register**, that certain nonimmigrants of specific countries are required to be registered and fingerprinted upon arrival in the United States. This requirement shall not apply to those nonimmigrants applying for admission to the United States under section 101(a)(15)(A) or 101(a)(15)(G) of the Immigration and Nationality Act. Those aliens so designated by the Attorney General who apply for admission to the United States shall be registered on Form I-94 (Arrival/Departure Record), and may be fingerprinted on Form FD-258 (Fingerprint Chart), and photographed by the Service at the Port-of-Entry where

the aliens apply for admission to the United States.

* * * * *

§ 264.3 [Removed]

3. Section 264.3 is removed.

Dated: December 9, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93-30578 Filed 12-22-93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-50; Amendment 39-8771; AD 93-25-05]

Airworthiness Directives; Allison Model 250-C20S Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Allison Model 250-C20S turbine engines which have been modified per Soloy Conversions, Ltd., Supplemental Type Certificate (STC) SE2352NM, that requires a one-time inspection of the main engine driveshaft and replacement of main driveshaft flex coupling bolts, bushings, and nuts. This amendment is prompted by reports of difficulty in adequately torquing these bolts. The actions specified by this AD are intended to prevent bolt fretting and fatigue failure, main engine driveshaft detachment, and engine failure.

DATES: Effective February 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 22, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Soloy Corporation, 450 Pat Kennedy Way, SW., Olympia, WA 98501-7298; telephone (206) 754-7000. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (206) 227-2764, fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Allison Model 250-C20S turbine engines which have been modified per Soloy Conversions, Ltd., Supplemental Type Certificate (STC) SE2352NM, was published in the **Federal Register** on May 15, 1992 (57 FR 20800). That action proposed to require a one-time inspection of the main engine driveshaft and replacement of the main driveshaft flex coupling bolts, bushings, and nuts in accordance with Soloy Corporation Service Bulletin (SB) 04-780, dated December 11, 1991.

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

One comment concurs with the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 65 modified engines of the affected design in the worldwide fleet. The FAA estimates that 24 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The manufacturer has advised the FAA that it will provide all needed replacement parts at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,960.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

93-25-05 Allison: Amendment 39-8771. Docket 91-ANE-50.

Applicability: Allison Model 250-C20S turbine engines, as modified by Soloy Conversion, Ltd., Supplemental Type Certificate (STC) SE2352NM, installed on but not limited to Cessna 206 and 207 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent bolt fretting and fatigue failure, main engine driveshaft detachment, and engine failure, accomplish the following:

(a) Within 90 days after the effective date of this AD, inspect the main engine driveshaft and replace the driveshaft flex coupling bolts, bushings, and nuts in accordance with Soloy Corporation Service Bulletin No. 04-780, dated December 11, 1991. Replace with a serviceable part those main engine driveshafts with elongated bolt holes.

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

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

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

(d) The inspection, and replacement, if necessary, shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
Soloy Corp. Service Bulletin No. 04–780.	1–3	Orig.	Dec. 11, 1991

Total Pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Soloy Corporation, 450 Pat Kennedy Way, SW., Olympia, WA 98501–7298; telephone (206) 754–7000. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 22, 1994.

Issued in Burlington, Massachusetts, on December 8, 1993.

Jay J. Pardee,

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

[FR Doc. 93–31117 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–214–AD; Amendment 39–8775; AD 93–25–09]

Airworthiness Directives; McDonnell Douglas Model MD–11 and DC–10 Series Airplanes, and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes. This action requires functional testing to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary. This amendment is prompted by a report that during pre-delivery testing of a Model MD–11 series airplane, the electrical connectors to the fire extinguishing handles were found to be connected incorrectly (crossed). The actions specified in this AD are intended to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine.

DATES: Effective January 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1994. Comments for inclusion in the Rules Docket must be received on or before February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, during pre-delivery testing of a McDonnell Douglas Model MD–11 series airplane, the electrical connectors to the engine generator and fire bell shutoff switches were found to be connected incorrectly (crossed). When the fire extinguishing handle on the number 1 engine was pulled, the number 2 engine fuel switch and the "GENERATOR OFF" lights were illuminated on the electrical system control panel, and the "GEN 2 OFF" indicator was displayed on the engine alert display (EAD).

Further investigation revealed that engine and fire bell system wiring was incorrectly installed (crossed). The number 1 connector was on the number 2 switch, the number 2 connector was on the number 3 switch, and the number 3 connector was on the number 1 switch.

This anomaly may render the other two generators inoperable if the airplane were operated with one generator inoperable (as permitted by the Master Minimum Equipment List). Moreover, when the three-step procedure, specified in the FAA-approved airplane flight manual, is executed to shut the engine down, the unaffected engine fuel shutoff switch light will illuminate.

The FAA finds that the likelihood of incorrect (crossed) wiring connections may also exist on Model DC–10 series airplanes and Model KC–10A (military) airplanes due to the similarity in design of the fire extinguishing systems on these airplanes.

This condition, if not corrected, could result in the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993, and DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993, that describe procedures for functional testing to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes of the same type design, this AD is being issued to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine. This AD requires functional testing to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously.

This AD also requires that operators submit, to the FAA, a report of their findings of discrepancies as a result of the functional testing.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-214-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

93-25-09 McDonnell Douglas: Amendment 39-8775. Docket 93-NM-214-AD.

Applicability: Model MD-11 series airplanes as listed in McDonnell Douglas MD-11 Alert Service Bulletin A26-16, dated November 22, 1993; and Model DC-10 series airplanes and Model KC-10A (military) airplanes as listed in McDonnell Douglas DC-10/KC-10A Alert Service Bulletin A26-46, dated December 6, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine, accomplish the following:

(a) Perform a functional test to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For Model MD-11 series airplanes: Within 30 days after the effective date of this AD, in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A26-16, dated November 22, 1993. Or

(2) For Model DC-10 series airplanes and KC-10A (military) airplanes: Within 60 days after the effective date of this AD, in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10/KC-10A Alert Service Bulletin A26-46, dated December 6, 1993.

(b) If the electrical connectors are found to be properly installed, no further action is required by paragraph (a) of this AD.

(c) If the electrical connectors are found to be improperly installed, prior to further flight, correct the wiring installation and repeat the functional test, in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A26-16, dated November 22, 1993 (for Model MD-11 series airplanes); or McDonnell Douglas DC-10/KC-10A Alert Service Bulletin A26-46, dated December 6, 1993 (for Model DC-10 series airplanes and Model KC-10A (military) airplanes); as applicable.

(d) Prior to further flight following any maintenance performed on the fire extinguishing handle system, repeat the functional test in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A26-16, dated November 22, 1993 (for Model MD-11 series airplanes); or McDonnell Douglas DC-10/KC-10A Alert Service Bulletin A26-46, dated December 6, 1993 (for Model DC-10 series airplanes and Model KC-10A (military) airplanes); as applicable.

(e) Within 10 days after completing the functional tests required by paragraphs (a) and (d) of this AD, submit a report of the findings of discrepancies to the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806-2425; fax (310) 988-5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

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

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

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

(h) The functional test shall be done in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A26-16, dated November 22, 1993 (for Model MD-11 series airplanes); or McDonnell Douglas DC-10/KC-10A Alert Service Bulletin A26-46, dated December 6, 1993 (for Model DC-10 series airplanes or KC-10A (military) airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—

Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 7, 1994.

Issued in Renton, Washington, on December 16, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–31181 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–32–AD; Amendment 39–8749; AD 93–23–13]

Airworthiness Directives: Piper Aircraft Corporation PA31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 93–02–13, which currently requires repetitively inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA31 series airplanes, and, if found improperly positioned, either reinforcing these seals or installing thicker material. That AD also allows for the termination of the repetitive inspections if the thicker baffle seal material is installed. Reports show reinforced baffle seals are also becoming improperly positioned. This action retains the baffle seal repetitive inspection requirement, eliminates the reinforcement option, and incorporates other baffle seal installations found to provide an equivalent level of safety. The actions specified by this AD are intended to prevent the high engine operating temperatures associated with improper sealing of these seals to the engine cowling.

DATES: Effective January 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4361; or Brown Aircraft Supply, Inc, 4123 Muncy Road, Jacksonville, Florida 32207; Telephone (904) 396–6655, as applicable. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Piper PA31 series airplanes was published in the **Federal Register** on July 28, 1993 (58 FR 40391). The action proposed to supersede AD 93–02–13 with a new AD that would (1) retain the inspection and installation requirements of AD 93–02–13; (2) eliminate the reinforcement option; and (3) incorporate three different Brown Aircraft Supply baffle seal installations into the current AD. The Piper baffle seal installation would continue to be accomplished in accordance with Piper Kit 764 093, dated November 10, 1980. Either of the Brown Aircraft Supply baffle seal installations would be accomplished in accordance with procedures included in Figure 1 of the proposed AD.

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

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

The FAA estimates that 2,448 airplanes in the U.S. registry will be affected by the required AD, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $55 an hour. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the inspection, the only cost impact upon the public would be the time it takes to accomplish this inspection.

The airplane operator has the option of installing thicker baffle seals and then eliminating the repetitive inspections. The required installation will take approximately 8 workhours to accomplish at an average labor rate of $55 an hour. Piper parts cost approximately $1,568, and Brown Aircraft Supply parts cost approximately $65. The cost difference is due to the Piper parts consisting of a kit that not only includes the baffle seals, but also new baffles. Based on these figures, the cost impact upon any U.S. operator who wishes to accomplish this baffle seal installation will be $2,008 (with Piper parts) per airplane, or $505 (with Brown Aircraft Supply parts) per airplane. The only difference between this AD and AD 93–02–13, which would be superseded by the required action, is the addition of the Brown Aircraft Supply installations. These installations cost less than the other additions, so, if this option is accomplished, this AD will actually cost less than the current inspection-terminating modification specified in AD 93–02–13.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing AD 93–02–13, Amendment 39–8496 (58 FR 7737, February 9, 1993), and by adding the following new airworthiness directive:

93–23–13 Piper Aircraft Corporation: Amendment 39–8749 ; Docket No. 93–CE–32–AD. Supersedes AD 93–02–13, Amendment 39–8496.

Applicability: Model PA31, PA31–300, and PA31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–20–04, Amendment 39–3925, AD 92–26–02, Amendment 39–8429, or AD 93–02–13, Amendment 39–8496), and thereafter as indicated.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, accomplish one of the following:

(1) Install thicker baffle seals in accordance with the instructions to Piper Kit 764 093, dated November 10, 1980; or

Note 1: Piper Kit 764 093 includes the entire baffle assembly consisting of both baffles and baffle seals. Replacing the baffle seals included in this kit is the only requirement of paragraph (b)(1) or (c)(2) of this AD.

(2) Install baffles of one of the following materials in accordance with Figure 1 of this AD:

(i) Brown Aircraft Supply Engine Baffle Material, part number (P/N) BA71646–1 and BA71646–2, temperature range −40 to 300 degrees Fahrenheit.

(ii) Brown Aircraft Supply, Fiber Reinforced High Temperature Silicone Engine Baffle Material (red), P/N T–95182, temperature range −65 to 550 degrees Fahrenheit; and

(iii) Brown Aircraft Supply, Engine Baffle Material, P/N T–8071, temperature range −40 to 300 degrees Fahrenheit.

Figure 1—Brown Aircraft Supply Baffle Seal Installation Procedures

1. Inspect the existing baffle seals through the front of the cowl to ensure existing seals are of sufficient length to provide at least 1-inch of contact with upper and lower cowls when properly positioned. Mark areas that need lengthening, and note the minimum length needed to meet requirements.

2. Remove the cowls in accordance with the applicable maintenance manual. Remove rivets, wire, and screws, as applicable, that secure baffle seals (fabric) to the engine baffles (metal). Retain any metal strips that are used to secure seals to the engine baffles.

3. Remove existing baffle seals and lay against Brown Aircraft Supply baffle seal material.

4. Cut new seals around the layout, ensuring that seals are lengthened as noted in procedure 1.

5. Reattach new seals to the engine baffles with the original screws, rivets, and wires, as applicable, or new hardware of the same part number.

Note: The front upper cowl baffle seal is most critical, especially at the inboard and outboard corners. If the old material can be removed intact, and the curve can be transferred to the new flat material, then it may not be necessary to slit the material where it curves from vertical to horizontal contact with the cowl. If the curve requires a slit in the material at the corner, then it is recommended that the slit be tied with ty-raps or safety wire to ensure contact with the cowl around the radius.

(c) If baffle seals are properly positioned (not blown back), within the next 50 hours TIS, accomplish one of the following:

(1) Reinspect the engine baffle seals as specified in paragraph (a) of this AD, and continue to reinspect thereafter at intervals not to exceed 50 hours TIS; or

(2) Install thicker baffle seals as specified in either paragraph (b)(1) or (b)(2) of this AD. This installation terminates the inspection requirements of this AD.

(d) The inspections required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The installation (using Piper Aircraft Corporation parts) required by this AD shall be done in accordance with Piper Kit 764 093, dated November 10, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment (39–8749) supersedes AD 93–02–13, Amendment 39–8496.

(i) This amendment (39–8749) becomes effective on Issued in Kansas City, Missouri, on November 22, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29240 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 778

[Docket No. 931225–3325]

Guidance; Validated License Requirements Based on Missile or Chemical and Biological Weapons End-Uses; Activities of U.S. Persons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notification of guidance.

SUMMARY: Certain provisions of the Export Administration Regulations (EAR) require an exporter or U.S. person to submit an individual validated license (IVL) application if the exporter or U.S. person "knows" or is "informed" of certain missile or chemical and biological weapons (CBW) activities. Numerous firms and individuals have asked the Bureau of Export Administration (BXA) for guidance about the scope of these provisions. In response to these inquiries, BXA is issuing the following guidance.

This is an advisory notice only, not a rulemaking action. As such, this notice does not impose new or additional requirements under the EAR.

DATE: This guidance is issued as of December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Marynell DeVaughn, Office of Chief Counsel for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Guidance for Validated License Requirements in Part 778

I. Validated License Requirements in Part 778 of the EAR Based on Missile or Chemical and Biological Weapons End-Uses; Activities of U.S. Persons

A. Sections 778.7(c) and 778.8(c) of the EAR require an exporter to submit an IVL application for an export otherwise eligible for general license treatment when that exporter—

(1) "Knows" that such export "will be used" in the design, development, production, stockpiling, or use of missiles or CBW "in or by a country" listed in Supplements No. 5 or 6 to EAR part 778; or

(2) Is "informed" by BXA that there is "an unacceptable risk of use in or diversion to" the design, development, production, stockpiling, or use of missiles or CBW "anywhere in the world."

B. Under § 778.9 of the EAR, a number of licensing restrictions apply to activities of U.S. persons.

(1) Section 778.9(a) requires a U.S. person to submit an individual validated license application if the U.S. person "knows" that any type of export, reexport, or transfer, irrespective of the origin of the items, "will be used" in the design, development, production, stockpiling, or use of missile or CBW "in or by a country" listed in Supplement Nos. 5 or 6 to part 778. Moreover, no U.S. person may knowingly support any export, reexport, or transfer that does not have a validated license as required by § 778.9(a). Section 778.9(d) defines support to include "any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter."

(2) Section 778.9(b) prohibits a U.S. person from knowingly performing "any contract, service, or employment" that "will assist" in the design, development, production, stockpiling, or use of missiles or CBW in a Supplement 5 or 6 country.

(3) Under § 778.9(e), BXA can "inform" a U.S. person that an individual validated license is required because "an activity could involve the types of participation or support" that are covered by § 778.9.

II. Guidance on the Validated License Requirements Based on Missile or Chemical and Biological End-Uses

(A) Numerous firms and individuals have asked BXA for guidance about the scope of these provisions. In response to these inquiries, BXA is issuing the following guidance: [1]

(1) BXA considers §§ 778.7(c)(1)(ii), 778.8(c)(1), and 778.9(a) as requiring an individual validated license—

- If the exporter or U.S. person knows that a specific export will be directly employed in the design, development, production, stockpiling, or use of missiles or CBW in a country listed in Supplement No. 5 or 6 to part 778.

(2) BXA considers § 778.9(b) as requiring an individual validated license—

- If the U.S. person knows that a specific contract, service, or employment will directly assist in the design, development, production, stockpiling, or use of missiles or CBW in a country listed in Supplement No. 5 or 6 to part 778.

(3) BXA considers §§ 778.7(c)(2) and 778.8(c)(2) as requiring an individual validated license—

- If the exporter is informed by BXA that there is an unacceptable risk that a specific export will be directly employed in the design, development, production, stockpiling or use of missiles or CBW.

(4) BXA considers § 778.9(e) as requiring an individual validated license—

- If the U.S. person is informed by BXA that the specific activities of that person could directly involve the design, development, production, stockpiling, or use of missiles or CBW.

(B) *Status of "is informed" notifications previously issued by BXA.* Exporters and U.S. persons are advised that all "is informed" notifications previously issued by BXA meet the standards described above and remain in full force and effect unless the exporter or U.S. person is specifically notified otherwise.

(C) *Consistency of this guidance with EPCI.* The guidance set forth above is consistent with the objectives of the Enhanced Proliferation Control Initiative (EPCI). The purpose of the EPCI controls is to stem the proliferation of missile and CBW technologies, not to embargo or interfere with legitimate commerce. The items covered by the "know or is informed" licensing requirements are general purpose items that have many benign civil uses. The equipment and technology that is specially designed or modified for missile or CBW applications is already described on the CCL as requiring a validated license, irrespective of end-use. The EPCI "catch-all" control under the "know or is informed" licensing requirements supplement the CCL entries based on the end-use of the export. Similarly, the U.S. person provisions also supplement the existing CCL-based controls. The U.S. person provisions restrict assistance that provides direct missile or CBW expertise through the performance of a contract, service, or employment.

(D) *Consistency of this guidance with terms defined in the EAR.* This guidance is consistent with the use in the regulatory language of specifically defined terms that relate to direct application in missile and CBW activities. Key terms used in the regulations, "missiles" and "design, development, production, or use," have specifically defined meanings.

(1) *Missiles.* The term *missiles* is defined in EAR § 778.7(a)(2) as "rocket systems * * * and unmanned air vehicle systems * * * capable of delivering at least 500 kilograms (kg) payload to a range of at least 300 kilometers (km)." Moreover, the terms "development," "production," and "use" are defined in Supplement No. 3 to part 799 of the EAR, as set forth below. These terms are also utilized in the context of the Missile Technology Control Regime and Australia Group control lists.

(2) *Development.* "Development" is related to all stages prior to "production," such as:

- Design.
- Design research.
- Design analysis.
- Design concepts.
- Assembly and testing of prototypes.
- Pilot production schemes.
- Design data.
- Process of transforming design data into a product.
- Configuration design.
- Integration design.
- Layouts.

(3) *Production.* "Production" means all production stages such as:

- Production engineering.
- Manufacture.
- Integration.
- Assembly (mounting).
- Inspection.
- Testing.
- Quality assurance.

(4) *Use.* "Use" means:

- Operation.
- Installation (including on-site installation).
- Maintenance (checking).
- Repair.
- Overhaul.

[1] BXA has previously issued guidance on exporter responsibilities under the "know" standard, including "red flag" indicators illustrating the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR. This material is set forth in section III to this guidance.

• Refurbishing.

(5) *Stockpiling.* "Stockpiling" means:

• A supply of material stored for future use, usually carefully accrued and maintained, i.e., to accumulate a stockpile of a given material.

III. "Know Your Customer" Guidance

Certain provisions in EAR part 778 require an exporter to submit an individual validated license application if the exporter "knows" that an export otherwise eligible for General License is for end-uses involving nuclear, chemical and biological weapons (CBW), or related missile delivery systems, in named destinations listed in the regulations. BXA has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the EAR.

(A) *Decide whether there are "red flags."* Take into account any abnormal circumstances in a transaction that, indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags." Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations which are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

(B) *If there are "red flags," inquire.* If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination.

The duty to check out "red flags" is not confined to the use of general licenses affected by the "know" or "reason to know" language in the EAR. Applicants for validated licenses are required by EAR 772.6 to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless "red flags" oblige you to take verification steps.

(C) *Do not self-blind.* Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

Employees need to know how to handle "red flags." Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(D) *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

(E) *Refrain from the transaction or disclose the information to BXA and wait.* If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BXA in the form of an application for a validated license, or in such other form as BXA may specify.

Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BXA will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a "red flag", you may contact the Office of Export Enforcement at 1-800-424-2980 or the Office of Export Licensing at (202) 482-2740.

Dated: December 20, 1993.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 93-31362 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Employment Standards Administration

20 CFR Parts 10 and 702

Claims; Disclosure of Social Security Numbers Under the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCIES: Office of Workers' Compensation Programs, and Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA) to state that persons must disclose their Social Security Numbers (SSN) whenever they file notices of injury and/or claims for compensation under either the FECA or LHWCA program. This action is taken pursuant to the authority set forth in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994.

EFFECTIVE DATE: January 24, 1994.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, room S-3524 Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219-7503. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Office of Workers' Compensation Programs (OWCP) has been authorized by Congress to require persons who file notices of injury and/or claims for compensation, under either the Federal Employees' Compensation Act (FECA) or the Longshore and Harbor Workers' Compensation Act (LHWCA), to disclose such identifying information, including Social Security account numbers, as may be prescribed. The various kinds of identifying information required, i.e., name, address, place of

employment, etc., are set forth on the applicable claim forms and are described generally in the implementing regulations. Although the forms had a place for reporting the claimant's SSN, the forms indicated that disclosure was purely voluntary. The enactment of Public Law 103–112 now requires that the SSN be disclosed on the form.

The Department, therefore, is amending the applicable regulations to expressly state that disclosure of the SSN is mandatory. Such disclosure will not adversely affect the claimant in any manner since the information set forth on the forms will be released only in strict compliance with the Privacy Act of 1974. Use of the SSN should, however, be beneficial to the claimant since it will be used to request information for employers and others who have relevant information. The SSN may also be used by the OWCP in conducting computer matches with other benefits and/or payment programs/files. Finally, the OWCP intends to use the claimant's (or survivor's) SSN as a claim file identifier. These procedures should assist the OWCP and its district office personnel in locating files and ensuring that incoming mail (including medical reports) is attached to the correct file without unnecessary delay.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments to the regulations. Such comment is unnecessary because the provisions of Public Law 103–112 makes comment unnecessary since the claimant is required to disclose the SSN.

Classification

The Department has concluded that this rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements of this rule have previously been approved by OMB.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 601) do not apply to this rule. In any event, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

20 CFR Part 10

Claims, Government employees, Workers Compensation.

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, and Workers' Compensation.

For the reasons set out in the preamble, part 10 and part 702 of title 20 of the Code of Federal Regulations are amended as set forth below:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301, 8149; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 1–93, 58 FR 21190.

2. Section 10.100 is amended by adding a new paragraph (d) as follows:

§ 10.100 How to file a notice of injury or death.

* * * * *

(d) The person submitting a notice under paragraph (a) or (b) of this section shall include the Social Security Number (SSN) of the injured worker. In cases where the worker dies as a result of an on-the-job injury and the notice is submitted under paragraph (c) of this section, the SSN of the person seeking benefits shall be disclosed in addition to the SSN of the deceased worker.

PART 702—ADMINISTRATION AND PROCEDURE

3. The citation of authorities for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 et seq.; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953, Comp. p. 1004, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*, 43 U.S.C. 1331; Secretary's Order 1–93, 58 FR 21190.

4. Section 702.202 is revised to read as follows:

§ 702.202 Employer's report; form and contents.

The employer's report of an employee's injury or death shall be in writing and on a form prescribed by the Director for this purpose, and shall contain:

(a) The name, address and business of the employer;

(b) The name, address, occupation and Social Security Number (SSN) of the employee;

(c) The cause, nature, and other relevant circumstances of the injury or death;

(d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred;

(e) Such other information as the Director may require.

(Approved by the Office of Management and Budget under control numbers 1215–0031 and 1215–0063)

5. Section 702.214 is revised to read as follows:

§ 702.214 Notice; form and content.

Notice shall be in writing on a form prescribed by the Director for this purpose; such form shall be made available to the employee or beneficiary by the employer. The notice shall be signed by the person authorized to give notice, and shall contain the name, address and Social Security Number (SSN) of the employee and, in death cases, also the SSN of the person seeking survivor benefits, and a statement of the time, place, nature and cause of the injury or death.

6. Section 702.221 is amended by revising paragraph (a) to read as follows:

§ 702.221 Claims for compensation; time limitations.

(a) Claims for compensation for disability or death shall be in writing and filed with the district director for the compensation district in which the injury or death occurred. The Social Security Number (SSN) of the injured employee and, in cases of death, the SSN of the person seeking survivor benefits shall also be set forth on each claim. Claims may be filed anytime after the seventh day of disability or anytime following the death of the employee. Except as provided below, the right to compensation is barred unless a claim is filed within one year of the injury or death, or (where payment is made without an award) within one year of the date on which the last compensation payment was made.

* * * * *

Signed in Washington, DC, this 17th day of December, 1993.

John R. Fraser,

Acting Assistant Secretary for Employment Standards.

Lawrence W. Rogers,

Director, Office of Workers' Compsenation Programs.

[FR Doc. 93–31369 Filed 12–22–93; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8503]

RIN 1545-AS19

Credit for Employer Social Security Taxes Paid on Employee Tips

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to employers in determining the credit for employer FICA taxes paid with respect to certain tips received by employees of food and beverage establishments. The temporary regulations clarify that the credit is effective for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also clarify that the credit applies only to taxes paid on tips reported to the employer by its employees.

The text of these temporary regulations also serves as the text of proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202-622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to the credit for employer taxes paid pursuant to the Federal Insurance Contributions Act (FICA) with respect to certain tips received by employees of food and beverage establishments. The credit is described in section 45B of the Internal Revenue Code (Code), which was added by section 13443 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 312).

Explanation of Provisions

Section 45B of the Code describes a business tax credit allowable under section 38 for employer FICA taxes paid by food and beverage establishments on tips received by their employees. The credit is equal to the employer's FICA tax obligation attributable to the employee tips. However, the credit is reduced if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate.

The temporary regulations clarify that the credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

The temporary regulations also clarify that the credit applies only to taxes paid on tips reported to the employer by its employees. In general, under section 6053(a) and § 31.6053-1, employees who receive tips in any calendar month must report all those tips in a written statement or statements furnished to the employer by the 10th day of the following month. Under section 3121(q), for employment tax purposes, these reported tips are treated as remuneration for employment and are deemed to have been paid by the employer in the same manner as regular wages when the tips are reported. At that point, they are subject to income tax and employee FICA tax withholding, and the employer must make tax deposits, report the tips on the employer's quarterly employment tax return (Form 941), and show the tips in Box 1 (wages) of the employees' Forms W-2.

Special Analyses

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

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.45B-1T is added to read as follows:

§ 1.45B-1T Credit for certain employer social security taxes paid with respect to employee tips (temporary).

(a) *Scope of credit.* Section 45B describes a business tax credit allowable under section 38 for the excess employer social security tax. That term is defined in section 45B(b) and depends in part on the tips received by employees. In determining the excess employer social security tax, only tips received by an employee and reported by the employee to the employee's employer pursuant to section 6053(a) and § 31.6053-1 of this chapter are taken into account.

(b) *Effective date* Section 45B and this section are effective for taxes paid by an employer under section 3111 after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury

[FR Doc. 93-31011 Filed 12-22-93; 8:45 am]

BILLING CODE 4830-01-U

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26 CFR Parts 31 and 602

[TD 8504]

RIN 1545-AS08

Reporting and Deposit of Employment Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to both the reporting and depositing of Federal employment taxes. The final regulations are intended to simplify the current reporting system by removing all "nonpayroll" withheld taxes from reporting on Form 941, Employer's Quarterly Federal Tax Return (or Form 941E, Quarterly Return of Withheld Federal Income Tax and Medicare Tax). The final regulations affect all taxpayers that have "nonpayroll" withheld tax liabilities currently reported quarterly on Form 941 (or 941E).

DATES: These regulations are effective on December 23, 1993.

These regulations apply to payments made after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, telephone (202) 622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1413.

The burden for the reporting requirement contained in § 31.6011(a)–4 is reflected in the burden of Form 945.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC. 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On November 4, 1993, the IRS published a notice of proposed rulemaking in the **Federal Register** (58 FR 58820) proposing amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under sections 6011 and 6302 of the Internal Revenue Code.

Written comments responding to the notice were received and a public hearing was held on December 2, 1993. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Under existing rules, taxpayers use the same form—Form 941 (or Form 941E)—to report both nonpayroll taxes (such as amounts withheld on annuities) and payroll taxes. Reporting both types of taxes on the same form makes it difficult for taxpayers with separate departments for payroll disbursements and for other disbursements to reconcile amounts to be deposited. To eliminate this problem, the final regulations require both the separate reporting and depositing of the two types of taxes.

Under the final regulations, taxes currently reported quarterly on Form 941 will continue to be reported on that form unless they are nonpayroll withheld taxes. Nonpayroll withheld taxes, however, will be reported annually on new Form 945, Annual Return of Withheld Federal Income Tax. The final regulations define nonpayroll withheld taxes as amounts withheld under: (1) Section 3402(q), relating to withholding on certain gambling winnings, (2) section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States, (3) section 3402(o)(1)(B), relating to withholding on certain annuities, (4) section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income, and (5) section 3406, relating to backup withholding with respect to reportable payments.

A taxpayer will not be required to file its first Form 945 until the first calendar year the taxpayer incurs a nonpayroll tax liability. One commentator suggested that no annual Form 945 be required for any year during which no withholding of nonpayroll taxes occurs. This suggestion is not being adopted at this time because the IRS cannot assume that no tax is due simply because no return has been filed. However, the IRS welcomes and will consider any further comments regarding this suggestion. Accordingly, the final regulations require any taxpayer required to file a Form 945 for one calendar year, to continue filing a Form 945 for each subsequent year, whether or not there is a liability for the subsequent year, until the taxpayer files a final return in accordance with the regulations. Thus, a taxpayer should continue to file the Form 945 and should not file a final return if it is reasonably foreseeable that the taxpayer will have a nonpayroll tax liability in any subsequent calendar year. This annual filing requirement helps preserve the integrity of the tax system for nonpayroll withheld taxes. This is consistent with the requirement that a Form 941 be filed for each quarter, whether or not there is a liability for that quarter.

The final regulations also amend the Federal employment tax deposit rules to reflect the change in reporting. Under the final regulations, taxes reported on Form 945 are deposited separately from taxes reported on Form 941. Form 8109, Federal Tax Deposit Coupon, has been revised to reflect these changes.

Deposits of taxes reported on Form 945 will be made in accordance with rules that generally parallel the existing employment tax deposit regulations. Under the final regulations, deposits of taxes reported on Form 945 are made under either a monthly or a semi-weekly rule. For calendar years 1994 and 1995, a taxpayer's status as a monthly or semi-weekly depositor for taxes reported on Form 945 will generally be the same as the taxpayer's depositor status on January 1, 1994, for taxes reported on Form 941. One commentator suggested that all deposits of nonpayroll withheld taxes be made on a monthly basis. This suggestion was not adopted in order to retain as much consistency as possible in the deposit rules for taxes reported on Form 941 and on Form 945.

Beginning with calendar year 1996, however, a taxpayer's depositor status for taxes reported on Form 945 will be determined annually based on a lookback to the amount of taxes reported on Form 945 for the second preceding calendar year (the lookback period). For example, for calendar year 1996 a taxpayer's depositor status will depend on the amount of taxes reported on Form 945 for calendar year 1994. If the taxpayer reported nonpayroll withheld tax liabilities of $50,000 or less on the Form 945 for the lookback period, the taxpayer is a monthly depositor for the calendar year. If the taxpayer reported nonpayroll withheld tax liabilities in excess of $50,000 on Form 945 for the lookback period, the taxpayer is a semi-weekly depositor for the calendar year. New taxpayers are considered to have a nonpayroll withheld tax liability of zero for any calendar year in which the taxpayer did not exist.

For calendar year 1994 and all subsequent years, if the amount of accumulated nonpayroll withheld taxes equals or exceeds $100,000 for any day within a deposit period (monthly or semi-weekly), the taxpayer is subject to the One-Day rule of § 31.6302–1(c)(3) of the regulations for such amount. A taxpayer that is a monthly depositor when the taxpayer becomes subject to the One-Day rule immediately becomes a semi-weekly depositor for the remainder of that calendar year and for the succeeding calendar year.

Effective Date

The final regulations are effective with respect to payments made after December 31, 1993.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the notice of proposed rulemaking was submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department have participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

Paragraph 1. The authority citation for part 31 is amended by adding entries to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 31.6011(a)–4 also issued under 26 U.S.C. 6011. * * *
Section 31.6302–4 also issued under 26 U.S.C. 6302 (a) and (c). * * *

Par. 2. Section 31.6011(a)–4 is amended as follows:

1. The heading for § 31.6011(a)–4 is revised.
2. The heading for paragraph (a) is revised.
3. Headings are added for paragraphs (a) (1) through (3).
4. The text of paragraph (a)(1) is revised.
5. Paragraph (b) is redesignated as paragraph (c).
6. New paragraph (b) is added.
7. The revised and added provisions read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a) (2) and (3) and (b) of this section, and in § 31.6011(a)–8, Form 941 is the form prescribed for making the return required under this paragraph.

(2) *Wages paid for domestic service.* * * *

(3) *Wages paid for agricultural labor.* * * *

(b) *Withheld from nonpayroll payments.* Every person required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for calendar year 1994 and for each subsequent calendar year (whether or not any such tax is required to be withheld therein) until a final return is made in accordance with § 31.6011(a)–6. Every person not required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for the first calendar year thereafter in which the person is required to withhold such tax and for each subsequent calendar year until a final return is made in accordance with § 31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for service in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

Par. 3. The heading for paragraph (a) of § 31.6071(a)–1 is revised to read as set forth below.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*— * * *

* * * * *

Par. 4. Section 31.6302–1 is amended as follows:

1. Paragraphs (e)(1) (iii) and (iv) are revised.
2. The last sentence of paragraph (e)(2) is revised.
3. The revisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(e) * * *

(1) * * *

(iii) The income tax withheld under sections 3402 and 3405, except income tax withheld with respect to payments made after December 31, 1993, on the following—

(A) Certain gambling winnings under section 3402(q);

(B) Retirement pay for service in the Armed Forces of the United States under section 3402;

(C) Certain annuities described in section 3402(o)(1)(B); and

(D) Pensions, annuities, IRAs, and certain other deferred income under section 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments made before January 1, 1994.

(2) * * * Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

* * * * *

Par. 5. In § 31.6302–3, paragraph (b) is revised to read as follows:

§ 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992, and before January 1, 1994.

* * * * *

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of § 31.6302–1 without taking into account the other taxes described in paragraph (e) of § 31.6302–1 for purposes of determining when tax withheld under section 3406 must be deposited. A taxpayer that treats backup withholding amounts separately with respect to reportable payments made after December 31, 1992, and before January 1, 1994, shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited under that section. See § 31.6302–4 for rules regarding the deposit of income tax withheld under section 3406 with

respect to reportable payments made after December 31, 1993.

* * * * *

Par. 6. Section 31.6302–4 is added to read as follows:

§ 31.6302–4 Federal tax deposit rules for withheld income taxes attributable to nonpayroll payments made after December 31, 1993.

(a) *General rule.* With respect to nonpayroll withheld taxes attributable to nonpayroll payments made after December 31, 1993, a taxpayer is either a monthly or a semi-weekly depositor based on an annual determination. Except as provided in this section, the rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of nonpayroll withheld taxes as though they were employment taxes. Paragraph (b) of this section defines nonpayroll withheld taxes. Paragraph (c) of this section provides rules for determining whether a taxpayer is a monthly or a semi-weekly depositor.

(b) *Nonpayroll withheld taxes defined.* For purposes of this section, effective with respect to payments made after December 31, 1993, *nonpayroll withheld taxes* means—

(1) Amounts withheld under section 3402(q), relating to withholding on certain gambling winnings;

(2) Amounts withheld under section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States;

(3) Amounts withheld under section 3402(o)(1)(B), relating to certain annuities;

(4) Amounts withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

(c) *Determination of deposit status*—(1) *Rules for calendar years 1994 and 1995.* On January 1, 1994, a taxpayer's depositor status for nonpayroll withheld taxes is the same as the taxpayer's status on January 1, 1994, for taxes reported on Form 941 under § 31.6302–1. A taxpayer generally retains that depositor status for nonpayroll withheld taxes for all of calendar years 1994 and 1995. However, a taxpayer that under this paragraph (c) is a monthly depositor for 1994 and 1995 will immediately lose that status and become a semi-weekly depositor of nonpayroll withheld taxes if the One-Day rule of § 31.6302–1(c)(3) is triggered with respect to nonpayroll withheld taxes. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(2) *Rules for calendar years after 1995*—(i) *In general.* For calendar years after 1995, the determination of whether a taxpayer is a monthly or a semi-weekly depositor for a calendar year is based on an annual determination and generally depends on the aggregate amount of nonpayroll withheld taxes reported by the taxpayer for the lookback period as defined in paragraph (c)(2)(iv) of this section.

(ii) *Monthly depositor.* A taxpayer is a monthly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) is $50,000 or less. A taxpayer ceases to be a monthly depositor of nonpayroll withheld taxes on the first day after the taxpayer is subject to the One-Day rule in § 31.6302–1(c)(3) with respect to nonpayroll withheld taxes. At that time, the taxpayer immediately becomes a semi-weekly depositor of nonpayroll withheld taxes for the remainder of the calendar year and the succeeding calendar year. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(iii) *Semi-weekly depositor.* A taxpayer is a semi-weekly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) exceeds $50,000.

(iv) *Lookback period.* For purposes of this section, the lookback period for nonpayroll withheld taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1996 is calendar year 1994. A new taxpayer is treated as having nonpayroll withheld taxes of zero for any calendar year in which the taxpayer did not exist.

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, Annual Return of Withheld Federal Income Tax, separately from taxes reportable on Form 941, Employer's Quarterly Federal Tax Return. Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit taxes reported on Form 945 and taxes reported on Form 941. (See paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) A deposit of taxes reported on Form 945 for one calendar year must be made separately from a deposit of taxes reported on Form 945 for another calendar year.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. Section 602.101(c) is amended by revising the entry for § 31.6011(a)–4 and adding entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.6011(a)–4	1545–0034 1545–0035 1545–0718 1545–1413
* * * * *	
31.6302–1	1545–1413
31.6302–2	1545–1413
31.6302–3	1545–1413
31.6302–4	1545–1413
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 93–31159 Filed 12–22–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO18–1–6177; FRL–4815–3]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State implementation plan (SIP) submitted by the State of

Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The SIP was submitted by the State on April 9, 1992 to satisfy certain federal requirements for an approvable nonattainment area PM-10 SIP for Canon City, Colorado.

In addition, EPA is amending the nonattainment area boundary for the Canon City nonattainment area to include some of the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

EFFECTIVE DATE: This rule will become effective on January 24, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405;

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

SUPPLEMENTARY INFORMATION:

Background

Canon City, Colorado was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Canon City).) The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM-10 nonattainment areas (i.e., those areas designated nonattainment for PM-10 under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Revisions to satisfy these requirements were submitted by the State on January 14, 1993, and EPA will be taking action on these requirements in a separate **Federal Register** notice. Such States also were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13543-13544.) On November 12, 1993, the State adopted PM-10 contingency measures for Canon City. EPA will also be taking action on these measures in a separate **Federal Register** notice.

On September 21, 1993, EPA announced its proposed approval of the Canon City, Colorado moderate PM-10 nonattainment area SIP as meeting those moderate PM-10 nonattainment area SIP requirements due on November 15, 1991 (see 58 FR 49001-49005). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Canon City moderate nonattainment area PM-10 SIP, taking into consideration the specific factual issues presented. Also in that action, EPA proposed to amend the boundary of the Canon City PM-10 nonattainment area to include some of the suburban area of Canon City, based on information submitted by the State that provided a demonstration that the revised boundary more accurately represented the Canon City airshed. EPA requested public comments on all aspects of the proposed rulemaking pertaining to Canon City (see 58 FR 49005). No comments were received on the proposed rulemaking.

Final Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). On April 9, 1992, the Governor of Colorado submitted a revision to the SIP which was intended to satisfy those moderate PM-10 nonattainment area SIP requirements due for Canon City on November 15, 1991. As described in EPA's proposed approval of this SIP submittal, the Canon City moderate PM-10 nonattainment area plan includes (among other things): (1) A comprehensive and accurate emissions inventory; (2) an explanation that the implementation of potentially available control measures are not reasonably required for attainment and maintenance of the PM-10 NAAQS in Canon City, thus satisfying the RACM (including RACT) and quantitative milestone/RFP requirements; (3) a demonstration (including air quality modeling) that attainment of the PM-10 NAAQS will continue to be achieved in Canon City by December 31, 1994; and (4) enforceability documentation (see 58 FR 49001-49005, September 21, 1993). Further, EPA proposed to determine that major stationary sources of precursors of PM-10 do not contribute

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

significantly to PM-10 levels in excess of the NAAQS in Canon City.[2] Lastly, EPA proposed to amend the Canon City moderate PM-10 nonattainment area boundary to include some of the additional suburban area of Canon City based on a SIP equivalent demonstration submitted by the State which showed that the revised boundary more accurately represents the Canon City airshed. Please refer to EPA's notice of proposed rulemaking (58 FR 49001) and the TSD for a more detailed discussion of these elements of the Canon City plan.

In this final rulemaking, EPA announces its approval of those elements of the Canon City, Colorado moderate PM-10 nonattainment area SIP submittal that were due on November 15, 1991 and submitted on April 9, 1992. EPA believes the State has adequately met all of the moderate PM-10 nonattainment area requirements for the Canon City PM-10 nonattainment area which were due November 15, 1991 and submitted by the State on April 9, 1992.

EPA is also announcing its determination that major stationary sources of precursors of PM-10 do not contribute significantly to PM-10 levels in excess of the NAAQS in Canon City.

Lastly, EPA announces that the Canon City moderate PM-10 nonattainment area description specified in 40 CFR 81.306 is replaced with the following boundary description:

Township 18S—Range 70W

All of sections 21, 22, 27, 28, 33, and 34; the E½, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W½ of sections 23, 26, and 35;

Township 19S—Range 70W

All of sections 3, 4, 9, 10; E½, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W½ of sections 2 and 11.

[2] The consequences of this finding are to exclude these sources from the applicability of PM-10 nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of PM-10 precursors in the area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed on September 21, 1993 (58 FR 49001). As noted elsewhere in this notice, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 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 section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 10, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.332 is added to read as follows:

§ 52.332 Moderate PM-10 nonattainment area plans.

On April 9, 1992, the Governor of Colorado submitted the moderate PM-10 nonattainment area plan for the Canon City area. The submittal was made to satisfy those moderate PM-10 nonattainment area SIP requirements which were due for Canon City on November 15, 1991.

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

4. In § 81.306, the PM-10 Nonattainment Areas table is amended by revising the entry for "Canon City" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM-10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
Fremont County				
Canon City Area	11/15/90	Nonattainment.	11/15/90	Moderate.
Township 18S—Range 70W: All of sections 21, 22, 27, 28, 33, and 34; the E½, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W½ of sections 23, 26, and 35; Township 19S—Range 70W: All of sections 3, 4, 9, 10; E½, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W½ of sections 2 and 11.				
* * * *	*		*	*

* * * * *

[FR Doc. 93-31293 Filed 12-22-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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 Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton (FEMA Docket No. 7072).	City of Rogers	June 3, 1993, June 10, 1993, Northwest Arkansas Morning News.	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72265.	May 19, 1993	050013
Arkansas: White (FEMA Docket No. 7067).	City of Searcy	Apr. 21, 1993, Apr. 28, 1993, The Daily Citizen.	The Honorable David Evans, Mayor, City of Searcy, 300 West Arch Avenue, Searcy, Arkansas 72143.	Apr. 7, 1993	050229
California: Sacramento (FEMA Docket No. 7072).	Unincorporated areas	June 23, 1993, June 30, 1993, Sacramento Bee.	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 301, Sacramento, California 95814.	June 8, 1993	060262
California: Tulare (FEMA Docket No. 7069).	Unincorporated areas	June 11, 1993, June 18, 1993, Visalia Times Delta.	Mr. Charles Harness, Chairman, Tulare County Board of Supervisors, Administration Building, Visalia, California 93291.	May 19, 1993	065066
Kansas: Sedgwick (FEMA Docket No. 7069).	Unincorporated areas	May 27, 1993, June 3, 1993, Wichita Eagle.	The Honorable Mark F. Schroeder, Chairman, County Commissioners, Sedgwick County, 1250 South Seneca, Wichita, Kansas 67213–4498.	May 5, 1993	200321
Kansas: Sedgwick (FEMA Docket No. 7069).	City of Wichita	May 7, 1993, May 14, 1993, The Daily Reporter.	The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, 1st Floor, 455 North Main Street, Wichita, Kansas 67202.	Apr. 22, 1993	200328
Oklahoma: Cleveland (FEMA Docket No. 7072).	City of Norman	June 29, 1993, July 6, 1993, The Norman Transcript.	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070.	June 8, 1993	400046
Oregon: Douglas (FEMA Docket No. 7072).	City of Roseburg	June 23, 1993, June 30, 1993, The News-Review.	The Honorable Jeri Kimmel, Mayor, City of Roseburg, 900 SE. Douglas Avenue, Roseburg, Oregon 97470.	June 8, 1993	410067
Texas: Collin (FEMA Docket No. 7067).	City of Plano	Apr. 21, 1993, Apr. 28, 1993, Dallas Morning News.	The Honorable James Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Apr. 2, 1993	480140
Texas: Collin (FEMA Docket No. 7067).	City of Plano	Apr. 23, 1993, Apr. 30, 1993, Dallas Morning News.	The Honorable James Muns Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Mar. 22, 1993	480140

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Denton (FEMA Docket No. 7074).	City of Denton	July 22, 1993, July 29, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	July 8, 1993	480194
Texas: El Paso (FEMA Docket No. 7069).	City of El Paso	May 27, 1993, June 3, 1993, El Paso Times.	The Honorable William S. Tilney, Mayor, City of El Paso, No. 2 Civic Center Plaza, El Paso, Texas 79901.	Apr. 28, 1993	480214
Texas: El Paso (FEMA Docket No. 7072).	City of El Paso	June 16, 1993, June 23, 1993, El Paso Sun Times.	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	May 12, 1993	480214
Texas: Harris (FEMA Docket No. 7076).	City of Houston	July 22, 1993, July 29, 1993, The Houston Post.	The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251.	June 28, 1993	480296
Texas: Tarrant (FEMA Docket No. 7072).	City of Arlington	June 3, 1993, June 10, 1993, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, 101 West Abram Street, P.O. Box 231, Arlington, Texas 76004–0231.	May 20, 1993	485454
Texas: Tarrant (FEMA Docket No. 7074).	City of Colleyville	July 22, 1993, July 29, 1993, Colleyville News and Times.	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	June 23, 1993	480590
Texas: Tarrant (FEMA Docket No. 7067).	City of Fort Worth	Apr. 2, 1993, Apr. 8, 1993, Fort Worth Star Telegram.	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Mar. 24, 1993	480596
Texas: Tarrant (FEMA Docket No. 7074).	City of Fort Worth	July 23, 1993, July 29, 1993, Fort Worth Star Telegram.	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 16, 1993	480596
Texas: Tarrant (FEMA Docket No. 7072).	City of North Richland Hills.	June 10, 1993, June 17, 1993, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	May 18, 1993	480607

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93–31263 Filed 12–22–93; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7079]

Changes in Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a

newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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 Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Pinellas	City of St. Petersburg	Sept. 28, 1993, Oct. 5, 1993, St. Petersburg Times.	The Honorable David J. Fischer, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731.	Sept. 14, 1993	125148 C
Georgia: Richmond	City of Augusta	Oct. 8, 1993, Oct. 15, 1993, The Augusta Chronicle.	The Honorable Charles A. DeVaney, Mayor of the City of Augusta, City-County Municipal Building, 530 Greene Street, Augusta, Georgia 30911.	Oct. 1, 1993	130159 C
Georgia: Richmond	Unincorporated areas	Oct. 8, 1993, Oct. 15, 1993, The Augusta Chronicle.	Mr. Hobson Chavous, Chairman of the Richmond County Board of Commissioners, City-County Municipal Building, 530 Greene Street, room 605, Augusta, Georgia 30911.	Oct. 1, 1993	130158 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: DuPage	Village of Carol Stream	Sept. 30, 1993, Oct. 7, 1993, Carol Stream Press.	Mr. Ross Ferraro, President of the Village of Carol Stream, 500 N. Gary Avenue, Carol Stream, Illinois 60188–1899.	Sept. 17, 1993	170202 C
Illinois: DuPage and Will.	City of Naperville	Oct. 27, 1993, Nov. 3, 1993, The Naperville Sun.	The Honorable Samuel T. Macrane, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566–7020.	Oct. 20, 1993	170213 C
Illinois: DuPage	Village of Woodridge	Oct. 14, 1993, Oct. 21, 1993, The Woodridge Progress.	The Honorable William Murphy, Mayor of the Village of Woodridge, 1900 West 75th Street, Woodridge, Illinois 60517.	Sept. 30, 1993	170137 B
New York: Onondaga	Town of Cicero	Sept. 17, 1993, Sept. 24, 1993, The Post-Standard.	Mr. Leonard L. Brown, Supervisor for the Town of Cicero, Town Hall, 8236 South Main Street, Cicero, New York 13039.	Sept. 9, 1993	360572 C
Ohio: Cuyahoga	Village of Mayfield	Sept. 27, 1993, Oct. 4, 1993, The News-Herald.	The Honorable Bruce Rinker, Mayor of the Village of Mayfield, 6621 Wilson Mills Road, Mayfield, Ohio 44143.	Sept. 14, 1993	390116 D
Ohio: Franklin	City of Hilliard	Oct. 20, 1993, Oct. 27, 1993, Hilliard Northwest News.	The Honorable Roger A. Reynolds, Mayor of the City of Hilliard, 3800 Municipal Square, Hilliard, Ohio 43026.	Oct. 12, 1993	390175 C
South Carolina: Aiken	Unincorporated areas	Oct. 8, 1993, Oct. 15, 1993, The Aiken Standard.	Mr. William Shepherd, Aiken County Administrator, 828 Richland Avenue, Aiken, South Carolina 29801.	Oct. 1, 1993	450002 B
Wisconsin: Washington County.	Unincorporated areas	Sept. 13, 1993, Sept. 20, 1993, West Bend Daily News.	Mr. Ruben J. Schmahl, Chairman of the Washington County Board of Supervisors, 432 East Washington Street, West Bend, Wisconsin 53095.	Sept. 7, 1993	550471 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93–31261 Filed 12–22–93; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazards Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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 Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Seminole (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 28, 1993, May 5, 1993, Sanford Herald.	Mr. Ron H. Rabun, Seminole County Manager, 274 Bush Boulevard, Sanford, Florida 32773.	Apr. 15, 1993	120289 B
Pennsylvania: Franklin (FEMA Docket No. 7069).	Township of Greene	May 21, 1993, May 28, 1993, Public Opinion.	Mr. Richard P. Kramer, Chairman of the Township of Greene Board of Supervisors, P.O. Box 215, Scotland, Pennsylvania 17254.	May 10, 1993	421649 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93–31260 Filed 12–22–93; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7080]

Changes in Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the chief executive officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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 Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kansas: Sedgwick	Unincorporated areas ..	Oct. 22, 1993, Oct. 29, 1993, The Wichita Eagle.	The Honorable Mark F. Schroeder, Chairperson, County Commissioners, Sedgwick County, 1250 South Seneca Street, Wichita, Kansas 67213.	Oct. 8, 1993	200321
Kansas: Sedgwick	City of Wichita	Oct. 22, 1993, Oct. 29, 1993, The Wichita Eagle.	The Honorable Frank Ojile, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	Oct. 8, 1993	200328
Louisiana: East Baton Rouge Parish.	East Baton Rouge Parish.	Oct. 8, 1993, Oct. 14, 1993, The Advocate.	The Honorable Tom Ed McHugh, Mayor, City of Baton Rouge, East Baton Rouge, Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.	Sept. 16, 1993	220058

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Collin	City of Plano	Oct. 22, 1993, Oct. 29, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Oct. 1, 1993	480140
Texas: Denton	City of Denton	Sept. 9, 1993, Sept. 16, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney, Denton, Texas 76201.	Sept. 2, 1993	480194
Texas: Tarrant	City of Arlington	Sept. 10, 1993, Sept. 16, 1993, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, 101 West Abram Street, Box 231, Arlington, Texas 76004.	Aug. 27, 1993	485454
Texas: Tarrant	City of Bedford	Sept. 2, 1993, Sept. 9, 1993, Mid-Cities News.	The Honorable Rick Barton, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095–0157.	Aug. 11, 1993	480585
Texas: Tarrant	City of Fort Worth	Oct. 1, 1993, Oct. 7, 1993, Fort Worth Star Telegram.	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Sept. 16, 1993	480596
Texas: Tarrant	City of Grapevine	Sept. 24, 1993, Sept. 30, 1993, Fort Worth Star Telegram.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76051.	Aug. 20, 1993	480598

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93–31265 Filed 12–22–93; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Navajo County (unincorporated areas) (FEMA Docket No. 7070)	
Silver Creek:	
Approximately 180 feet downstream of the northern corporate limits of the Town of Snowflake	*5,562
At the northern corporate limits of the Town of Snowflake	*5,563
Approximately 1,000 feet downstream of Hoyt Road	*5,588
At the southern corporate limits of the Town of Taylor	*5,646
Maps are available for review at the Engineering Department, 100 East Carter Drive, Holbrook, Arizona.	
Snowflake (town), Navajo County (FEMA Docket No. 7064)	
Silver Creek:	
Approximately 800 feet downstream of the confluence with Cottonwood Wash (at the corporate limits of the Town of Snowflake)	*5,562
Just upstream of Ramsey Avenue	*5,575
At Hoyt Road	*5,589
Approximately 950 feet upstream of Savage Avenue (at the southern corporate limits of the Town of Snowflake)	*5,607
Cottonwood Wash:	
At the confluence with Silver Creek	*5,566
Just upstream of Ramsey Avenue	*5,571
Approximately 500 feet downstream of Apache Railroad	*5,582
Approximately 500 feet upstream of Apache Railroad	*5,590
Approximately 700 feet upstream of Apache Railroad	*5,598
Maps are available for review at 81 West, First South Street, Snowflake, Arizona.	
Taylor (town), Navajo County (FEMA Docket No. 7070)	
Silver Creek:	
Approximately 4,700 feet downstream of the confluence with Railroad Grade Wash (at the northern corporate limit of the Town of Taylor)	*5,607
Just upstream of Silver Creek Lane	*5,617
Approximately 500 feet upstream of Willow Lane	*5,620
Approximately 3,800 feet upstream of Willow Lane	*5,625
Maps are available for review at Town Hall, 425 West Papermill Road, Taylor, Arizona.	
CALIFORNIA	
Kern County (unincorporated areas) (FEMA Docket No. 7070)	
Sand Canyon:	
Approximately 5,500 feet northeast of the intersection of Three Flags Highway and Onyx Peak Avenue	#2
Approximately 2,800 feet west of the intersection of Three Flags Highway and Onyx Peak Avenue	#2
Approximately 4,000 feet west of the intersection of Three Flags Highway and Onyx Peak Avenue	#3
Grapevine Canyon:	
Along Three Flags Highway between 14,500 and 5,000 feet north of the intersection of Leliter Road	#1
Approximately 3,000 feet downstream of the second Los Angeles Aqueduct	#1
Approximately 1,500 feet downstream of the second Los Angeles Aqueduct	#2
Approximately 700 feet downstream of the second Los Angeles Aqueduct	#3
At the second Los Angeles Aqueduct	#4
Short Canyon:	
At the intersection of Brown-Inyokern Road and Willeox Avenue	#1
Approximately 2,500 feet north of the intersection of Three Flags Highway and Leliter Road	#1
Approximately 4,000 feet south of the intersection of Three Flags Highway and Leliter Road	#1
Approximately 4,000 feet west of the intersection of Three Flags Highway and Leliter Road	#2
Indian Wells Canyon:	
At the intersection of Athel Street and Quail Street	#1
Approximately 7,500 feet south of the intersection of Three Pines Canyon Avenue and Hawk Street	#1
At the intersection of Three Pines Canyon Avenue and Sierra Vista Street	#1
Approximately 7,000 feet south of the intersection of Placer Street and Three Pines Canyon Avenue	#1
Approximately 5,000 feet south of the intersection of Bull Run Street and Three Pines Canyon Avenue	#2
Approximately 2,000 feet west of the intersection of Three Pines Canyon Avenue and Sierra Vista Street	#2
Approximately 1,500 feet southwest of Indian Wells Canyon Road measured along Highway 14	#2
Approximately 300 feet north of the intersection of Indian Wells Canyon Road and Highway 14	#3
Maps are available for review at the Kern County Engineering and Survey Services Department, 2700 "M" Street, Suite 570, Bakersfield, California.	
San Bernardino (city), San Bernardino County (FEMA Docket No. 7064)	
Del Rosa Channel:	
At the confluence with Warm Creek	*1,072
Approximately 130 feet downstream of Baseline Road	*1,083
Warm Creek:	
At the confluence with East Twin Creek	*1,057
At Tippecanoe Street	*1,069
At the confluence with Del Rosa Channel	*1,072
Little Sand Creek:	
At Foothill Boulevard	*1,443
Approximately 1,500 feet upstream of Foothill Boulevard	*1,452
Sand Creek:	
At Highland Avenue	*1,267
At Date Street	*1,340
Approximately 400 feet upstream of the Highland Canal Aqueduct	*1,482
Lower Warm Creek:	
At the confluence with Santa Ana River	*990
Just downstream of Central Avenue	*993
At the Atchison, Topeka and Santa Fe Railway	*997
Maps are available for review at City Hall, 300 North D Street, San Bernardino, California.	
San Bernardino County (unincorporated areas) (FEMA Docket No. 7064)	
City Creek:	
At the confluence of Twin Creek and City Creek	*1,029
Just upstream of Pedley Road	*1,050
Just upstream of Tippecanoe Avenue	*1,069
Little Sand Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Marshall Boulevard	*1,340
Approximately 900 feet upstream of Marshall Boulevard	*1,350
Approximately 2,000 feet upstream of Marshall Boulevard	*1,443
West Fontana Channel:	
At the intersection of Beech Avenue and Merrill Avenue	#1
Approximately 400 feet south of the intersection of Whittram Avenue and Beech Avenue	*1,205
Maps are available for review at the Department of Public Works, 385 North Arrowhead Avenue, San Bernardino, California.	
COLORADO	
Central City (city), Gilpin County (FEMA Docket No. 7064)	
Gregory Gulch:	
Just upstream of Lawrence Street (at the eastern corporate limits of the city)	*8,147
At Leavitt Street	*8,270
Approximately 55 feet upstream of D Street	*8,349
At the confluence with Eureka Gulch	*8,406
Eureka Gulch:	
Approximately 250 feet upstream of Spruce Street	*8,488
At Prosser Street	*8,572
At H Street	*8,671
Approximately 1,270 feet upstream of H Street (at the western corporate limits of the city)	*8,747
Maps are available for review at City of Central City Community Development, 390 Eureka Street, Central City, Colorado.	
IDAHO	
Elmore County (unincorporated areas) (FEMA Docket No. 7070)	
Rattlesnake Creek:	
Approximately 440 feet downstream of 18th South Street	*3,114
Just downstream of Sixth South Street	*3,132
Approximately 450 feet downstream of Eighth North Street	*3,143
Just upstream of Interstate Route 84	*3,204
Just downstream of Mountain Home Reservoir Spillway	*3,285
Rattlesnake Creek Diversion:	
At the confluence with Rattlesnake Creek	*3,122
Approximately 350 feet downstream of Ninth South Street	*3,125
Approximately 1,000 feet upstream of Ninth South Street	*3,129
Rattlesnake Creek Gated Outlet:	
At the confluence with Rattlesnake Creek	*3,218
Just downstream of the Mountain Home Reservoir Gated Outlet	*3,240
Maps are available for review at the Elmore County Courthouse, Planning and Zoning Department, 150 South Fourth East Street, Mountain Home, Idaho.	
Mountain Home (city), Elmore County (FEMA Docket No. 7070)	
Rattlesnake Creek:	
Approximately 400 feet downstream of American Legion Boulevard	*3,138
Just upstream of Eighth North Street	*3,148
Approximately 2,900 feet upstream of Eighth North Street	*3,165
Rattlesnake Creek Diversion:	
At 12th South Street	*3,122
Just upstream of Sixth South Street	*3,130
Just downstream of American Legion Boulevard	*3,139
Maps are available for review at City Hall, 160 South Third East Street, Mountain Home, Idaho.	
NEW MEXICO	
Ruidoso (village), Lincoln County (FEMA Docket No. 7071)	
Turkey Spring Canyon:	
Corporate limit	*6,534
Approximately 1,300 feet upstream of corporate limit	*6,573
Musketball Creek:	
At the confluence with Cedar Creek	*7,146
Approximately 1,400 feet upstream of the confluence with Cedar Creek	*7,214
Rio Ruidoso:	
Approximately 3,250 feet upstream of Cherokee Bill Canyon	*6,471
Approximately 3,400 feet upstream of Cherokee Bill Canyon	*6,477
Approximately 3,650 feet upstream of Cherokee Bill Canyon	*6,480
Approximately 350 feet downstream of the confluence of Cherokee Bill Canyon	*6,432
At the confluence of Cherokee Bill Canyon	*6,436
Just upstream of unnamed road (approximately 500 feet upstream of Cherokee Bill Canyon)	*6,448
Approximately 1,500 feet upstream of Cherokee Bill Canyon	*6,452
Approximately 2,500 feet upstream of Cherokee Bill Canyon	*6,467
South Fork Cedar Creek:	
460 feet downstream of the confluence with Musketball Creek	*7,128
At the confluence with Musketball Creek	*7,146
At the confluence with North Fork Cedar Creek	*7,157
Just upstream of unnamed road (approximately 450 feet upstream of the confluence with North Fork Cedar Creek)	*7,170
Just upstream of unnamed road (approximately 1,500 feet upstream of the confluence with North Fork Cedar Creek)	*7,216
Cedar Creek:	
Approximately 4,850 feet upstream of Inns Brook Road	*6,948
Just upstream of unnamed road (approximately 6,550 feet upstream of Inns Brook Road)	*6,986
340 feet upstream of unnamed road	*6,995
3,500 feet upstream of unnamed road	*7,085
3,660 feet upstream of unnamed road	*7,091
4,360 feet upstream of unnamed road	*7,118
4,860 feet upstream of unnamed road	*7,128
North Fork Cedar Creek:	
At the confluence with South Fork Cedar Creek	*7,157
390 feet upstream of the confluence with South Fork Cedar Creek	*7,176
760 feet upstream of the confluence with South Fork Cedar Creek	*7,178
2,325 feet upstream of the confluence with South Fork Cedar Creek	*7,236
Approximately 3,800 feet upstream of the confluence with South Fork Cedar Creek	*7,298
Carrizo Creek:	
510 feet upstream of Lower Tomahawk Trail	*6,602
770 feet upstream of Lower Tomahawk Trail	*6,606
Just upstream of Upper Tomahawk Trail	*6,627
At the confluence with Grindstone Canyon	*6,633
700 feet upstream of the confluence with Grindstone Canyon	*6,646
Just upstream of Carrizo Creek Road	*6,699
Just upstream of the footbridge	*6,706
Maps are available for review at Village Hill, 313 Creekmeadows Drive, Ruidoso, New Mexico.	
NORTH DAKOTA	
Grafton (city), Walsh County (FEMA Docket No. 7063)	
Park River:	
At Field Road extended, approximately 6,660 feet downstream of Burgamott Avenue	*824
At Burgamott Avenue	*824
Just downstream of Hill Avenue extended	*830
Approximately 8,020 feet upstream of Kittson Avenue	*831
Maps are available for review at the Department of Public Works, City of Grafton, 5 East Fourth Street, Rolla, North Dakota.	
WASHINGTON	
Bothell (city), King and Snohomish Counties (FEMA Docket No. 7070)	
North Creek:	
Just upstream of State Route 522	*23
Approximately 700 feet downstream of Interstate 405 South (Landward of West Levee/Riverward of Levees/Landward of East Levee)	*27/27/24
At the intersection of 195th Street Northeast and the North Creek Parkway	*31
At the upstream crossing of North Creek Parkway (Landward of West Levee/Riverward of Levees/Landward of East Levee)	*36/37/34
Just downstream of Northeast 205th Street	*40
Maps are available for review at the City Hall, 18305 101st Avenue Northeast, Bothell, Washington.	
Okanogan County (unincorporated areas) (FEMA Docket No. 7073)	
Methow River:	
At Mazama Creek Road	*2,102
Approximately 630 feet downstream of the confluence with Early Winters Creek	*2,151

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 7,500 feet upstream of the confluence with Early Winters Creek	*2,200
Approximately 690 feet upstream of the confluence with Gate Creek	*2,250
Approximately 2,380 feet upstream of the confluence with McGee Creek	*2,300
At the confluence with Lost River	*2,359
Maps are available for review at Okanogan County Office of Planning and Development, Administration Building, 237 Fourth North, 2nd Floor, Okanogan, Washington.	
WYOMING	
Cheyenne (city), Laramie County (FEMA Docket No. 7070)	
Crow Creek:	
700 feet above confluence with Dry Creek	*5,885
1,440 feet above confluence with Dry Creek	*5,887
38,325 feet above confluence with Dry Creek	*6,009
Dry Creek:	
At the confluence with Crow Creek	*5,886
3,240 feet above confluence with Crow Creek	*5,904
5,400 feet above confluence with Crow Creek	*5,916
9,100 feet above confluence with Crow Creek	*5,921
18,900 feet above confluence with Crow Creek	*5,971
Maps are available for review at the City Engineer's Office, 2101 O'Neil Avenue, Cheyenne, Wyoming.	
Laramie County (unincorporated areas) (FEMA Docket No. 7070)	
Crow Creek:	
1,000 feet below confluence with Dry Creek	*5,882
1,440 feet above confluence with Dry Creek	*5,887
14,175 feet above confluence with Dry Creek	*5,919
28,097 feet above confluence with Dry Creek	*5,977
37,750 feet above confluence with Dry Creek	*6,000
Dry Creek:	
At the confluence with Crow Creek	*5,886
2,850 feet above confluence with Crow Creek	*5,895
9,400 feet above confluence with Crow Creek	*5,938
16,300 feet above confluence with Crow Creek	*5,953
18,120 feet above confluence with Crow Creek	*5,962
Maps are available for review at Laramie County Engineering Office, 2503 East Fox Farm Road, Cheyenne, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-31259 Filed 12-22-93; 8:45 am]

BILLING CODE 6718-03-P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazards Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

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

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

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.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows.

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Norwich (city), New London County (FEMA Docket No. 7066)	
Trading Cove Brook:	
Approximately 0.4 mile downstream of the Connecticut Turnpike	*31
Approximately 0.3 mile downstream of confluence of Goldmine Brook	*56
Hunter Brook:	
Approximately 1,080 feet upstream of Hunter Road upstream crossing	*72
At confluence with Shetucket River	*36
Yantic River:	
Approximately 50 feet upstream of Yantic Mill Dam No. 2	*77
Approximately 550 feet upstream of Conrail Railroad Bridge No. 4	*120
Tributary B:	
At confluence with Yantic River	*86
Approximately 790 feet upstream of confluence with Yantic River	*87
Bobbin Mill Brook:	
At confluence with Yantic River	*86
Approximately 63 feet upstream of confluence with Yantic River	*87
Norwichtown Brook:	
At Sturtevant Street	*91
At downstream side of Sholes Avenue	*91
Maps available for inspection at the City Clerk's Office, City Hall, 100 Broadway, Norwich, Connecticut.	
FLORIDA	
Unincorporated Areas, Dade County (FEMA Docket No. 7066)	
Canal C-100A:	
Approximately 100 feet east of intersection of S.W. 77th Court and S.W. 155th Street	*10
At intersection of S.W. 78th Court and S.W. 155th Street	*10
Canal C-100C:	
Approximately 100 feet south of Killian Drive	*9
Canal 100A:	
At intersection of S.W. 92nd Avenue and S.W. 102nd Street	*9
Spur Canal No. 1:	
Approximately 700 feet north of the intersection of N.W. 157th Street and N.W. 17th Place	*6
Maps available for inspection at the Dade County Department of Water Control, 111 N.W. First Street, 13th Floor, Miami, Florida.	
Lee County (unincorporated areas) (FEMA Docket No. 7050)	
Popash Creek:	
At mouth	*8
At county boundary	*27
Stroud Creek:	
At mouth	*8
Just upstream of St. Paul Road	*24
Daughtrey Creek:	
At mouth	*8
Just upstream of Nalle Grade Road	*26
Daughtrey East:	
At mouth	*8
Just upstream of Rich Road	*22
Tributary L-2:	
At U.S. Route 41	*8
Just downstream of Bayshore Road	*13
Tributary L-1:	
At U.S. Route 41	*8
Just downstream of Bayshore Road	*15
Powell Creek:	
At Brooks Road	*8
Just downstream of Tucker Lane NE	*17
Powell Creek Tributary No. 1:	
At mouth	*12
About 4.47 miles upstream of mouth	*20
Powell Creek Tributary No. 2:	
At mouth	*15
About 3.16 miles upstream of mouth	*20
Marsh Point Creek:	
Just downstream of Bayshore Road	*8
Just upstream of Tucker Lane NE	*17
Chapel Branch Creek:	
At mouth	*8
Just upstream of Rich Road	*21
Bayshore Creek:	
At mouth	*8
About 500 feet upstream of Disconte Lane	*23
Bayshore Tributary:	
At mouth	*14
Just downstream of Leetana Drive	*18
Thompson Cutoff:	
At mouth	*8
Just downstream of Ruben Road	*22
Thompson Cutoff Tributary:	
At mouth	*13
About 1.24 miles upstream of mouth	*21
Maps available for inspection at the Lee County Building Department, 1735 Hendry Street, Ft. Myers, Florida.	
KENTUCKY	
Jefferson County (unincorporated areas) (FEMA Docket No. 7048)	
Ohio River:	
Just upstream of confluence of Salt River	*443
Approximately 3.3 miles upstream of Harrods Creek	*453
Upper Mill Creek:	
Approximately 400 feet downstream of Wilkie Road	*437
Just downstream of Rockford Lane	*443
Big Run Diversion:	
At mouth	*437
Just upstream of St. Andrews Church Road	*487
Slate Run:	
At confluence with Pond Creek	*454
Just downstream of St. Anthonys Church Road	*469
Pond Creek:	
Approximately one mile upstream of Gene Snyder Freeway	*441
Approximately 1,700 feet upstream of New Cut Road	*457
Ponder Creek:	
At mouth	*442
Just downstream of Stonestreet Road	*469
Just upstream of Stonestreet Road	*475
Just downstream of Paralee Lane	*487
Stephan Ditch:	
At mouth	*443
Approximately 400 feet upstream of Maryman Road	*449
Valley Creek:	
At mouth	*433
Just downstream of Greenwood Road	*448
Lower Mill Creek:	
Approximately 1,500 feet upstream of confluence with Ohio River	*430
Just downstream of Terry Road	*437
Upper Garrison Ditch:	
At mouth	*437
Approximately 200 feet upstream of Cane Run Road	*442
Lower Garrison Ditch:	
At mouth	*436
Approximately 200 feet upstream of Illinois Central Railroad	*442
Big Run Creek:	
At mouth	*443
Approximately 1,150 feet upstream of Lower Hunters Trace	*450
Bee Lick:	
At mouth	*456
Just downstream of Mitchell Hill Road	*479
Little Bee Lick Creek:	
At mouth	*464
Approximately 350 feet upstream of Charlene Drive	*490
Wilson Creek:	
At mouth	*458
Approximately 3,500 feet upstream of Farmers Lane	*479
Northern Ditch:	
At mouth	*457
Just downstream of Old Shepherdsville Road	*478
Southern Ditch:	
At mouth	*457
Just downstream of Michael Ray Drive	*562
Just upstream of Michael Ray Drive	*570
Approximately 1,200 feet upstream of Michael Ray Drive	*584
Roberson Run:	
At mouth	*474
Approximately 1,300 feet upstream of Judge Boulevard	*520
Fern Creek:	
At mouth	*478
Just downstream of Fegenbush Lane	*497
Filson Fork:	
At mouth	*471
Approximately 200 feet downstream of Preston Highway	*488
Just upstream of Preston Highway	*496
Just downstream of Shepherdsville Road	*546
Fishpool Creek:	
At mouth	*464
Just downstream of Charleswood Road	*557
Just upstream of Charleswood Road	*562
Just downstream of Cooper Chapel Road	*579
Cooper Chapel Brook:	
At mouth	*490
Just downstream of Chapel Hill Road	*525
Just upstream of Chapel Hill Road	*535
Approximately 4,000 feet upstream of Chapel Hill Road	*570
Manslick Branch:	
At mouth	*482
Approximately 1,400 feet upstream of Glen Rose Road	*538
Mud Creek:	
At mouth	*461
Approximately 1,400 feet upstream of Blue Lick Road	*492
Greasy Ditch:	
At mouth	*460
Just upstream of Poplar Level Road	*468
South Fork Beargrass Creek:	
Just upstream of Bashford Manor Lane	*474
Approximately 3,200 feet upstream of Hunsinger Lane	*534
Buechel Branch:	
At mouth	*475
Approximately 1,500 feet upstream of Buechel Bank Road	*498

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
East Branch Boxwood Ditch:	
At mouth	*440
Just downstream of Cane Run Road	*443
Cane Run Ditch:	
Approximately 1,000 feet downstream of Teaneck Lane	*439
Just downstream of Camp Ground Road	*440
Lynnview Ditch:	
Just upstream of Martin Avenue	*440
Approximately 2,000 feet upstream of Hartlage Road	*449
Black Pond Creek:	
At mouth	*433
Just upstream of Lower Hunters Trace	*447
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.	
Louisville (city), Jefferson County (FEMA Docket No. 7048)	
Greasy Ditch:	
Approximately 275 feet downstream of Fern Valley Road	*460
Approximately 1,000 feet upstream of Fern Valley Road	*461
South Fork Beargrass Creek:	
At mouth	*448
Approximately 1,375 feet upstream of Breckenridge Lane	*513
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.	
Shively (city), Jefferson County (FEMA Docket No. 7048)	
Upper Mill Creek:	
Approximately 640 feet upstream of Wilkie Road	*439
Approximately 1,300 feet upstream of Memorial Gardens Road	*453
Lynnview Ditch:	
At mouth	*440
Just upstream of Farnsley Road	*449
Boxwood Ditch:	
At mouth	*439
Just downstream of Rockford Lane	*440
City Park Ditch:	
At mouth	*452
Approximately 800 feet upstream of Hardesty Avenue	*452
Heatherfield Ditch:	
Just downstream of Interstate 264	*448
Approximately 1,000 feet upstream of Crums Lane	*448
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.	
MAINE	
Clifton (town), Penobscot County (FEMA Docket No. 7058)	
Chemo Pond:	
Entire shoreline within community	*129
Maps available for inspection at 24 Airline Road, Clifton, Maine.	
MISSISSIPPI	
City of Richland, Rankin County (FEMA Docket No. 7066)	
Richland Creek:	
Just upstream of Illinois Central Railroad	*272
Just upstream of U.S. Highway 49	*272
Pearl River:	
About 9.1 miles downstream of Illinois Central Railroad	*267
Just upstream of Interstate 20 East Bound	*274
Pearl River Tributary 1:	
About 0.9 mile downstream of Old U.S. Highway 49	*268
About 1,900 feet downstream of Old U.S. Highway 49	*268
Pearl River Tributary 2:	
About 2,000 feet downstream of Neely Road	*270
Just upstream of Old U.S. Highway 49	*271
Squirrel Branch:	
About 900 feet downstream of Illinois Central Railroad	*271
About 400 feet downstream of U.S. Highway 49	*271
Conway Slough:	
About 1,600 feet downstream of Illinois Central Railroad	*273
Just landward of East Jackson Levee	*263
Maps available for inspection at Richland City Hall, 371 Scarborough Street, Richland, Mississippi.	
NEW YORK	
Canton (Village), (FEMA Docket No. 7070)	
Grass River:	
Approximately 1.02 miles downstream of Main Street	*323
Approximately 0.6 mile upstream of Conrail	*352
Maps available for inspection at the Canton Municipal Building, 60 Main Street, Canton, New York.	
Ellicottville (village), Cattaraugus County (FEMA Docket No. 7057)	
Great Valley Creek:	
Approximately 670 feet downstream of confluence of Holiday Valley Creek	*1,519
Approximately 0.2 mile upstream of Mill Street	*1,542
Elk Creek:	
At confluence with Great Valley Creek	*1,536
Approximately 400 feet upstream of Parkside Drive	*1,548
Plum Creek:	
At confluence with Great Valley Creek	*1,532
Approximately 0.8 mile upstream of confluence with Great Valley Creek	*1,598
Holiday Valley Creek:	
Approximately 160 feet upstream of corporate limits	*1,521
Approximately 140 feet upstream of upstream corporate limits	*1,525
Maps available for inspection at the Ellicottville Village Hall, 1 W. Washington, Ellicottville, New York.	
NORTH CAROLINA	
Charlotte (city), Mecklenburg County (FEMA Docket No. 7063)	
Taggart Creek:	
Approximately 1,100 feet upstream of the confluence with Sugar Irwin Creek	*604
Approximately 300 feet downstream of Mulberry Church Road	*687
Maps available at Charlotte City Hall, 600 East 4th Street, Charlotte, North Carolina 28202.	
Gastonia (city), Gaston County (FEMA Docket No. 7066)	
Duharts Creek:	
Downstream side of Beaty Road	*649
Approximately 500 feet upstream of Oakdale Street	*746
Duharts Creek Tributaries:	
Tributary D–1:	
At the confluence with Duharts Creek	*655
Approximately 950 feet upstream of confluence with Duharts Creek	*656
Tributary D–2:	
At the confluence with Duharts Creek	*666
Approximately 510 feet upstream of confluence with Duharts Creek	*666
Tributary D–3:	
At the confluence with Duharts Creek	*673
Approximately 65 feet downstream of upstream Extraterritorial Limits	*707
Tributary D–4:	
At the confluence with Duharts Creek	*673
Approximately 100 feet upstream of confluence with Duharts Creek	*673
Tributary D–6:	
Approximately 625 feet upstream of confluence with Duharts Creek	*689
At Aberdeen Road	*708
Tributary D–8:	
At the confluence with Duharts Creek	*711
Approximately 625 feet upstream of Aberdeen Boulevard	*734
Tributary D–9:	
At the confluence with Duharts Creek	*717
Approximately 0.5 mile upstream of Remount Road	*747
Maps available at the City Engineer's Office, 181 S. South Street, Gastonia, North Carolina.	
PENNSYLVANIA	
Hawley (borough), Wayne County (FEMA Docket No. 7066)	
Lackawaxen River:	
Approximately 1,200 feet downstream of Church Street Bridge	*883
Approximately 1,830 feet upstream of U.S. Route 6 and State Route 590 Bridge	*895
Maps available for inspection at the Borough Office, Main Avenue, Hawley, Pennsylvania.	
Palmyra (township), Wayne County (FEMA Docket No. 7070)	
Lackawaxen River:	
Approximately 100 feet upstream of U.S. Route 6 and State Route 590 Bridge	*891
Approximately 990 feet downstream of Park Street Bridge	*925

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Township Office, Oak Street, Hawley, Pennsylvania.	
Valley (township), Montour County (FEMA Docket No. 7071)	
Mahoning Creek:	
At downstream corporate limits	*478
Approximately 300 feet upstream of the most upstream crossing of State Route 642	*569
Mauses Creek:	
At confluence with Mahoning Creek.	*480
Downstream of State Routes 45 and 642	*488
Maps available for inspection at the Township Building, 1305 Continental Boulevard, Valley, Pennsylvania.	
SOUTH CAROLINA	
Columbia, City (Richland County) (FEMA Docket No. 7042)	
Smith Branch:	
Approximately 175 feet downstream of downstream corporate limits	*178
Approximately 0.2 mile upstream of Preston Drive	*239
Bay Branch:	
At the confluence with Smith Branch	*220
Approximately 0.4 mile upstream of Northeastern Expressway	*263
Reeder Point:	
At Richard Street	*169
At the Greenlawn Drive	*219
Pen Branch:	
At the confluence with Gills Creek	*159
Approximately 250 feet upstream of Budon Court	*216
Gills Creek:	
Approximately 1 mile upstream of CSX Transportation	*145
Approximately 700 feet upstream of Quail Lane	*162
Tributary RP-1:	
Approximately 200 feet downstream of Southern Railway	*161
Approximately 600 feet downstream of Planters Lane	*202
Maps available for inspection at the City Zoning Department, 1212 Laurel, Columbia, South Carolina.	
Richland County (unincorporated areas) (FEMA Docket No. 7042)	
Griffins Creek:	
Approximately 0.6 mile downstream of CSX Transportation	*166
Approximately 0.6 mile upstream of CSX Transportation	*179
Nicholas Creek:	
Approximately 0.5 mile upstream of confluence with Broad River	*193
Approximately 0.4 mile upstream of confluence of Moccasin Branch	*237
Swygert Branch:	
At the confluence with Nicholas Creek	*193
Approximately 0.6 mile upstream of Bob Dom Road (Abandoned)	*238
Moccasin Branch:	
At the confluence with Nicholas Creek	*220
At the western lane	*301
Stoop Creek:	
Approximately 75 feet upstream of Interstate Route 26 and U.S. Route 76	*214
Approximately 800 feet upstream of Piney Woods Road	*315
Smith Branch:	
Approximately 50 feet downstream of Clement Road	*176
Approximately 325 feet upstream of Clement Road	*178
Bay Branch:	
Approximately 75 feet downstream of Shaw Street	*245
Approximately 0.4 mile upstream of Northeastern Expressway	*263
Tributary C-5:	
At the confluence with Crane Creek	*202
Approximately 900 feet upstream of the confluence with Crane Creek	*203
Crane Creek:	
Upstream side of U.S. Route 321	*202
Approximately 0.9 mile upstream of confluence of Sorghum Branch	*322
Cumbess Creek:	
At the confluence with Crane Creek	*243
Approximately 50 feet upstream of Southern Railway	*324
Roberts Branch:	
At the confluence with Crane Creek	*253
Approximately 200 feet upstream of Long Town Road	*378
Sorghum Branch:	
At the confluence with Crane Creek	*312
Approximately 400 feet upstream of Green Spring Drive	*363
Tributary RB-1:	
At the confluence with Roberts Branch	*287
Approximately 0.4 mile upstream of Sunny Acres Pond Dam	*333
North Branch Crane Creek:	
At the confluence with Crane Creek	*221
At the confluence of Beasley Creek and Swygert Creek	*270
Beasley Creek:	
At the confluence with North Branch Crane Creek	*270
Approximately 2.9 miles upstream of Turkey Farm Road	*430
Rice Creek:	
Approximately 150 feet downstream of downstream County boundary	*256
Approximately 1.2 miles upstream of Rimer Road	*429
Bridge Creek:	
Approximately 500 feet downstream of downstream County boundary	*259
Approximately 50 feet upstream of most upstream Legion Lake dam	*328
Sandy Branch:	
At the downstream County boundary	*261
Approximately 0.4 mile upstream of Briarcliff East	*321
Spears Creek:	
At downstream County boundary	*209
Approximately 0.8 mile upstream of Spears Creek Church Road	*344
Tributary SP-1:	
At the confluence with Spears Creek	*210
Approximately 1.8 miles upstream of confluence with Spears Creek	*246
Reeder Point Branch:	
At the confluence with Black Lake	*129
Approximately 1,900 feet upstream of Burnsides Pond Dam	*178
Tributary RP-1:	
At the confluence with Reeder Point Branch	*143
Approximately 800 feet upstream of Planters Lane	*209
Gills Creek:	
At upstream side of Southern Railway	*142
Approximately 800 feet downstream of State Route 12	*162
Maps available for inspection at the Planning and Zoning Department, County Administration Building, 220 Hampden, Columbia, South Carolina.	
TENNESSEE	
Anderson County, Unincorporated Areas (FEMA Docket No. 7063)	
Hinds Creek:	
Approximately 0.83 mile downstream of confluence of Buffalo Creek	*836
At downstream side of Mountain Road	*848
Buffalo Creek:	
At confluence with Hinds Creek	*840
Approximately 0.48 mile upstream of Park Road	*971
Maps available for inspection at the Planning and Zoning Office, Anderson County Courthouse, 100 North Main Street, Clinton, Tennessee.	
Norris (city), Anderson County (FEMA Docket No. 7063)	
Buffalo Creek:	
At a point approximately 0.4 mile downstream of U.S. Route 441	*905
Approximately 225 feet upstream of State Route 61	*930
Maps available for inspection at the Norris Community Building, 20 Chestnut Drive, Norris, Tennessee.	
VIRGINIA	
Chesterfield County (Unincorporated Areas) (FEMA Docket No. 7071)	
Proctors Creek:	
Approximately 600 feet downstream of confluence of Great Branch	*92
Approximately 0.31 mile upstream of State Route 145	*106
Great Branch:	
At confluence with Proctors Creek	*94
At downstream side of State Secondary Route 717	*105
Maps available for inspection at the Environmental Engineering Office, 9701 Lucy Corr Drive, Chesterfield, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-31264 Filed 12-22-93; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 93-501]

Commission Organization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Order amends the Commission's Rules regarding the authority of the Chief, Field Operations Bureau to issue administrative subpoenas in the investigations of cases involving a violation of section 301, which prohibits the transmission of radio energy without an authorization, and section 302a which prohibits the marketing of unauthorized radiofrequency devices. This delegation of the authority will enable the Chief, Field Operations Bureau to subpoena the production of books, records, correspondence, memoranda and other records deemed relevant to the investigation of alleged violations.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Pamera D. Hairston, Esq. at (202) 632-7059 or Mary Beth Richards, Esq. at (202) 632-7090.

Order

Adopted: November 19, 1993; *Released:* December 17, 1993.

By the Commission:

1. Section 409(e) of the Communications Act of 1934, as amended (Act), 47 U.S.C. 409(e), grants the Commission express authority to require by subpoena information relating to any matter under investigation. This authority may be delegated in accordance with section 5(c)(1) of the Act, 47 U.S.C. 155(c)(1). Subpoenas may be issued to, among others, private entities not subject to an administrative agency's jurisdiction.[1]

2. We find that the delegation of authority to the Chief, Field Operations Bureau, to issue administrative subpoenas in the investigations of cases involving a violation or violations of sections 301 (unlicensed operation) or 302a (illegal marketing of radiofrequency devices capable of causing interference) of the Act, 47 U.S.C. 301 and 302a, will facilitate investigations of illegal activity and, therefore, is in the public interest.

3. *Accordingly, it is ordered,* That, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), authority is delegated to the Chief, Field Operations Bureau to require by administrative subpoena the production of books, papers, correspondence, memoranda, and other records deemed relevant to the investigation of an alleged violation or violations of section 301 or 302a of the Act, 47 U.S.C. 301 and 302a.

4. *It is further ordered* That § 0.311 of the Commission's rules, 47 CFR 0.311, be amended to add a paragraph (f) to reflect this delegation of authority. This amendment of the Commission's rules is set forth below. The requirement for notice and comment rule making contained in 5 U.S.C. 553(b) and the effective date provisions of 5 U.S.C. 553(d) do not apply since this amendment concerns matters of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A), 553(d).

5. *It is further ordered* That this amendment of § 0.311 as set forth below is effective upon the date of publication in the **Federal Register.**

List of Subjects in 47 CFR Part 0

Organization and functions.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Title 47 of the Code of Federal Regulations, Part 0, is amended as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Secs. 5, 48 Stat 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by adding paragraph (f) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(f) The Chief of the Field Operations Bureau is authorized to issue subpoenas for the production of books, papers, correspondence, memoranda, and other records deemed relevant in the investigation of an alleged violation or violations of section 301 (unlicensed operation) or 302a (illegal marketing of radiofrequency devices) of the Communications Act of 1934, as amended.

[FR Doc. 93-31351 Filed 12-22-93; 8:45 am]

BILLING CODE 6712-01-M

[1] See *FCC* v. *Cohn*, 154 F. Supp 899 (S.D.N.Y. 1957).

47 CFR Parts 2 and 25

[CC Docket No. 92-76; FCC 93-478]

Licensing Policies and Procedures, Domestic Common Carrier Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On October 21, 1993, the Commission adopted a Report and Order establishing rules to govern the licensing and regulation of "non-voice non-geostationary mobile-satellite service" (NVNG MSS) systems. These technical and service rules are intended to facilitate the implementation and regulation of new domestic satellite services.

EFFECTIVE DATE: January 24, 1994.

FOR FURTHER INFORMATION CONTACT: Kristi L. Kendall, Common Carrier Bureau, (202) 634-7058.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collections of information are estimated as follows: Annual reporting requirement: 4 responses; 8 hours per response; 32 hours total. Application filing requirements: 4 applications; 1000 hours per application; 4000 hours total. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060-0539), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0539), Washington, DC 20503.

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document.

Summary of Report and Order

The Commission has allocated certain electromagnetic frequencies below 1 GHz to use by a new "non-voice, non-geostationary mobile-satellite service" (NVNG MSS), and has proposed rules and policies to govern this service. This Report and Order establishes final rules that will allow the licensing and operation of competitive NVNG MSS systems.

A. Applications for Space Station Authority

System Size

NVNG applicants will be required, as discussed in the Notice of Proposed Rulemaking (Notice), 58 FR 14532 (March 18, 1993), to specify precisely the number of space stations that will be included in their proposed constellations. One party suggested that applicants be granted authority to launch and operate a requested range of satellites, with a minimum of two, alleging that this flexibility in system design will allow a licensee to choose, as its service develops, the number of satellites that most effectively and efficiently reaches its intended customer base. In essence, their proposal would give licensees a predetermined "set aside" for future expansion. While this flexibility could enhance the commercial viability of an NVNG system, it could also hinder the plans of future NVNG MSS providers. System size, particularly when a system has a small number of satellites, will have a decided impact on future entry. For example, the Negotiated Rulemaking Committee noted in its Report that additional NVNG systems could likely be able to share the same orbit(s) with a two satellite system if station keeping and other sharing methods are employed. Such an accommodation would be difficult, if not impossible, if licensees are given carte blanche unilaterally to increase system size, even within preordained parameters. Conversely, if a system operator decides that its customers will be best served by the minimum number of satellites specified in its license, any potential for additional service will lie fallow for the remainder of the license term. We therefore continue to believe that it is prudent to require applicants to specify precisely the number of satellites reasonably anticipated to meet their needs.

Emissions Limitations

At the request of an applicant, we have clarified, and amended the text of, § 25.142(a)(3). As discussed in the Notice, our primary concern in the development and inclusion of this rule has been the control of in-band emission levels. An NVNG satellite, which is designed to receive signals from small, omnidirectional antennae, will receive not only those signals intended for retransmission by the system, but any signals within its broad operating footprint that are transmitted on the same frequencies. In the Case of NVNG systems, it is likely, for example, that transmissions from Canadian terrestrial paging systems operating in the 148–149.9 MHz band will be received by U.S. license NVNG systems, which are authorized to operate in those same frequencies. Retransmission of these "out-of-system" signals by the NVNG satellite at 137–138 MHz could ultimately increase the system's power flux density levels at the earth's surface. This could in turn result in harmful interference to other authorized users of the affected frequency bands. We have therefore amended § 25.142(a)(3) to conform to our expressed intent of protecting in-band services from harmful interference due to unacceptable power flux density levels. Although we originally noted our intent to prohibit entirely the retransmission of any out-of-system signals by an NVNG satellite, we have modified this position and have adopted a method that will allow applicants greater flexibility in the implementation of their systems. Specifically, new § 25.142(a)(3) prohibits the retransmission of signals received by an NVNG satellite from a source outside of the system at power flux density levels exceeding those described by the applicant in response to the preceding § 25.142(a)(2). We thereby will limit the harmful effect of unintended signal retransmission, but will permit the licensee to determine its preferred method of meeting those limits. We believe that this rule is necessary to protect other authorized users in the 137–138 MHz and 400 MHZ bands from excessive interference resulting from undesired emission, yet will not reasonable opportunity for system operators to develop various transmission schemes.

Financial Qualification

Section 25.142(a)(4) establishes the financial qualification requirements for applicants in the NVNG mobile satellite service. Specifically, an applicant must demonstrate the current financial ability to construct, launch and operate for one year the first two satellites in its system. An applicant suggested that the Commission adopt a separate financial showing for smaller applicants, noting that it is unfair to require applicants with modest system plans to demonstrate the same financial wherewithal of applicants with larger, more expensive proposals. It was therefore suggested that we require an applicant proposing to launch five or fewer satellites to demonstrate the financial ability to construct, launch and operate for one year only the first satellite in its system. While this rule will require a smaller system applicant to demonstrate a proportionately high percentage of its necessary capital, we do not believe that it is unfair or unduly harsh. The financial requirements that we are adopting are not as rigorous, for example, as those in the fixed satellite services. Further, there is little reason to distinguish among large and small system proposals, as a small NVNG system may utilize as much of this very limited spectrum resource as a larger system. Accordingly, we believe that adoption of this modification may unduly complicate the rules, and could jeopardize the public interest in the availability of NVNG services and the efficient use of the spectrum allocated to this service.

It has further been suggested that we accept, as meeting the financial qualification requirements of § 25.142(a)(4), copies of grant commitment letters or other evidence of external funding commitments. It is apparent that a binding grant commitment letter would fall well within the intent, albeit not the precise wording, of the existing regulation. We believe that grant commitments in general may provide the same level of financial certainty as those other submissions currently accepted as demonstrating an applicant's financial qualification. As in the case of other acceptable debt or equity financial showings, the grant commitment must be specifically described, and must not rest upon contingencies that require further action by the parties. We therefore amend § 25.140 of our rules to add a new paragraph which specifically permits an applicant to submit evidence of grants, or other external funding commitments, in support of its application.

Replacement Space Stations

Section 25.142(a)(5) will allow operators at their discretion to replace failed or expired space stations with technically identical counterparts at any time during the license term. The commenters urge that, instead of requiring space stations to be technically identical to those replaced, a replacement space station be only "operationally equivalent" to its predecessor in terms of its interference potential. In support of this concept, it has been noted that evolving manufacturing efficiencies and technical advancements are inevitable, and will facilitate greater system utility and efficiency. Thus, state-of-the art replacement satellites may have different, albeit equivalent, technical parameters. Adoption of this "operationally equivalent" standard, they argue, will promote the continual upgrade of space station systems, to the benefit of the operators and their

customers. While we believe that both technical innovation and operator flexibility serve the public interest, we must, consistent with our statutory obligation, assure the continued compatibility of NVNG systems with those of other licensed spectrum users. If a space station design differs from that initially examined and approved, we are not only obligated, but are also in the best position, to determine neutrally whether the existing and replacement space stations are indeed operationally equivalent. We do not believe, on balance, that it will be unduly burdensome for operators to request license modification if they desire to upgrade or in any other way change their licensed satellite design. This requirement will not impede technical innovation in satellite design, but is necessary to ensure the fulfillment of our statutory mandate. Therefore, absent an accompanying request for license modification, we will require replacement space stations launched during the license term to be technically identical to those replaced.

Intersystem Coordination

The commenters did not object to, or request modification of, our proposed rules §§ 25.142(b) (1) and (2). These subsections require applicants to coordinate their systems with Federal government users prior to authorization. Nor was there any objection to the reminder, expressed in § 25.142(b)(4), that NVNG services may be subject to certain provisions of the Communications Act relating to safety and distress communications. We continue to believe that these portions of § 25.142 are in the public interest, and have adopted them with minor modification. Several commenters have alleged, however, that proposed § 25.142(b)(3) does not place the NVNG licensees under a sufficiently strict obligation to coordinate their systems with those of future licensees. They thus request that (1) each NVNG license bear a condition requiring the licensee to negotiate coordination agreements in good faith with subsequent licensee, (2) the coordinating parties file written progress reports with the Commission every three months detailing their efforts, and (3) these final coordination agreements be publicly available for use by future licensees.

At the outset, we reiterate our firm belief that the good faith coordination efforts of all spectrum users are essential to the development and efficient use of the electromagnetic spectrum. We believe, however, that our intersystem coordination rule, in conjunction with existing policy, will provide the relief requested. New § 25.142(b)(3) requires licensees and permittees, at the Commission's request, to cooperate fully in the coordination and accommodation of future systems. By this rule, we may require licensees to coordinate not only with future licensees, but with future applicants as well. While we will continue initially to rely on the good faith efforts of existing spectrum users to cooperate with new licensees, we have stated our intent to intervene at an early stage if such cooperation is not forthcoming, or if earlier coordination would be particularly helpful. Accordingly, we believe that this proposal will enable us to assure good faith cooperation on the part of all parties providing, or seeking to provide, NVNG MSS.

With regard to the request to file periodic written reports on the status of coordination negotiations, we do not believe that such reports will create greater incentives for licensees to coordinate with each other, and may simply complicate the process with an inconclusive paper trail. If a licensee is not cooperative, we expect to be so informed by the aggrieved party. At that point, we will, as we have stated in the past, assist in the coordination process, or grant such other relief as seems appropriate. Finally, we believe that the relative benefits of making coordination agreements publicly available are unlikely to outweigh the potential damage to licensees through the release of confidential and proprietary data. Data made publicly available by the Commission would unavoidably become accessible to the world at large. This could prejudice the negotiating posture of the licensees in their domestic, and perhaps myriad international, coordination efforts. The existing applicants were able to coordinate their systems without benefit of exact data regarding existing systems. We believe that, in light of our ability to require pre- and post-licensing coordination efforts, and our willingness to provide informal assistance if necessary, future applicants will have ample access to the data necessary to design and implement their systems. Accordingly, we have adopted § 25.142(b)(3) as proposed.

Reporting Requirements

Finally, objection was raised to the reporting requirement set forth in proposed § 25.142(c). One commenter believes that this requirement is unnecessarily burdensome, and unlikely to generate useable information that cannot readily be obtained by the Commission should the need arise. It argues that the potential damage from disclosure of commercially sensitive information far outweighs any potential benefit to be gained therefrom. We believe that this argument underestimates the value to the Commission of the data submitted by licensees in similar semi-annual reports. For example, review of this information is the primary manner by which we assess the commercial and technical development of a particular satellite service. This assists us in analyzing spectrum utilization matters, such as the availability of service on a common carriage basis and consumer demand for particular service options. Further, we are required by law annually to report on competitive market conditions in the mobile communications marketplace. We thus conclude that the solicitation and review of this type of information is important to fulfilling our responsibilities under the Communications Act. While we understand a licensee's reluctance to file commercially sensitive data, system usage information is intended for use by the Commission and can reasonably be shielded from public dissemination by requests for confidential treatment. To lessen the burden on licensees, we have modified the proposed rule, and now request only the annual submission of that information we believe necessary to enable us to meet our public interest responsibilities and legislative directives.

B. Applications for Transmitting Earth Station Authority

Specific earth station, or transceiver, licensing requirements are set forth in § 25.135. The commenters universally support the concept of the issuance of a blanket license for NVNG user transceivers. Prior to issuance of this blanket transceiver license, an applicant must demonstrate that transceiver operations will not interfere with existing and authorized uses of the affected or adjacent frequencies. Further, as proposed in the Notice, certain transceivers will be required to bear a label prohibiting their use aboard commercial aircraft. This prohibition has been included to preclude potential interference of NVNG transceivers with navigation and other aircraft functions. There was no opposition to these provisions, and we continue to believe that they are appropriate for the protection of existing frequency users. We therefore have adopted § 25.135 (a) and (b) essentially as proposed.

Sections 25.135 (c) and (d) clarify the basic tenets that NVNG transceivers operating in the United States must communicate with or through U.S. authorized space stations only, and that

such communications must be authorized as well by the space station licensee or an authorized vendor. One commenter asked that we devise a rule that will allow domestically authorized user transceivers to access foreign-licensed NVNG space station systems. We do not believe that this type of arrangement should be dealt with by regulation. In the past, arrangements for U.S. licensees to access foreign space stations for either domestic or international use have been made on a bilateral, government-to-government basis. We believe that we will best be able to determine the extent to which such access should be permitted by continuing this approach. The rules that we have adopted will not preclude entering into arrangements for such access with countries that license non-geostationary satellite systems and permit roaming by areas have technically compatible transceivers designed to operate with systems licensed in the United States.

Once authorized to access a U.S.-licensed space station system, a roaming user's transceiver operations will be deemed to fall within the umbrella of the blanket earth station license held by the system operator or service vendor authorized by the system licensee. Because of the large number of technically identical terminals, and the likely short-term use of a roaming unit within the United States, it would be an unnecessarily onerous burden to require issuance of a separate license to each individual transceiver user. By placing the ultimate responsibility for transceiver operations upon the system operator or service vendor as earth station licensee, we believe that the public interest can be well protected without inhibiting the use of these units by unnecessary licensing burdens. Thus, we have adopted § 25.135 (c) and (d) as proposed.

C. License Terms and Renewals

Earth Stations

NVNG subscriber user transceivers will be authorized pursuant to "blanket" earth station licenses, whereby a single licensee will be responsible for the operations of a specific number of technically identical units. As proposed in the Notice, the ten-year license term will commence on the date that the earth station license is granted.

Space Stations

As in the case of NVNG earth stations, we have proposed a blanket licensing approach to the authorization of NVNG space stations. Entire satellite systems in this service will be licensed to operate for periods of ten years, commencing upon the date that the licensee certifies that its first satellite is successfully placed into orbit and operational. The operating license of all other system satellites launched within the ten year period will expire on that same date. Applications to renew a space station system license must be filed by the end of the seventh year of the existing system license. This period of time will allow the Commission sufficient time to act on replacement applications, will give interested parties adequate notice of an operator's intent, and will not unduly force existing licensees into premature decisions.

In the Notice, we stated that NVNG licensees, like licensees in other satellite services, will generally be given replacement system authority if the frequencies remain available for use by comparable types of systems. Two of the applicants request that we codify this system replacement expectancy, noting that not only are NVNG systems expensive to construct and operate, but that NVNG customers deserve the assurance of continued service availability. Accordingly, they suggest adoption of a rule that will assure system operators of reauthorization so long as they have a record of consistent regulatory compliance. At a minimum, they allege, we should incorporate a rule that embodies our policy generally to authorize replacement systems if the frequencies remain available. As we stated in the Notice, any number of intervening circumstances may inhibit our grant of replacement authority. We are therefore reluctant to attempt to define the exact terms under which we will grant replacement system authority ten years hence. For example, at that time, we may have devised efficiency standards, which could interfere with our ability to reauthorize an existing type or size of system. Rather than attempt to create at this time an exhaustive list of conditions precedent to the grant of replacement authority, which list may alternatively prove to be either too inclusive or too exclusive, we continue to believe that our general policy will most accurately meet the public interest. This policy will provide NVNG operators with assurance that we generally intend to grant replacement system authority, but will not hobble our ability to examine all factors that may ultimately prove relevant to such a grant.

D. System Construction, Milestones

Space station system licensees will be required to notify us when their first system satellite is launched and operational. Milestone deadlines, which are the dates by which construction of a system must be commenced and completed and satellites launched, will not be codified but will be established in each individual license. This will allow us to consider an individual applicant's circumstances when developing these guidelines. As a general matter, a permittee must commence construction of the first two satellites of its system within one year of grant of the construction permit, and begin construction of all remaining satellites within three years of grant. Construction of the first two satellites must be completed within four years of grant and the entire system must be launched and operational within six years. One commenter has urged the Commission to modify its milestone proposal to reflect the realities of smaller systems, suggesting that it is unduly burdensome to insist that a permittee of a small system be compelled to commence construction of such a proportionately high number of satellites within the first year. Instead, it has been suggested that a system permittee proposing to operate five satellites or fewer be required to commence construction of only a single satellite within the first year. While we decline to create a specific policy regarding system milestones for permittees proposing to operate fewer than six satellites, we agree with this general assessment. It is this type of situation that underlies our determination not to codify absolute milestone limits, but to retain the flexibility to consider all factors involved in their imposition. In light of the expressed concern over the adequacy of the allocated spectrum and the possibility of warehousing this scarce resource, we intend to continue our longstanding policy of equitably imposing, and enforcing, milestone commitments.

E. Frequency Assignments

We have proposed that each applicant specify precisely the frequencies that it intends to use for its service and feeder links. If the proposed operations appear compatible with other authorized uses, we will license the applicant to use the requested frequencies on a non-exclusive basis. This section raised considerable controversy. Arguing that the spectrum sharing scheme proposed by the applicants in the negotiated rulemaking will result in both an undesirable duopoly and spectrum warehousing, one commenter proposed that we instead (1) make frequency assignments based on our assessment of an applicant's "real near term

requirements," and (2) allow system expansion only after a licensee is able to demonstrate a specific level of system usage. However, this is a first generation service. We do not know how quickly, or in what manner, the service will grow. The applicants have presented us with their own best estimates regarding their actual spectrum usage requirements. Different, arbitrarily imposed limits on system size could force a licensee into what may very well be an artificially, and unsupportably, low system capacity.

If inadequate capacity is licensed initially, the problem is not easily resolved. Once LEO satellite systems are placed in orbit, they cannot be expanded to meet demand until the next generation is launched. By that time, expansion may be hindered by other factors. Licensee will have six years to commence operation of their systems. By the time they are launched and filled to the preordained capacity, there may be no room for these first generation systems to expand. Indeed, system capacity may have to be decreased over time as U.S.-authorized NVNG systems coordinate their operations with those of neighboring jurisdictions. If we grant licensees access to only a bare minimum amount of spectrum, it is thus conceivable that their systems will prove too limited to serve customer needs or achieve commercial viability. While maximum entry has always been a major concern in the evolution of this service, it must not take precedence over our ability to license viable systems.

We would be more likely to entertain the notion of imposing our own limits on a licensee's spectrum usage and power levels if we had sufficient information regarding the ultimate commercial and technical development of the NVNG MSS, or if the first round applicants proposed to use all of the available spectrum. However, we are not prescient, and the applicants do not propose to occupy the entire NVNG spectrum resource. Some unassigned NVNG spectrum remains available under the applicants' sharing proposal, additional allocated spectrum should become available for use in 1997 and beyond, and the majority of the spectrum that will be non-exclusively assigned to licensees can be used by future licensees as well. Accordingly, we will continue to leave decisions regarding appropriate system size and configuration to the applicants themselves.

F. Spectrum Efficiency

We have undertaken from the beginning of this rulemaking the development of rules that will further the efficient use of the NVNG MSS spectrum. During the course of the negotiated rulemaking, the Committee debated at great length the possibility of imposing concise spectrum efficiency requirements upon NVNG space station operators. These discussions failed to elicit a sound, mutually agreeable solution. Accordingly, we proposed in our *Notice* to defer the imposition of efficiency standards until we can examine the technical and commercial development of the service.

As an initial matter, the commenters unanimously agree that it is inadvisable at this time to mandate a single modulation and accessing technique for this service. There is no current need, and indeed no factual basis upon which, to do so. One applicant continues to urge our reconsideration of an efficiency standard that the company has advanced throughout the course of this rulemaking. Generally, that standard would require system operators to make service available in the United States at least 75% of the time. This proposal as well as others, was discussed at length in the negotiated rulemaking. During those meetings, the Committee was unable even to define the concept of efficiency as it relates to this service. The problems that plagued the Committee during its deliberation of this subject remain. We have no experience with commercial NVNG MSS systems operating in these frequency bands. Without experience, we do not know which technologies will even prove workable, much less preferable, as different services attempt to coexist within this particular spectrum. Further, we do not know how consumer demand for services will evolve in the NVNG MSS. In any event, it is not "efficient" to mandate at this time either use of a technology that may not work, or a level of available service that may not be supported by the market. We do expect to address the issue of efficiency standards in future proceedings.

G. Regulatory Treatment

In the Notice, we proposed that applicants be allowed to request classification as either common or private carriers. In accordance with existing policy, the Commission would then determine whether such classification would be in the public interest. The comments universally supported this proposal. Since adoption of the Notice, section 332 of the Communications Act, 47 U.S.C. 332, has been amended to establish a new category of mobile services called "commercial mobile services" (CMS). Section 332 now requires that CMS providers be treated as common carriers, but the Commission has authority to forebear from most Title II regulation for CMS providers. Subsection 332(c)(5), however, states that the Commission may continue to determine whether the provision of space segment capacity by satellite systems to CMS providers should be treated as common carriage. Accordingly, we believe that we continue to have the discretion to make determinations regarding the regulatory classification of NVNG space station licensees. As we stated in the Notice, NVNG services are not inherently common carrier in nature under the guidelines of the *NARUC I* decision. Accordingly, we will not require NVNG space station licensees to provide system access to CMS providers on a common carriage basis. However, earth station licensees will be treated as common carriers if their service offerings fall within the new definition of CMS. We also proposed that NVNG licensees operating as common carriers should be subject to streamlined regulation. We have adopted that proposal, as we believe that it will ease the regulatory burden on NVNG licensees, without harm to the public interest. Thus, all NVNG common carrier space and earth station licensees will be subject to streamlined regulation. In addition, we note that the issue of forbearance from tariff regulation of domestic CMS providers is now under consideration in a separate CMS Rulemaking.

H. Application Amendments

In the *Notice*, we suggested that applicants be given 90 days in which to amend their applications to conform to the new regulations. One applicant argues that it is unrealistic to expect applicants to make all necessary changes in system design and business plans and to secure reasonable financial commitments within ninety days of adoption of final rules. It therefore proposes that applicants be given nine months in which to meet the newly-imposed financial showing. We believe, however, that an applicant's financial arrangements could well have commenced prior to the completion of this rulemaking. While the final rules have only been established herein, their probable substance has been largely apparent for some time. In light of the fact that the financial qualification standard adopted today is not onerous, we do not feel that it will be in the public interest to bifurcate and extend the amendment period, and thus further to delay licensing of these systems. We therefore will allow applicants in this

processing round 90 days from the effective date of these regulations in which to file all conforming amendments and fees for system construction, launch and operation.

An applicant has also requested clarification that all system amendments necessary to bring applications into conformance with these newly-imposed rules will be accepted without procedural disadvantage to the applicants. For example, if certain of these amendments were deemed, under ordinary circumstances, to be "major" amendments, the entire application would be considered newly-filed as of the date of the amendment. The application would then no longer be eligible for consideration in this processing round, because of its failure to be properly on file as of the original application cut-off date. Therefore, we clarify that to the extent that amendments are necessary because of obligations that we have imposed upon applicants after the cut-off date, the amendments will be accepted without adverse consequence. We emphasize, however, that only necessary amendments will be accepted unconditionally. All others will be treated under the existing procedural regulations.

I. International Obligations

It was suggested that we impose license conditions on NVNG MSS service providers, requiring the successful completion of both domestic and international coordination of their systems prior to grant. The International Telecommunication Union (ITU) has established a procedure governing the coordination of mobile satellite systems. That procedure assures that worldwide coordination is accomplished in a manner that places the burden on both the affected administration and the administration seeking coordination to cooperate in the resolution of conflicts. ITU regulations do not, however, require successful coordination of a system prior to licensing by an individual administration. Such a requirement could empower another administration to employ dilatory tactics merely to impede implementation of U.S. systems.

In a similar vein, a second commenter urges the Commission to consult with "appropriate ITU organizations" before the promulgation of final rules that, it alleges, may foreclose competition and promote spectrum inefficiency. While the United States is an active participant in a number of global fora, including the ITU and its Radiocommunications Sector, we believe that it is unnecessary and imprudent to await further global action on LEO MSS issues prior to the promulgation of wholly domestic regulations. Such a delay would needlessly hamper the efforts of domestic licensees to make available to the U.S. public these innovative services. As we stated in the Notice, we will follow the coordination procedures prescribed for non-geostationary satellite systems; will work with the global community to promote LEO services through discussion of sharing techniques and other technical issues; and will continue to require our licensees to meet both their international obligations and any national requirements imposed by other licensing administrations. Because we will require our licensees to comply with international procedures, including the national requirements of any other licensing administrations, the efforts of these other jurisdictions to implement NVNG service within their own territories will remain within their control.

J. Distress and Safety Communications

The Interagency Committee on Search and Rescue (ICSAR) noted that NVNG offers the potential to greatly improve emergency communications to benefit search and rescue (SAR) and disaster response operations, and recommends that NVNG applications address certain SAR concerns. Specifically, ICSAR suggests that applicants in the NVNG MSS disclose how their systems will: (1) Determine the grid coordinates of any distress signal received; (2) determine and direct messages to the appropriate search and rescue organization for assistance; and (3) design the communications interface with search and rescue organizations to utilize the public switched data network. While we agree with ICSAR that NVNG services have the potential to complement existing safety services, we note that the NVNG services are not intended to replace existing international safety services and cannot be used in lieu of distress beacons, such as emergency locator transmitters or emergency position indicating radio beacons, that are required to be carried by international agreement or statute. We thus believe that ICSAR's proposal to require NVNG applicants to show specific methods of interconnection to route distress communications to SAR organizations is not necessary. System operators have adequate incentives to work to meet demands identified by ICSAR in a timely and cost-effective manner. We therefore do not feel that it is necessary to impose upon NVNG applicants the requirements suggested by ICSAR. We expect, however, that NVNG system operators who choose to offer distress communications capability will coordinate their efforts with ICSAR and SAR organizations.

K. Public Notice Requirement

The Commission has also proposed to modify its rules to specify that its public notice requirements do not apply to assignments or transfers of space station authorization that do not involve a substantial change of control. Because this amendment merely codifies our existing practice, and will in no way adversely impact the public interest, we have adopted § 25.151(c)(5) as proposed.

List of Subjects

47 CFR Part 2

Communications common carriers.

47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Title 47 of the Code of Federal Regulations, parts 2 and 25, are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.1 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 2.1 Terms and definitions.

* * * * *

Non-Voice, Non-Geostationary Mobile-Satellite Service. A mobile-satellite service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

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

Authority: Sections 101–404, 76 Stat. 419–427; 47 U.S.C. 701–744, sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.

4. Section 25.201 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 25.201 Definitions.

* * * * *

Non-Voice, Non-Geostationary Mobile-Satellite Service. A mobile-satellite service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

* * * * *

5. Section 25.114 is amended by revising paragraph (c)(18), and adding a new paragraph (c)(27), to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(c) * * *

(18) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic, and NVNG MSS, satellite systems shall provide the financial information required by § 25.140(b)–(e) or § 25.142(a)(4). Applications for international satellite systems authorized pursuant to Establishing of Satellite Systems Providing International Communications, 50 FR 42266 (October 18, 1985), 101 FCC 2d 1046 (1985), *recon.* 61 RR2d 649 (1986), *further recon.* 1 FCC Rcd 439 (1986), shall provide the information required by that decision.

* * * * *

(27) Applications to license multiple space station systems in the non-voice, non-geostationary mobile-satellite service under blanket operating authority shall also provide all information specified in § 25.142.

6. Section 25.115 is amended by adding a new paragraph (d) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(d) User transceivers in the non-voice, non-geostationary mobile-satellite service need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 493 and specifying the number of units to be covered by the blanket license. FCC Form 430 should be submitted if not already on file in conjunction with other facilities licensed under this subpart. Each application for a blanket license under this section shall include the information described in § 25.135.

7. Section 25.120 is amended by revising paragraphs (d) and (e) to read as follows:

§ 25.120 License term and renewals.

* * * * *

(d) Space stations.

(1) For space stations in the fixed-satellite services, the license term will begin at 3 a.m. EST on the date the licensee certifies to the Commission that the satellite has been successfully placed into orbit and that the operations of the satellite fully conform to the terms and conditions of the space station radio authorization.

(2) For space station systems in the non-voice, non-geostationary mobile-satellite service, the license term will begin at 3 a.m. EST on the date that the licensee certifies to the Commission that its initial space station has been successfully placed into orbit and that the operations of that satellite fully conform to the terms and conditions of the space station system authorization. All space stations launched and brought into service during the ten-year license term shall operate pursuant to the system authorization, and the operating authority for all space stations will terminate upon the expiration of the system license.

(e) Renewal of licenses. Applications for renewals of earth station license must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days, before the expiration date of the license. Applications for space station system replacement authorization in the non-voice, non-geostationary mobile-satellite service shall be filed no earlier than 90 days and no later than 30 days, prior to the end of the seventh year of the existing system license.

8. Section 25.130 is amended by revising paragraph (b) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(b) A frequency coordination analysis in accordance with § 25.203 shall be provided for earth stations transmitting in the frequency bands shared with equal rights between terrestrial and space services, except that transceiver units associated with the non-voice, non-geostationary mobile-satellite service shall instead provide the information required by § 25.135.

* * * * *

9. Section 25.133 is amended by revising paragraph (b) to read as follows:

§ 25.133 Period of construction; certification of commencement of operation.

* * * * *

(b) Each license for a transmitting earth station included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification containing the following information: The name of the licensee, file number of the application, call sign of the antenna, date of the license, a certification that the facility as authorized has been completed, that each antenna facility has been tested and is within 2 dB of the pattern specified in § 25.209, and that the station is operational including the date of commencement of service, and will remain operational during the license period unless the license is submitted for cancellation. For stations authorized under § 25.115 (c) and (d) (Large Networks of Small Antennas operating in the 12/14 GHz bands; User transceivers in the non-voice, non-geostationary mobile-satellite service), a certificate must be filed when the network is put into operation.

* * * * *

10. A new § 25.135 is added to read as follows:

§ 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.

(a) Each applicant for a blanket earth station license in the non-voice, non-geostationary mobile-satellite service shall demonstrate that transceiver operations will not cause unacceptable interference to other authorized users of the spectrum, based on existing system information publicly available at the Commission at the time of filing, and will comply with operational conditions placed upon the systems with which they are to operate in accordance with § 25.142(b). This demonstration shall include a showing as to all the technical parameters, including duty cycle and power limits, under which the individual user transceivers will operate.

(b) Transceiver units associated with the non-voice, non-geostationary mobile-satellite service may not be operated on civil aircraft. All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having a receiver operating in the 137–138 MHz band shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board a civil aircraft. It must be turned off at all times while on board such an aircraft."

This subsection shall not apply to transceiver units whose receivers are incapable of radiating in the 108–137 MHz frequency bands.

(c) Transceiver units in this service are authorized to communicate with and through U.S. authorized space stations only. No person shall transmit to a space station unless the specific transmission is first authorized by the space station licensee or by a service vendor authorized by that licensee.

(d) Any transceiver unit associated with this service will be deemed, when communicating with a particular non-voice, non-geostationary mobile-satellite service system pursuant to paragraph (c) of this section, to be temporarily associated with and licensed to the system operator or service vendor holding the blanket earth station license awarded pursuant to § 25.115(d). The domestic earth station licensee shall, for such temporary period, assume the same licensee responsibility for such transceiver as if such transceiver were regularly licensed to it.

11. Section 25.140 is amended by redesignating paragraph (d)(2)(iii) as paragraph (d)(2)(iv), and by adding a new paragraph (d)(2)(iii) to read as follows:

§ 25.140 Qualifications of domestic fixed-satellite space station licensees.

* * * * *

(d) * * *

(2) * * *

(iii) The terms of any grant, or other external funding commitment intended to be used to finance the proposed construction, acquisition or operation of the requested facilities including such information as the identity of the grantor(s), the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies;

* * * * *

12. A new § 25.142 is added to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

(a) *Space station application requirements.* (1) Each application for a space station system authorization in the non-voice, non-geostationary mobile-satellite service shall describe in detail the proposed non-voice, non-geostationary mobile-satellite system, setting forth all pertinent technical and operational aspects of the system, and the technical, legal, and financial qualifications of the applicant. In particular, each application shall include the information specified in § 25.114, except that in lieu of the information concerning orbital locations requested in § 25.114(c)(6), the applicant shall specify the number of space stations and applicable information relating to the altitude(s), argument(s) of perigee, service arc(s), right ascension of ascending node(s), eccentricity, and inclination of the space stations (all referenced to the same time) that will comprise its system. Applicants must also file information demonstrating compliance with all requirements of this section, and showing, based on existing system information publicly available at the Commission at the time of filing, that they will not cause unacceptable interference to any non-voice, non-geostationary mobile-satellite service system authorized to construct or operate.

(2) Applicants for a non-voice, non-geostationary mobile-satellite must identify the power flux density produced at the Earth's surface by each space station of their system in the frequency bands 137–138 MHz and 400.15–401 MHz, to allow determination of whether coordination with terrestrial services is required under international footnotes 599A and 647B of § 2.106 of the Commission's Rules. In addition, applicants must identify the measures they would employ to protect the radio astronomy service in the 150.05–153 MHz and 406.1–410 MHz bands from harmful interference from unwanted emissions.

(3) Emission limitations. (i) Applicants in the non-voice, non-geostationary mobile-satellite service shall show that their space stations will not exceed the emission limitations of § 25.202(f) (1), (2) and (3), as calculated for a fixed point on the Earth's surface in the plane of the space station's orbit, considering the worst-case frequency tolerance of all frequency determining components, and maximum positive and negative Doppler shift of both the uplink and downlink signals, taking into account the system design.

(ii) Applicants in the non-voice, non-geostationary mobile-satellite service shall show that no signal received by their satellites from sources outside of their system shall be retransmitted with a power flux density level, in the worst 4 kHz, higher than the level described by the applicants in paragraph (a)(2) of this section.

(4) Financial qualifications. Each applicant for space station system authorization in the non-voice, non-geostationary mobile-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to proceed expeditiously with the construction, launch and operation for one year of the first two space stations of its proposed system immediately upon grant of the requested authorization. Failure to make such a showing will result in the dismissal of the application. This showing shall include all information described in § 25.140 (c), (d) and (e).

(5) Replacement of space stations within the system license term. The licensee need not file separate applications to construct, launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(i) The licensee intends to launch a space station that is technically identical to those authorized in its system license, and

(ii) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(b) *Operating conditions.* In order to ensure compatible operations with authorized users in the frequency bands to be utilized for operations in the non-voice, non-geostationary mobile-satellite service, non-voice, non-geostationary mobile-satellite service systems must operate in accordance with the conditions specified in this section.

(1) Service limitation. Voice services may not be provided.

(2) Coordination requirements with Federal government users.

(i) The frequency bands allocated for use by the non-voice, non-geostationary mobile-satellite service are also authorized for use by agencies of the Federal government. The Federal use of frequencies in the non-voice, non-geostationary mobile-satellite service frequency bands is under the regulatory jurisdiction of the National Telecommunications and Information Administration (NTIA).

(ii) The Commission will use its existing procedures for liaison with NTIA to reach agreement with respect to achieving compatible operations between Federal government users under the jurisdiction of NTIA and non-voice, non-geostationary mobile-satellite service systems (including user transceivers subject to blanket licensing under § 25.115(d)) through the frequency assignment and coordination practices established by NTIA and the Interdepartment Radio Advisory Committee (IRAC). In order to facilitate such frequency assignment and coordination, applicants shall provide the Commission with sufficient information to evaluate electromagnetic

compatibility with the Federal government use of the spectrum, and any additional information requested by the Commission. As part of the coordination process, applicants shall show that they will not cause unacceptable interference to authorized Federal government users, based upon existing system information provided by the Government. The frequency assignment and coordination of the satellite system with Federal government users shall be completed prior to grant of construction authorization.

(iii) The Commission shall also coordinate with NTIA/IRAC with regard to the frequencies to be shared by those earth stations of non-voice, non-geostationary mobile-satellite service systems that are not subject to blanket licensing under § 25.115(d), and authorized Federal government stations in the fixed and mobile services, through the exchange of appropriate systems information.

(3) Coordination among non-voice, non-geostationary mobile-satellite service systems. Applicants for authority to establish non-voice, non-geostationary mobile-satellite service systems are encouraged to coordinate their proposed frequency usage with existing permittees and licensees in the non-voice, non-geostationary mobile-satellite service whose facilities could be affected by the new proposal in terms of frequency interference or restricted system capacity. All affected applicants, permittees, and licensees shall, at the direction of the Commission, cooperate fully and make every reasonable effort to resolve technical problems and conflicts that may inhibit effective and efficient use of the radio spectrum; however, the permittee or licensee being coordinated with is not obligated to suggest changes or re-engineer an applicant's proposal in cases involving conflicts.

(4) Safety and distress communications. Stations operating in the non-voice, non-geostationary mobile-satellite service that are used to comply with any statutory or regulatory equipment carriage requirements may also be subject to the provisions of sections 321(b) and 359 of the Communications Act of 1934, as amended. Licensees are advised that these provisions give priority to radio communications or signals relating to ships in distress and prohibit a charge for the transmission of maritime distress calls and related traffic.

(c) *Reporting requirements.* All operators of non-voice, non-geostationary mobile-satellite service systems shall, on June 30 of each year, file a report with the Common Carrier Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) A listing of any non-scheduled space station outages for more than thirty minutes and the cause(s) of such outages;

(2) A detailed description of the utilization made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for domestic transmission, the amount of capacity (if any) sold but not in service, and the amount of unused system capacity; and

(3) Identification of any space stations not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

13. Section 25.151 is amended by revising paragraph (c)(5) to read as follows:

§ 25.151 Public notice period.

* * * * *

(c) * * *

(5) For consent to an assignment or transfer of control of a space station authorization or a transmitting earth station authorization, where the assignment or transfer does not involve a substantial change in ownership or control; or

* * * * *

14. Section 25.202 is amended by adding a new paragraph (a)(3), and by revising paragraph (f)(4), to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

(a) * * *

(3) The following frequencies are available for use by the non-voice, non-geostationary mobile-satellite service:

137–138 MHz: space-to-Earth
148–149.9 MHz: Earth-to-space
149.9–150.05 MHz: Earth-to-space
399.9–400.05 MHz: Earth-to-space
400.15–401 MHz: space-to-Earth

Until January 1, 1997, the allocations in the 149.9–150.05 MHz and 399.9–400.05 MHz bands may be used on a secondary basis only. Since the 399.9–400.05 MHz band is not allocated internationally to the mobile-satellite service, all operations outside the United States will be on a non-interference basis only.

* * * * *

(f) * * *

(4) In any event, when an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraphs (f) (1), (2) and (3) of this section.

* * * * *

[FR Doc. 93–31192 Filed 12–22–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Parts 80, 87 and 94

[PR Docket 93–39; FCC 93–506]

Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission has adopted a Report and Order. The Report and Order is part of a Commission-wide initiation to reexamine burdensome regulations. Accordingly, the Report and Order relaxes or eliminates certain rules that impose unnecessary regulatory burdens in certain private radio services.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sean White, (202) 632–7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 93–506, Adopted November 19, 1993; and released December 14, 1993. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337–1433.

Summary of Notice

1. First, the Report and Order amends §§ 80.25(a) and 87.27 of the Commission's Rules, 47 CFR 80.25(a) and 87.27, to extend the current license term for aircraft and ship station licenses from five years to ten years. Section 307(c) of the Communications Act of 1934 (Communications Act), 47 U.S.C. 307(c) authorizes a ten-year term for such licenses. The current five year term requirement imposes an unnecessary burden both on the licensees, who must prepare and file the application form (there is a $35 application fee), and on the Commission, which must process the approximately 125,000 ship station and 40,000 aircraft station license applications it receives each year. Accordingly, the Commission modifies Sections 80.25 and 87.27 to provide a

ten-year license term for ship and aircraft station licenses.

2. Second, the Report and Order eliminates the requirement contained in § 94.85 of the Commission's Rules, 47 CFR 94.85, that licensees in the Private Operational Fixed Microwave Service perform specified measurements to ensure that their transmitters are maintained within the frequency tolerances required by § 94.67, 47 CFR 94.67. The records specified in § 94.85, however, are not currently used by the Commission. Licensees must comply with our frequency tolerance rules at all times, so a one-time measurement serves little purpose. There does not appear to be a need, therefore, for a rule that requires licensees to follow a predesignated set of steps to prove compliance.

3. Finally, the Report and Order eliminates the requirement contained in §§ 94.113(a), (b), (d), (e) (f), and (g) of the Commission's Rules, 47 CFR 94.113(a), (b), (d), (e), (f), and (g), that licensees in the Private Operational Fixed Microwave Service maintain numerous records on station maintenance, including transmitter measurements and antenna inspections. Because licensees are required to maintain their systems in conformance with our rules, it is unnecessary to require specifically that they retain maintenance records. The purpose of retaining such records is to provide evidence of conformance with equipment specifications. If a station fails Commission inspection, or causes interference due to technical deficiencies, however, past compliance does not rectify current violation of the Commission's Rules. Failure to meet the Commission's technical standards, whether efforts have been made to do so or not, subjects a licensee to consequences such as the imposition of a monetary forfeiture. Therefore, the Commission eliminates the unnecessary and burdensome obligations imposed by §§ 94.113(a), (b), (d), (e), (f), and (g).

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will decrease burden hours imposed on the public.

List of Subjects

47 CFR Part 80

Radio.

47 CFR Part 87

Radio.

47 CFR Part 94

Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rule

Part 80 of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat.1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.25 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by adding new paragraph (a), and revising newly redesignated paragraph (b) to read as follows:

§ 80.25 License term.

(a) Licenses for ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal.

* * * * *

Part 87 of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.27 is amended by redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively, adding a new paragraph (a), and revising newly designated paragraph (b) to read as follows:

§ 87.27 License term.

(a) Licenses for aircraft stations will normally be issued for a term of ten years from the date of original issuance, major modification or renewal.

(b) Licenses other than aircraft stations in the aviation services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal.

* * * * *

Part 94 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 94 is revised to read as follows:

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

§ 94.85 [Removed]

2. Section 94.85 is removed in its entirety.

3. Section 94.113 is revised to read as follows:

§ 94.113 Station records.

When a station in this service has an antenna structure which is required to be illuminated, appropriate entries in its station records (logs) shall be made as follows:

(a) The time the tower lights are turned on and off each day, if manually controlled.

(b) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(c) In the event of any observed or otherwise known failure of a tower light:

(1) Nature of such failure.

(2) Date and time the failure was observed or otherwise noted.

(3) Date, time, and nature of the adjustments, repairs, or replacements made.

(4) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(5) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(d) Upon completion of the 3-month periodic inspection required by § 94.111(c):

(1) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(2) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

[FR Doc. 93–31353 Filed 12–22–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 931223-3323; I.D. #111893C]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Final rule.

SUMMARY: The Office of the Solicitor, Department of the Interior, issued a legal opinion on October 4, 1993, which construed the scope of the fishing rights of the Yurok and Hoopa Valley Indian Tribes of the Klamath River Basin, California (Solicitor's Opinion). In that opinion, the Solicitor concluded that the Indian Tribes of the reservations have a Federally protected right to the fishery resource sufficient to support a moderate standard of living or 50 percent of the total available harvest of Klamath-Trinity basin salmon, whichever is less. The Solicitor further concluded that given the current depressed condition of Klamath River basin salmon stocks, and absent any agreement among the parties to the contrary, the Tribes are entitled to 50 percent of the harvest.

The Secretary of Commerce (Secretary) issues this final rule to recognize that the Federally reserved fishing rights of the Yurok and Hoopa Valley Tribes, as acknowledged and quantified in the Solicitor's Opinion, are applicable law for the purposes of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Accordingly, all future fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California approved by the Secretary must provide for harvest allocations to the Yurok and Hoopa Valley Tribes as set out in the Solicitor's Opinion and referenced in the Appendix to the regulations governing the Pacific salmon fishery.

EFFECTIVE DATE: This action becomes effective January 24, 1994.

ADDRESSES: Requests for copies of the Solicitor's Opinion and further information should be addressed to Dr. Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney R. McInnis at (310) 980-4030, or Mr. William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework fishery management plan (FMP) that was approved in 1984. It has been amended four times (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; and 56 FR 26774, June 11, 1991). Management measures recommended by the Pacific Fishery Management Council (Council) under the FMP must be approved by the Secretary before they become effective. Indian fishing on the Hoopa Valley and the Yurok Reservations is regulated by the Department of the Interior under regulations published at 25 CFR part 250.

Although numerous court decisions have confirmed that the Yurok and Hoopa Valley Indians have Federally protected fishing rights to the fishery resource in the rivers running through their reservations, none of the decisions decided whether the Tribes' fishing rights entitle them to a specific allocation or quantified share of the resource. The FMP specifies that, to the maximum extent possible, optimum yield will be set at a level that fulfills the requirements of the Indian fishery for salmon on the Klamath River and that the Council must take the effects of in-river harvest on spawner escapement into account while setting ocean harvest levels. The Klamath Fishery Management Council (KFMC), established by Public Law 99-552, October 27, 1986, produced a Long-term Plan for Management of Harvest of Anadromous Fish Populations of the Klamath River Basin which states that an allocation system will be consistent with the legally defined harvest share allocable to tribal reserved fishing rights, and will allocate the remaining share among ocean and in-river harvesters.

Prior to the Solicitor's Opinion, the Tribes' reserved fishing rights had not been quantified. As a result, the KFM has not been able to reach the required consensus for making recommendations to the Council regarding ocean harvest levels of Klamath Basin salmon stocks.

The Solicitor's Opinion now provides a clear legal framework for allocating the salmon harvest between the Tribes and various other in-river and ocean commercial and recreational fishermen. Both the Department of Justice and the Department of Commerce reviewed the Solicitor's Opinion. Under section 303 of the Magnuson Act, ocean fishery management measures must comport with all other applicable laws. By this notice, the Department of Commerce acknowledges that the Federally reserved fishing rights of the Yurok and Hoopa Valley Tribes, as described and quantified in the Solicitor's Opinion, are applicable law for purposes of the Magnuson Act. Subsequently, this action amends 50 CFR part 661 which governs the Pacific salmon fisheries, by referencing the Solicitor's Opinion in the Appendix of the Pacific salmon regulations. The Secretary will only approve ocean salmon management measures recommended by the Council that provide for tribal harvest opportunity consistent with the rights recognized in the Solicitor's Opinion and meet the spawning escapement goal for Klamath River fall chinook salmon. If the Council does not recommend management measures consistent with the Solicitor's Opinion, the Secretary may issue emergency regulations to ensure tribal harvest opportunity consistent with the Solicitor's Opinion.

Classification

This rule does not impose any new requirements on the Government or the public, but merely articulates NMFS' interpretation of what is applicable law for purposes of section 303 of the Magnuson Act.

The Assistant Administrator for Fisheries, NOAA, has determined that this interpretative rule is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination is being submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

Because notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act for interpretative rules, and because no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis is required and none has been prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

This rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: December 20, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

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

2. The appendix to part 661 is amended by renumbering paragraphs II.B.11. and II.B.12. as paragraphs II.B.12. and II.B.13, respectively, and by adding a new paragraph II.B.11. as follows:

Appendix

* * * * *

II * * *

B * * *

11. Yurok and Hoopa Valley Tribal fishing rights. For purposes of section 303 of the Magnuson Act, the Federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion [1] dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303, allowable ocean harvest must be consistent with all applicable laws.

* * * * *

[FR Doc. 93–31355 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–22–M

[1] Copies of the Solicitor's Opinion are available from the Office of the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

Proposed Rules

Federal Register
Vol. 58, No. 245
Thursday, December 23, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO-370-A5; FV93-930-1]

Proposed Tart Cherry Marketing Agreement and Order; Promulgation Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearings on proposed marketing agreement and order.

SUMMARY: This notice announces additional times and locations of public hearings to be held to consider a proposed marketing agreement and order to cover tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

DATES: The additional hearings will be held on:

1. January 10 and 11, 1994, in Rochester, NY;
2. January 13 and 14, 1994, in Provo, UT;
3. February 14 through 16, 1994, in Portland, OR.

All sessions will begin at 9 a.m.

ADDRESSES: The hearings will be held at the following locations:

1. Rochester—Radisson Hotel, Rochester Plaza, 70 State Street;
2. Provo—Provo Holiday Inn, 1460 South University Avenue;
3. Portland—Holiday Inn Airport, 8439 Northeast Columbia Boulevard.

FOR FURTHER INFORMATION CONTACT: (1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, room 2523-S, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 720-5053.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326-2725.

SUPPLEMENTARY INFORMATION: This notice is an addendum to a notice of hearing which appeared in the **Federal Register** (58 FR 63108, November 30, 1993). A public hearing was held December 15-17, 1993, in Grand Rapids, Michigan, to receive evidence on the marketing order proposal. These additional hearings allow receipt of further evidence on the marketing order proposal from growers, handlers, processors, or other interested parties who were not able to attend the Grand Rapids, Michigan, hearing.

The proposed agreement and order would authorize volume regulation, grade, size, maturity, pack and container regulations including mandatory inspection. The proposed order would also authorize production, processing and marketing research and promotion projects. The proposal was submitted by the Cherry Marketing Institute, a major industry organization, on behalf of interested cherry growers and processors (handlers). The program would be financed by assessments levied on handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee, appointed by the Secretary, would be composed of 18 members (17 growers and handlers and a public member).

The additional hearings will be held January 10-11, 1994, in Rochester, New York, at the Radisson Hotel, Rochester Plaza, 70 State Street; January 13-14, in Provo, Utah, at the Provo Holiday Inn, 1460 South University Avenue; and February 14-16, in Portland, Oregon, at the Holiday Inn Airport, 8439 Northeast Columbia Boulevard. All sessions will begin at 9 a.m. except the Portland, Oregon session will begin at 1 p.m.

Testimony is invited at the hearings on the proposed order and on all the recommendations and proposals contained in the notice published in the **Federal Register** on November 30, 1993 (58 FR 63108), as well as any appropriate modifications or alternatives.

Authority: 7 U.S.C. 601-674.

Dated: December 20, 1993.

Lon Hatamiya,
Administrator.

[FR Doc. 93-31438 Filed 12-22-93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93-20]

Capital Adequacy: Deferred Tax Assets

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its capital adequacy rules with respect to deferred tax assets of national banks. The proposed amendment would limit the amount of certain deferred tax assets that may be included in a national bank's Tier 1 capital for risk-based and leverage capital purposes.

The proposal was developed jointly by the OCC, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (hereafter, the "agencies") to respond to the Financial Accounting Standards Board's (FASB) issuance of Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (FAS 109) in February 1992. The agencies have adopted the provisions of FAS 109 for reporting in quarterly Consolidated Reports of Condition and Income and Thrift Financial Reports beginning January 1, 1993.

In conjunction with this reporting change, the proposed amendment is expected to increase the amount of net deferred tax assets that a national bank may include when computing its regulatory capital. The OCC invites comments on all aspects of the proposed amendment.

DATES: Comments should be submitted on or before January 24, 1994.

ADDRESSES: Comments on the OCC's proposal may be submitted to Docket No. 93-20, Communications Division, Ninth floor, Office of the Comptroller of the Currency, 250 E Street, SW.,

Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Eugene W. Green, Deputy Chief Accountant, Office of the Chief National Bank Examiner, (202) 874–5180; Elizabeth B. Salomon, Professional Accounting Fellow, Office of the Chief National Bank Examiner, (202) 874–5180; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874–4460, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Origins of This Rule

In February 1992, the Financial Accounting Standards Board (FASB) issued Statement No. 109, "Accounting for Income Taxes" (FAS 109). The new statement provides guidance on how to account for income taxes, including deferred tax assets. It superseded Accounting Principles Board (APB) Opinion No. 11 (APB 11) and FASB Statement No. 96 (FAS 96), and was effective for fiscal years beginning on or after December 15, 1992. The FASB encouraged companies to adopt the statement even before the required date.

FAS 109 generally allows banks to report certain deferred tax assets they could not previously recognize. The OCC and the other federal banking and thrift agencies had certain supervisory concerns about the effect of the change on the institutions they regulate, especially with regard to their reported capital levels.

FAS 109

Under FAS 109, banks can report deferred tax assets that arise from: (1) tax carryforwards and (2) deductible temporary differences.

Tax carryforwards are deductions or credits that banks cannot use for current tax purposes, but which banks can carry forward to reduce taxable income or income taxes payable in a future period or periods. For example, when a bank's tax deductions exceed its tax revenues, the result is a net operating loss. Such losses may be used to recover taxes paid in prior years (the carryback period) or may be carried forward to reduce a bank's taxable income in a future period. The situation is similar for certain tax credits that cannot be used in the current tax period. The bank will realize the benefit of deferred tax assets arising from tax carryforwards if it generates sufficient taxable income in the permissible carryforward period.

Temporary differences arise when a bank records financial events or transactions in one period on the bank's books and recognizes them in another period, or periods, on its tax return. There are two types of temporary differences—deductible and taxable.

Deductible temporary differences reduce a bank's future taxable income. When a bank records an addition to its allowance for possible loan losses, the amount is recorded as an expense on the bank's books during the period the allowance is established or increased. The tax deductions for such losses, however, may not be taken until the losses are actually realized when the loan is charged off. The charge-off typically occurs in a subsequent period. A deferred tax asset is created for many banks when an amount has been added to the bank's allowance on the books but has not yet been charged off.

Taxable temporary differences produce additional taxable income in future periods. For example, a bank may depreciate its bank building using an accelerated depreciation method on its tax return but may use a straight-line method when recording depreciation on its books. As a result, the bank's tax depreciation will be less than its book depreciation in certain future periods. This taxable temporary difference will cause the bank to have higher taxable income in those future periods.

Deferred tax assets arising from deductible temporary differences can be realized only by: (1) Recovering taxes paid in prior years, (2) offsetting taxable temporary differences, or (3) reducing future taxable income. Deferred tax assets arising from deductible temporary differences that exceed the sum of taxable temporary differences and the amount the bank could recover from taxes paid in the permissible carryback period will be realized only if the bank generates sufficient taxable income in the permissible carryforward period. Hereafter, these deferred tax assets, as well as deferred tax assets arising from tax carryforwards, will be referred to as "deferred tax assets that are dependent upon future taxable income."

FAS 109 permits banks to record deferred tax assets that are dependent upon future taxable income. However, banks must establish a valuation allowance to adjust the recorded deferred tax asset to an amount that is more likely than not (i.e., likelihood of more than 50 percent) to be realized.

Previous GAAP and Regulatory Policy

Until FAS 109 was issued, generally accepted accounting principles (GAAP) generally did not permit banks to recognize deferred tax assets that are dependent upon future taxable income. APB 11 allowed banks to report deferred tax assets arising from tax carryforwards only if their realization was "assured beyond any reasonable doubt."

OCC supervisory policy, outlined in Banking Circular 202 (BC 202), limited the net deferred tax assets national banks may report in their quarterly Consolidated Reports of Condition and Income (Call Reports) to the amount of taxes previously paid that the bank could recover through carryback of net operating losses or unrealized tax credits. This "carryback approach" also did not permit the reporting of deferred tax assets that are dependent upon future taxable income.

Supervisory Concerns Regarding Deferred Tax Assets

The OCC is concerned about including deferred tax assets that are dependent upon future taxable income as part of regulatory capital. Whether or not the bank can realize such assets depends on whether it generates enough taxable income during the carryforward period.

As new products evolve and market conditions change, a bank's current financial condition and outlook for future income can change rapidly. Such changes make predicting future taxable income more difficult. Therefore, for many banks, including sound and well-managed banks, the judgment about the likelihood that the bank will be able to realize deferred tax assets that are dependent upon future taxable income will be highly subjective.

The OCC has additional concerns about the effect of these changes on banks that are experiencing financial difficulty. Such banks often have net operating loss carryforwards. As a result, these troubled institutions could potentially record deferred tax assets under FAS 109, even though their realistic prospects for generating sufficient future taxable income are uncertain.

As a troubled bank's condition deteriorates, it is less likely to be able to realize deferred tax assets that are dependent upon future taxable income. In such instances, FAS 109 generally requires the bank to reduce its recorded net deferred tax asset by increasing the asset's valuation allowance. The result is a charge to earnings that will reduce the bank's regulatory capital at precisely the time it needs capital the most.

The OCC also has concerns about deferred tax assets of consolidating institutions. When one bank merges with another, its ability to realize

deferred tax assets that are dependent upon future taxable income becomes more uncertain. In acquisitions structured as taxable asset purchases under the federal tax code, any net operating loss carryforwards available to the acquired bank before the purchase are generally extinguished. In an acquisition or change in control that qualifies as a tax-free reorganization, the tax code generally limits the net operating loss carryforwards of the acquired bank that can be used by the acquiring bank. These tax rules may make the ultimate realization of deferred tax assets more uncertain.

These concerns led the OCC and the other agencies to direct the institutions they supervise to delay adopting FAS 109 for regulatory reporting purposes until the agencies had determined the appropriate regulatory reporting and capital treatment.

FFIEC Request for Comment

On August 3, 1992, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment (57 FR 34135) on four alternative approaches for the regulatory reporting and the regulatory capital treatments of deferred tax assets of depository institutions. The four alternatives were (1) to adopt FAS 109 for regulatory reporting and capital calculations, (2) to adopt most provisions of FAS 109, but limit the amount of reported deferred tax assets for regulatory reporting and capital calculations to the amount allowed under the carryback approach, (3) to adopt FAS 109, but limit banks' ability to recognize deferred tax assets for regulatory reporting and capital calculations, and (4) to adopt FAS 109 for regulatory reporting and adopt one of the limits for regulatory capital calculations.

In the request for comment, the FFIEC indicated that, while no final decision would be made until all comments were received, they would prefer the second alternative. The FFIEC indicated they would prefer to adopt most provisions of FAS 109, but limit the recognition of deferred tax assets for regulatory reporting and capital calculations to the amount allowed under the carryback approach, which would be consistent with FDIC and OCC policy at that time. This approach would not allow depository institutions to report deferred tax assets that are dependent upon future taxable income as assets in the Call Report. These assets, therefore, would be excluded from calculations of regulatory capital.

The FFIEC requested comment on which of the four alternative approaches, or any other approach, would be appropriate. They also requested comment on whether some deferred tax assets possess characteristics that could alleviate their concerns, and what criteria could distinguish institutions that are likely to be able to realize net deferred tax assets that are dependent upon future taxable income. The request included a third question about whether it would be appropriate to grandfather certain deferred tax assets for state member banks and savings associations if the approach adopted was more conservative than existing GAAP.

The FFIEC received 198 comments in response to its request. The comments were primarily from banks, thrifts and holding companies. The FFIEC carefully reviewed these comments. Many commenters did not explicitly address the specific questions in the request for comment, but did so indirectly.

The vast majority of the commenters indicated that they believe there are strong reasons to adopt FAS 109 for regulatory reporting and for calculating regulatory capital. Many commenters asserted that deferred tax assets that are dependent upon future taxable income are valuable assets, particularly for healthy institutions that are likely to realize these assets. The commenters stated that FAS 109 provides criteria to measure deferred tax assets, and thereby distinguish institutions that will be able to realize such assets. Further, the commenters asserted that, in recommending the carryback approach, the agencies effectively were proposing a liquidation value approach to deferred tax assets. The commenters found this approach inconsistent with the going concern concept used in measuring other assets and liabilities.

Commenters noted that tax laws have changed significantly since the OCC and FDIC policies were developed. Beginning in 1994, losses attributable to bad debts will be able to be carried forward 15, rather than 5 years, for federal income tax purposes. Extending the carryforward period increases the likelihood that carryforwards will be realized. Commenters also pointed out that changes in tax laws that require some banking organizations to deduct charge-offs (rather than their provisions for loan losses) mean that even strong banking organizations may have large amounts of deferred tax assets that are dependent upon future taxable income. The carryback approach would not allow these institutions to recognize those assets.

Commenters expressed concern that adopting the carryback approach would create a difference between GAAP and regulatory reporting. Such a difference, they said, would create an additional reporting burden for institutions. Commenters questioned whether banking organizations would be able to compete equally with finance companies and other organizations if the carryback approach were adopted.

Some commenters indicated that they preferred the fourth alternative of allowing net deferred tax assets that are dependent upon future taxable income to be reported in the Call Report, but limiting the amount of such assets that could be included in regulatory capital. This approach, they said, would be consistent with GAAP, and would address the supervisory concerns relating to regulatory capital.

II. Proposal

The OCC and the other agencies believe that many of the comments received have merit. Many financially sound banks will have net deferred tax assets arising from deductible temporary differences that exceed their taxable temporary differences and the bank's carryback potential. Under the carryback approach, the banks could not record those assets. Yet, it is highly likely that many banks will actually realize these assets. Therefore, the agencies believe that banks should be able to recognize some amount of net deferred tax assets that are dependent upon future taxable income.

The OCC and the other agencies, however, continue to be concerned about the realizability of certain deferred tax assets. The agencies are concerned because estimating future taxable income, particularly beyond the near term, is very subjective. Inaccurate estimates could cause a bank to overstate its deferred tax assets and its capital position. Allowing banks to recognize significant amounts of assets that are based on subjective estimates could pose a risk to the deposit insurance funds. As a result, the agencies propose to retain some limit on deferred tax assets that are dependent upon future taxable income.

The OCC and the other agencies are primarily concerned with the impact that deferred tax assets that are dependent upon future taxable income have on regulatory capital. Therefore, the agencies believe their supervisory concerns can be adequately addressed by limiting the amount of such assets that may be included in regulatory capital. This approach maintains consistency between GAAP and regulatory reporting. The agencies also

believe this approach minimizes additional reporting burden on depository institutions.

Accordingly, after careful consideration of the comments received, the FFIEC instructed banks and savings associations to adopt FAS 109 for reporting in bank Call Reports and Thrift Financial Reports beginning in the first quarter of 1993 (or the beginning of their first fiscal year thereafter, if later). The FFIEC also recommended that the agencies amend their capital adequacy rules to limit the amount of deferred tax assets that may be used to meet regulatory capital requirements.

Based on the FFIEC's recommendations, the OCC is proposing to limit the amount of deferred tax assets that are dependent upon future taxable income which may be included in a national bank's Tier 1 capital to the lesser of:

(1) the amount of deferred tax assets that is expected to be realized within one year of the quarter-end report date, based on a national bank's estimate of future taxable income for that year (not including tax carryforwards expected to be used and existing temporary differences expected to reverse), or

(2) 10 percent of Tier 1 capital before the deduction of any disallowed purchased mortgage servicing rights, purchased credit card relationships, and deferred tax assets.

To determine the limit, the OCC proposes that national banks should assume that all temporary differences fully reverse. Also, estimates of future taxable income should include the effect of tax planning strategies the bank is planning to implement within one year of the quarter-end report date. Except for these provisions and the one-year limit for projecting future taxable income, national banks should follow FAS 109 in determining capital adequacy.

The OCC does not propose to limit deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences. Any net deferred tax assets, included in bank Call Reports in accordance with FAS 109, over the proposed limitation should be deducted from Tier 1 capital, from total assets, and from risk-weighted assets in calculating regulatory capital. Deferred tax assets that are included in regulatory capital continue to be assigned a risk weight of 100 percent.

Consistent with the recommendations of the FFIEC, FAS 109 and longstanding policy of the OCC and the other agencies, the OCC proposes that the capital limit be determined separately for each national bank. Under this "separate entity" method, a national bank subsidiary of a holding company (together with its consolidated subsidiaries) is treated as a separate taxpayer, rather than as part of the holding company group. The bank's income taxes, therefore, are calculated as if it were a separate taxpayer.

In some cases, a national bank's holding company may not be able to ensure that the bank will be reimbursed for tax benefits from its potential carryback of net operating losses or tax credits. In these cases, the bank should limit the carryback potential it considers when calculating the capital limit on deferred tax assets to the amount it could reasonably expect to have refunded by its parent.

The OCC proposes that the capital limit should be determined on a tax jurisdiction-by-tax jurisdiction basis. That is to say, any excess over the limit that applies in one jurisdiction (e.g., federal) may not be used to increase the amount of the limit for other jurisdictions (e.g., state). This position is the same as the FAS 109 requirement that deferred tax assets and related amounts be determined separately for each tax jurisdiction.

The proposed approach allows banks to include in regulatory capital deferred tax assets that are realizable based on the their estimate of taxable income during the next year. The OCC is proposing this one-year limit because, in general, national banks' projections up to 12 months into the future are generally reliable. However, the OCC believes the reliability of such projections decreases significantly for periods farther in the future.

The proposal further limits deferred tax assets that are dependent upon future taxable income to 10 percent of Tier 1 capital. This proposal reflects the OCC's belief that such assets should not make up a large portion of a national bank's capital base because they are less than certain to be realized and typically cannot be sold apart from the bank.

Questions for Comment

While the OCC is seeking public comment on all aspects of its proposal for the regulatory reporting and regulatory capital treatment of deferred tax assets, it is seeking specific comment on the following questions.

(1) Previous GAAP, as set forth in APB Opinion No. 16, "Business Combinations" (APB 16), adjusts the reported value of an asset (other than goodwill) acquired in a purchase business combination to reflect the tax effect of the difference between the asset's market or appraised value and its tax basis. FAS 109 changes this treatment by requiring assets acquired in a purchase business combination to be recorded at their fair value and the related tax effect of the difference between the book and tax basis to be recorded separately in a deferred tax account.

Under FAS 109, assets acquired in nontaxable purchase business combinations, including identifiable intangible assets (e.g., core deposit intangibles), will be recorded at higher amounts than previous accounting standards would require for the same transaction. This increase in intangible assets is offset by an equal increase in deferred tax liabilities (or decrease in deferred tax assets). Some of these additional intangible assets may not qualify for inclusion in regulatory capital. Because such nonqualifying intangible assets must be deducted from regulatory capital, institutions acquiring such assets may have to reflect a lower amount of regulatory capital after deducting these intangibles than they would have under previous accounting standards for the same transaction, even though there is no additional risk to capital.

The OCC is considering allowing banks to not deduct the additional amounts of identifiable intangible assets that have been acquired in nontaxable purchase business combinations and that must be recorded under FAS 109 when computing regulatory capital. The OCC seeks comment on this approach and whether any other provisions of FAS 109 suggest any different regulatory capital treatment.

(2) Is the 10 percent of Tier 1 capital limit an appropriate limit? Is this secondary limit necessary?

(3) Are there other ways to reduce the potential burden associated with implementing this proposal? Will the limitation, as proposed, be difficult to implement? If so, please describe implementation concerns and ways to remedy them without jeopardizing a bank's safety and soundness.

III. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

When considered with the recent change in the reporting of deferred tax assets in the Call Report, this proposed rule is likely to permit a somewhat greater amount of such assets to be included in the calculation of regulatory capital. However, this change would not

have a significant impact on banks of any size.

IV. Executive Order 12866

It has been determined that this document is not a significant regulatory action. In conjunction with the recent change in the reporting of deferred tax assets in the Call Report, the proposed rule could permit more deferred tax assets to be included in regulatory capital. As a result, this proposed rule should generally have a positive effect on national banks. However, the proposed changes should not result in a significant increase in the aggregate Tier 1 capital of national banks.

Authority and Issuance

For the reasons set out in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In appendix A, section 1, paragraphs (c)(9) through (c)(28) are redesignated as paragraphs (c)(10) through (c)(29) and a new paragraph (c)(9) is added to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(9) *Deferred tax assets* mean the tax consequences attributable to tax carryforwards and deductible temporary differences. Tax carryforwards are deductions or credits that cannot be used for tax purposes during the current period, but which can be carried forward to reduce taxable income or taxes payable in a future period, or periods. Temporary differences are financial events or transactions that are recognized in one period for financial statement purposes, but are recognized in another period, or periods, for income tax purposes. Deductible temporary differences are temporary differences that result in a reduction of taxable income in a future period, or periods.

* * * * *

3. In appendix A, section 2, paragraph (c)(1) is revised, new paragraph headings are added to paragraphs (c)(2) and (c)(3), and the introductory text of paragraph (c)(3) is revised to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 2. Components of Capital.

* * * * *

(c) * * *

(1) *Deductions From Tier 1 Capital.* The following items are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made:

(i) All goodwill subject to the transition rules contained in section 4(a)(1)(ii) of this appendix A;

(ii) Other intangible assets, except as provided in section 2(c)(2) of this appendix A; and

(iii) Deferred tax assets that are dependent upon future taxable income, which exceed the lesser of either:[6]

(A) The amount of deferred tax assets that the bank expects to realize within one year of the quarter-end report date, based on its estimate of future taxable income for that year;[6a] or

(B) 10% of Tier 1 capital net of goodwill and other disallowed intangible assets.

(2) *Qualifying Intangible Assets.* * * *

* * * * *

(3) *Deductions From Total Capital.* The following terms are deducted from total capital:

* * * * *

Dated: November 2, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93-31131 Filed 12-22-93; 8:45 am]

BILLING CODE 4810-33-P

[6] The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences generally would not be deducted from capital. However, the amount of carryback potential a bank may consider in calculating the capital limit on deferred tax assets may not exceed the amount that the bank could reasonably expect to have refunded by its parent holding company.

[6a] Estimated future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences expected to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the bank expects to implement during the year.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 618, and 620

RIN 3052-AB42

Organization; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), issues a proposed rule that would amend the director compensation regulations to reflect changes to the Farm Credit Act of 1971 (Act) made by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Amendments) and to address concerns raised by Farm Credit Banks and FCA regarding the current annual report disclosure rules for director and senior officer compensation and reimbursable expenses. The proposed rule would include an annual adjustment procedure for the bank director compensation ceiling and would also establish an approval process for exceeding the statutory limitation. These changes are being proposed in order to comply with the requirements of the 1992 Amendments.

Also, the proposed rule would require written policies on reimbursement of travel, subsistence, and other related expenses for directors, officers, and employees of all Farm Credit institutions. In connection with this action, the proposed rule would eliminate the requirement for individual disclosure of reimbursable expenses paid to bank directors and require that the aggregate of expenses reimbursed to the boards of directors of each Farm Credit institution be disclosed. By proposing these changes, the FCA Board desires to reduce the burden that may inadvertently be imposed on some banks that would have to provide extensive additional disclosures to fully explain necessary and reasonable expenses reimbursed to individual directors.

Finally, the proposed rule would amend the requirements for disclosure of senior officer compensation in accordance with section 514 of the 1992 Amendments. The FCA Board believes that adopting more detailed disclosure requirements, such as those imposed on commercial banks, for senior officers of Farm Credit institutions, would accomplish the objectives set forth in section 514.

DATES: Written comments must be received on or before January 24, 1994.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Overview

The Farm Credit Administration's (FCA) need to comply with the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Amendments) and other issues raised by Farm Credit Banks and identified by FCA concerning existing director and senior officer compensation and disclosure regulations prompted the FCA to initiate a project to amend its regulatory guidance in this area. The 1992 Amendments raised the maximum limit on compensation for bank directors to $20,000 per year, adjusted annually to reflect changes in the Consumer Price Index (CPI) for all urban consumers published by the Bureau of Labor Statistics. The 1992 Amendments also provided FCA with the authority to waive the limitation under exceptional circumstances, as determined in accordance with regulations promulgated by the FCA.

When § 611.400 was previously amended (57 FR 43393, September 21, 1992), The Farm Credit Council (FCC) commented on behalf of its membership and objected to disclosure of reimbursable expenses. The FCC commented that no other Federal bank regulatory agency currently requires public disclosure of the amount of expense reimbursements received by directors. Two banks endorsed the FCC's comments but did not provide any additional suggestions. These were the only comments received on the amendments during the public comment period. The FCA Board determined that disclosure of reimbursable expenses was important because these expenses are often a significant component of overall director costs and can, in some cases, exceed compensation. Further, the FCA Board determined that stockholders of banks should be afforded the opportunity to review reimbursable expenses in order to guard against excessive expenditures by directors. The disclosure requirement is consistent with the stockholders' common-law right to inspect the corporation's books and with congressional concern over the impact of director costs on the borrower.

Subsequent to the publication of the final amendment to § 611.400, two banks requested that FCA rescind the requirement to disclose the reimbursable expenses paid to each bank director. One bank stated that the disclosure requirement results in an inequitable treatment due to the widespread geographic locations of its directors relative to the bank's headquarters location. The bank explained that it may be necessary for directors who live greater distances from the bank headquarters or directors who serve on national committees to incur greater travel expenses. Thus, an inequitable implication may result from the individual disclosure because stockholders would not have a full understanding of the reasons why some directors have legitimately higher reimbursable expenses. The bank suggested in its letter that FCA amend the regulation to require disclosure of the aggregate reimbursable expenses paid to the directors as a group, rather than individually. Another bank requested that FCA reconsider the requirements of § 611.400 because of the variation in expenses due to the geographic location of directors, committee assignments, and other circumstances. The bank also reiterated comments made on the proposed amendments to § 611.400 and stated that the requirements for disclosure of expenses exceed the disclosure requirements placed on other financial institutions. Thus, the bank requested that FCA eliminate the expense disclosure requirement entirely. As a result of the changes made by the 1992 Amendments and the concerns raised after publication of the final amendments, the FCA Board has reevaluated the issue of disclosure of reimbursable expenses.

In addition, the FCA Board has reconsidered the issue of senior officer compensation. In section 514 of the 1992 Amendments, Congress determined that disclosure of compensation paid to directors and senior officers of Farm Credit institutions provides stockholders with information necessary to better manage their institutions. Congress directed the FCA to ensure that the information reported by Farm Credit institutions provides stockholders with sufficient information to assist them in making informed decisions regarding the operation of their institutions. The FCA Board believes that adopting more detailed disclosure requirements, such as those imposed on commercial banks, for senior officers of Farm Credit institutions would accomplish Congress' objectives. The proposed regulation would require institutions to disclose the individual compensation of the five highest paid senior officers, the total compensation paid to all officers as a group, and a description of the compensation plans of the aforementioned individuals. These disclosures would provide shareholders, investors, Congress, and the public with the necessary information to assist them in evaluating whether senior officer compensation plans approved by the Farm Credit institution boards are reasonable and appropriate in view of the financial condition and performance of the institution. Additionally, the FCA Board believes that disclosure of individual senior officer compensation, along with an explanation of the compensation program, would aid readers of the annual report in understanding the impact of individual senior officer compensation on operating expenses as well as any significant compensation fluctuations. Further, the proposed regulation would provide shareholders, investors, Congress, and the public with uniform information concerning the compensation of Farm Credit institution senior officers similar to that published by other Government-sponsored enterprises.

II. Section-by-Section Analysis

A. Section 611.400—Compensation of Bank Board Members

The bank director compensation regulation that became effective on January 29, 1993, addressed the maximum level of compensation that can be paid to bank directors and modified the disclosure requirements. Existing § 611.400 eliminated the $200 per day maximum that existed in the previous regulation and raised the director compensation ceiling to "limits established by the Farm Credit Act of 1971, as amended." The 1992 Amendments replaced the $15,000 per year cap with a new limitation of $20,000 per year, annually adjusted to reflect changes in the Consumer Price Index (CPI) for all urban consumers published by the Bureau of Labor Statistics.

In response to the 1992 Amendments, the FCA Board issued a bookletter entitled "Annual Adjustment Procedure for the Maximum Amount of Director Compensation" (August 11, 1993), which discusses the methodology for adjusting the $20,000 per year limitation on director compensation to reflect changes in the CPI. Proposed § 611.400 would incorporate this methodology. FCA studied several approaches for determining an annual adjustment procedure and sought a method that would be a fair representation of the actual change in the cost of living over an entire year and that would be easily understood and applied. Proposed § 611.400(b) would require that the current year's maximum bank director compensation be determined by adjusting the prior year's maximum compensation level by the prior year's annual average percentage change in the CPI for all urban consumers. For example, the 1994 statutory maximum bank director compensation can be determined as follows: 1994 Maximum Compensation=1993 Maximum Compensation multiplied by (the Annual Average 1993 CPI divided by the Annual Average 1992 CPI). For more information, the annual average CPIs for all urban consumers can be found in publications by the United States Department of Labor, Bureau of Labor Statistics, Division of Consumer Prices and Price Indexes, and in the Economic Indicators, published by the United States Government Printing Office, as well as in several other publications.

Proposed § 611.400(c) would address FCA's statutory authority to establish regulations to waive the limitation on bank director compensation set by section 4.21 of the Act. Prior to developing the proposed rule, FCA identified certain exceptional circumstances in which it might be appropriate to consider granting a waiver of the statutory limitation, such as merger or significant special assignments to an individual or board committee. FCA also considered whether the statutory limit would need to be frequently waived due to the changing structure of the System. The FCA Board believes that circumstances may arise when a waiver of the statutory limitation, within reason, is justified. Nevertheless, the FCA Board believes that the need to waive the statutory limitation on bank director compensation should be rare, as the periodic adjustment procedure was instituted to ensure that the limitation on bank director compensation remains fair and reasonable. The FCA Board also believes that the responsibility to justify the need to exceed the ceiling should be left with the bank.

The FCA Board believes that the decision as to whether a waiver of the statutory bank director compensation limitation is warranted should be made on a case-by-case basis. The circumstances that may necessitate a waiver of the ceiling are intended by statute to be "exceptional." Developing a regulation that captures all exceptional instances that may truly warrant a waiver of the statutory maximum is not practicable. There may be circumstances in which it would be appropriate to exceed the compensation ceiling that may be overlooked in such a regulation. Furthermore, circumstances identified in the regulation that would ordinarily warrant the ceiling to be exceeded may not always, due to the particular circumstances, justify an exception to the ceiling.

The proposed regulation would require a bank to provide the FCA Chairman with a written request for approval to exceed the statutory limitation before disbursing any funds. The request must include an explanation of the exceptional circumstance(s) that the bank believes necessitates a waiver, and justification of the amount each bank director would receive based on the extraordinary amount of time and service devoted to the bank's business. Further, under the proposed regulation, the FCA would not grant a waiver that allows a bank to pay any director in excess of 25 percent more than the statutory maximum compensation as adjusted by the CPI. Congress set a maximum limit on bank director compensation to ensure that borrowers/stockholders are not burdened with excessive director costs. The FCA believes that the authority to waive the compensation ceiling in exceptional circumstances was not intended by Congress to be a means to grant unlimited director compensation. Nevertheless, the FCA believes that a reasonable level of additional compensation beyond the statutory limitation should be provided in recognition of the heavy burdens placed on directors as a result of exceptional circumstances. The FCA would respond to any such request within 30 days of receipt of all the information required by the regulation and any additional information that may be requested by the FCA.

Finally, the proposed regulation would remove the provisions for payment of reimbursable expenses from § 611.400 and place those requirements in the proposed amendment to § 618.8270, Travel, subsistence, and other related expenses, which are covered under part 618—General Provisions, and are applicable to all Farm Credit institutions.

B. Section 618.8270—Travel, Subsistence, and Other Related Expenses

Existing § 611.400 requires that the amount of reimbursement to each director for travel, subsistence, and other related expenses must be disclosed separately from the amount of compensation received. The objective of the rule was to ensure full disclosure of director compensation and expenses and promote director accountability to shareholders. The regulation was not intended to be burdensome or prejudicial against directors who travel greater distances to board meetings; rather, the intent was to capture reimbursable expenses that represent a significant portion of overall director costs. Therefore, in order to reduce the perceived inequities and maintain an effective oversight mechanism for monitoring variations in director expenses, the proposed regulation would strengthen the regulatory framework regarding policy formulation and remove the requirement for individual disclosure of bank director reimbursable expenses.

Existing § 618.8270 requires institutions to establish a travel policy, but does not contain detailed guidance as to what those policies must cover. Therefore, proposed § 618.8270 would combine and strengthen the requirements of the existing §§ 611.400 and 618.8270, and provide one regulation that governs the travel and other reimbursable expenses for directors, officers, and employees of all institutions. Proposed § 618.8270 would require each Farm Credit institution to establish written policies regarding travel, subsistence, and other related expenses. Additionally, the proposed rule would require all Farm Credit institutions to develop guidelines and set specific limitations that ensure expenses being reimbursed to directors, officers, and employees are necessary and appropriate for conducting official duties.

The proposed rule would require the institution's policies to address the following areas: (1) Authorized purposes for which reimbursement of travel, subsistence, and other related expenses may be made; (2) guidelines and limitations on reimbursement for such items as modes of transportation, mileage rates for use of personal vehicles, per diem allowances, including maximums or limitations on lodging, meals, and incidental expenses,

and telephone calls, and any other miscellaneous expenses; (3) circumstances, if any, under which reimbursement of expenses of spouses or others may be made in connection with institution activities or functions; and (4) reimbursement procedures, including required documentation for reimbursement and the timing and frequency for adjusting any rates or limitations set on the reimbursement of expenses.

Additionally, the regulatory requirements would be strengthened by requiring institutions to have their internal auditors review the records maintained in accordance with § 618.8270 to determine if the policies are being consistently followed by all individuals. The proposed rule would require the compliance review to be conducted at least annually, with the results reported to the institution's board audit committee or full board, if the board does not have an audit committee.

C. Section 620.5(i)—Compensation of Directors and Senior Officers

1. Director Compensation

The disclosure requirements in the proposed regulation remain largely unchanged from the existing regulation. The proposed regulation would add a requirement that if any of the bank's directors are granted a waiver of the maximum bank director compensation level set by section 4.21 of the Act, the exceptional circumstances allowing the waiver must be disclosed.

2. Senior Officer Compensation

Existing § 620.5(i)(2) requires an institution to disclose the aggregate amount of compensation paid during the last fiscal year to all senior officers as a group, stating the number of persons in the group without naming them. At a minimum, the aggregate amount must include the five highest paid officers, whether or not designated as a senior officer by the institution's board. In addition, a statement is required that the total compensation during the last fiscal year paid to any officer included in the aggregate amount that exceeds $50,000 is available to shareholders upon request. The FCA Board continues to believe that this type of information is necessary to make informed decisions regarding an institution and that it should be disclosed and made available to shareholders. However, for the reasons previously stated, the FCA Board believes that disclosure of senior officer compensation in the aggregate does not provide shareholders with sufficient information to determine whether compensation is reasonable.

Therefore, the proposed regulation would require institutions to disclose the individual compensation of the five highest paid senior officers, the total compensation paid to all officers as a group, and a description of the compensation plans of the aforementioned individuals. While the differences in the number of senior and other officers between small and large institutions varies, the FCA Board believes that uniform disclosures between institutions, regardless of size, are important for comparison purposes. Disclosing the individual compensation of the five highest paid senior officers, as well as all officers as a group, would provide stockholders with a more complete portrayal of the costs of the institution's management. These disclosures would be comparable to the disclosure requirements placed on senior officers of commercial banks. For example, the Federal Deposit Insurance Corporation requires compensation disclosures on an individual and a group basis (12 CFR 335.212), as well as a discussion of any compensation program and compensation plans.

Specifically, the proposed regulation would require Farm Credit institutions to disclose the total amount of compensation paid and the amount of each component of compensation paid to each of the five highest compensated senior officers, naming each individual and his/her position or title. At a minimum, disclosure is required for the five highest compensated officers, whether or not designated as a senior officer by the board. Each Farm Credit institution would also be required to disclose the aggregate amount of compensation paid and the components of compensation paid to all officers as a group, stating the number of officers in the group without naming them. Finally, the disclosure would include a description of all plans pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year to the aforementioned individuals. The proposed regulation would define compensation as annual salary, cash bonuses, deferred compensation, vested pension benefits (unless the plan is made available to all employees on the same basis), and any other noncash compensation.

The current disclosure of aggregate compensation, by itself, does not fully explain the reason for individual senior officer compensation levels and large fluctuations in total compensation. Large fluctuations can result, in part, from incentive payments made to senior officers based on the institution's performance, and these incentive programs are not fully explained through the existing disclosure requirements. The more descriptive disclosures in the proposed rule are intended to provide stockholders with adequate information to hold the institution's board of directors accountable for justifying the reasonableness of compensation levels paid to its senior officers. Additionally, these proposed disclosure requirements are intended to achieve Congress' objective of providing Farm Credit institution stockholders with sufficient meaningful information to make informed decisions regarding their institutions.

3. Travel, Subsistence, and Other Related Expenses

The FCA Board has reconsidered the disclosure requirements regarding reimbursable expenses for the reasons previously explained. The FCA Board, however, maintains its original intention of providing shareholders with a mechanism to identify and respond to unreasonable expenses and variances in expenses reimbursed to directors. The current requirement for individual bank director disclosure of reimbursable expenses may be unduly burdensome for some banks in light of the additional disclosures that may be needed to provide a meaningful and accurate portrayal of expenses being reimbursed to each individual bank director. Because reimbursable expenses continue to be a significant portion of director costs and, in some cases, can exceed compensation, some type of disclosure of expenses is still warranted. The FCA Board continues to believe that disclosure provides shareholders with information to make informed decisions about the directors they elect and about the institution's operations. In addition, the existing disclosure regulation for reimbursable expenses only applies to bank directors. The FCA Board believes that all Farm Credit institution directors and senior officers are an integral part of the System's management and should, in most instances, be placed under the same scrutiny.

Proposed § 618.8270 would require that the policy adopted by each Farm Credit institution, as it applies to directors and senior officers, be discussed in the annual report. The FCA Board is proposing this requirement in order to provide shareholders with information that would assist them in determining whether the expenses being reimbursed to the management of their

institution are reasonable. The proposed regulation would also require Farm Credit institutions to provide shareholders with information as to where they could receive a copy of the policy. Although shareholders/borrowers may be hesitant to request information about a particular director or senior officer, they may be less hesitant to request a general policy.

Proposed § 620.5(i)(3) would require disclosure of the aggregate amount reimbursed to each Farm Credit institution board of directors, rather than individual bank directors, for travel, subsistence, and other related expenses. Additionally, the proposed regulation would provide shareholders information on developing trends by requiring a 3-year history of aggregate expenses reimbursed to the board of directors.

The FCA Board believes that disclosure of the 3-year trend of the aggregate expenses reimbursed to boards of directors and a discussion of the institution's travel policy should provide shareholders with information to assist them in evaluating the reasonableness of management expenses. These disclosures are intended, in part, to provide shareholders with additional insight into the efficiency of the institution's operations. Further, because directors are accountable to the shareholders as their representatives in a Farm Credit institution, the shareholders are in the best position to assess and govern the use of the institution's funds.

Proposed § 618.8270 would require Farm Credit institution boards to adopt policies governing travel, subsistence, and other related expenses for all employees as well as directors and senior officers. However, it should be noted that the disclosure requirements would only relate to the directors and senior officers of the institutions. The FCA Board believes that monitoring the expenses reimbursed to employees is the responsibility of management.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart D—Rules for Compensation of Board Members

2. Section 611.400 is revised to read as follows:

§ 611.400 Compensation of bank board members.

(a) Farm Credit System banks are authorized to pay fair and reasonable compensation to directors for services performed in an official capacity at a rate not to exceed the level established in section 4.21 of the Farm Credit Act of 1971, as amended, unless the FCA determines that such level adversely affects the safety and soundness of the institution.

(b) The bank director compensation level established in section 4.21 of the Act shall be adjusted to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics, in the following manner: Current year's maximum compensation=Prior year's maximum compensation adjusted by the prior year's annual average percent change in the CPI for all urban consumers.

(c) A waiver of the compensation limitation prescribed by section 4.21 of the Act may be granted under exceptional circumstances as approved on a case-by-case basis by the FCA. The request for a waiver approval shall precede any payments by the bank to its director(s) that exceed the maximum limitation determined in paragraph (b) of this section. A bank seeking a waiver shall provide the FCA Chairman with a written request that:

(1) Describes and explains the exceptional circumstance(s) that the bank believes necessitates a waiver of section 4.21 of the Act;

(2) States the amount and the terms and conditions (if any) of the proposed compensation level for each director that would exceed the statutory maximum determined in paragraph (b) of this section; and

(3) Justifies the compensation level of each director that would exceed the statutory limitation based on the extraordinary time and service they devoted to bank business. The FCA shall not grant a waiver that allows a bank to pay any director in excess of 25 percent more than the statutory maximum compensation as determined in paragraph (b) of this section.

The FCA shall respond to written requests within 30 days of receipt of the preceding information and any other information requested by the FCA.

(d) Each bank board shall adopt a written policy regarding compensation of bank directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which attendance is necessary and appropriate and may be compensated, except that a Farm Credit System bank shall not compensate any director for rendering services on behalf of any other Farm Credit System institution or a cooperative of which the director is a member, or for performing other assignments of a nonofficial nature;

(2) The methodology for determining each director's rate of compensation; and

(3) The exceptional circumstances under which the board would seek a waiver of the statutory limitation on bank director compensation for any of its directors and any limitations or conditions the board wishes to place on the availability of such waivers.

(e) Directors may also be reimbursed for reasonable travel, subsistence, and other related expenses in accordance with the requirements of § 618.8270 of this chapter.

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart F—Miscellaneous Provisions

4. Section 618.8270 is revised to read as follows:

§ 618.8270 Travel, subsistence, and other related expenses.

(a) Each Farm Credit institution board shall develop written policies regarding the reimbursement of travel, subsistence, and other related expenses to its directors, officers, and employees.

The policies shall address the following areas:

(1) Authorized purposes for which reimbursement of travel, subsistence, and other related expenses may be made;

(2) Guidelines and limitations on reimbursement for such items as:

(i) Modes of transportation;

(ii) Mileage rates for use of personal vehicles;

(iii) Per diem allowances, including maximums or limitations on lodging, meals, and incidental expenses; and

(iv) Telephone calls and any other miscellaneous expenses.

(3) Circumstances, if any, under which reimbursement of expenses of spouses or others may be made in connection with institution activities or functions; and

(4) Reimbursement procedures, including required documentation for reimbursement and the timing and frequency for adjusting any rates or limitations set on the reimbursement of expenses. Required documentation shall include:

(i) The activity or function for which the director, officer, or employee is being compensated;

(ii) The reason the attendance of the director, officer, or employee (or other individual) is necessary and appropriate;

(iii) The duration of the stay and the location of such activity or function; and

(iv) An itemized explanation of the expenses claimed.

(b) Each board shall ensure that the written records that are maintained to document the expenses paid to directors, officers, and employees by the institution are in accordance with the policies adopted by the board as required in paragraph (a) of this section. The records shall be in such detail to enable the personnel authorized to process reimbursements to verify that the amounts being reimbursed are within the policy guidelines set by the board.

(c) Each board shall require a review by the institution's internal auditors of the records maintained pursuant to paragraph (b) of this section to determine if the policies are being consistently followed. This review shall be conducted at least annually, with the results reported to the board audit committee or full board, if the board does not have an audit committee.

PART 620—DISCLOSURE TO SHAREHOLDERS

5. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

6. Section 620.5 is amended by revising paragraph (i) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(i) *Compensation of directors and senior officers.* (1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation) and state the total cash compensation paid to all directors as a group during the last fiscal year. If applicable, describe any exceptional circumstances under which a waiver of section 4.21 of the Act was granted by the FCA. For each director, state:

(i) The number of days served at board meetings;

(ii) The total number of days served in other official activities;

(iii) The total compensation paid to each director during the last fiscal year.

(2) *Senior officer compensation.* For the purposes of this paragraph, compensation shall include annual salary, cash bonuses, deferred compensation, vested pension benefits (unless the plan is made available to all employees on the same basis), and any other noncash compensation that exceeds 10 percent of total compensation or $25,000, whichever is less. The report shall disclose:

(i) The total amount of compensation paid and the amount of each component of compensation paid to the five highest compensated senior officers or the five highest compensated officers, whether or not designated as a senior officer by the board, naming each individual and his/her position or title.

(ii) The aggregate amount of compensation paid and the components of compensation paid to all officers as a group, stating the number of officers in the group without naming them; and

(iii) A description of all plans pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals described in paragraphs (i)(2)(i) and (i)(2)(ii) of this section. The description of each plan must include, but not be limited to:

(A) A summary of how the plan operates and who is covered by the plan;

(B) The criteria used to determine amounts payable, including any performance formula or measure;

(C) The time periods over which the measurement of compensation will be determined;

(D) Payment schedules;

(E) Any material amendments to the plan during the last fiscal year;

(F) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year, less any amount relating to the same plan that previously has been disclosed as accrued; and

(G) Amounts accrued pursuant to the plan for the accounts of the named individuals and the group during the last fiscal year, the distribution or unconditional vesting of which is not subject to future events.

(iv) The annual report shall include a statement that disclosure of the total compensation paid during the last fiscal year to any senior officer or to any other officer included in the aggregate whose compensation exceeds $50,000 is available to shareholders upon request.

(3) *Travel, subsistence, and other related expenses.*

(i) Briefly describe the policy adopted pursuant to § 618.8270 of this chapter addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that the policy is available to shareholders upon request.

(ii) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence, and other related expenses for all directors as a group.

* * * * *

Dated: December 16, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–31282 Filed 12–22–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7036, IC–19955, File No. S7–32–93]

RIN 3235–AF00

Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule, proposed amendments to rules and forms, and request for comment.

SUMMARY: The Commission is proposing for public comment a new rule and an amendment to a rule under the Investment Company Act of 1940. The new rule would allow open-end management investment companies ("mutual funds") to issue multiple classes of voting stock representing interests in the same portfolio, subject to conditions intended to prevent investor confusion, assure fair expense allocation and voting rights, and prevent conflicts of interest among classes. The proposed rule would eliminate the need for funds issuing multiple classes to apply for exemptions. The proposed rule amendment would clarify how the requirements for approval of certain distribution arrangements would apply to funds with multiple classes of shares. Finally, the Commission is proposing for public comment amendments to rules under the Investment Company Act and the Securities Act of 1933, amendments to the form for registration statements of open-end investment companies, and amendments to related forms. These amendments would establish disclosure requirements for prospectuses, advertisements, and sales literature of multiple class funds, as well as of "master-feeder" funds, which present many of the same disclosure issues as multiple class funds. These disclosure amendments are intended to address concerns about the complexity of sales and service charges of these funds.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-32-93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Regarding rule 18f-3 and amendments to rule 12b-1, Roseanne Harford, Senior Counsel, or Diane C. Blizzard, Assistant Director, Office of Regulatory Policy, (202) 272-2048, regarding proposed disclosure and reporting requirements, James M. Curtis, Senior Counsel, Office of Investment Company Regulation, (202) 504-2406, or Robert G. Bagnall, Assistant Chief, Office of Regulatory Policy, (202) 272-3042, and regarding changes to Form N-SAR, Lawrence A. Friend, Chief Accountant, Office of Disclosure and Review, (202) 272-2106, all at the Division of Investment Management, Securities and Exchange Commission, Mail Stop 10-6, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 18f-3 [17 CFR 270.18f-3], and related amendments to rule 12b-1 [17 CFR 270.12b-1], both under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act"). The Commission is requesting public comment on proposed amendments to rule 34b-1 under the Investment Company Act [17 CFR 270.34b-1], rules 134, and 482 [17 CFR 230.134, and 482] under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a-77aa], and Forms N-1A [17 CFR 239.15A, 274.11A], N-14 [17 CFR 239.23], and N-SAR [17 CFR 274.101]. The Commission also is requesting public comment on a revision to amendments to rule 482 that were proposed for public comment earlier this year relating to "off-the-page" prospectuses.[1] These proposals would implement a recommendation made in the report issued last year by the Division of Investment Management ("Division"), Protecting Investors: A Half Century of Investment Company Regulation ("Protecting Investors Report"), Chapter 8, The Sale of Open-End Investment Company Shares.[2]

It is likely that further multiple class exemptive applications will be received and reviewed pending further action on these proposals. These applications will continue to be reviewed on the same basis as previous multiple class applications and should not request relief based on these proposals.

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EXECUTIVE SUMMARY

Since 1985, the Commission has issued over 90 orders allowing funds to issue multiple classes. The orders impose as many as 20 conditions intended to ensure that multiple class funds do not present the investor protection concerns that section 18 of the Investment Company Act was designed to address. Among other things, the conditions limit class differences, subject to oversight by a fund's board of directors.

The Commission is proposing rule 18f-3 under the Investment Company Act, which would permit funds to issue multiple classes of shares without the need to seek exemptive orders from the Commission. The rule would require certain differences in the rights and obligations of different classes, permit certain other differences among classes, specify the matters on which class voting is required, and prescribe how income and expenses must be allocated. The rule also would delineate the responsibilities of the board of directors. Finally, the rule would permit, but not require, different classes to have different exchange privileges and conversion rights. A related amendment to rule 12b-1 would clarify that a rule 12b-1 plan must treat each class separately and require separate director and shareholder approval. Rule 18f-3 would simplify the process for issuing multiple classes and, by eliminating the need for funds to apply for exemptive orders, save time and reduce expenses. It also would reduce the Commission's burden of reviewing the applications.

Over the past few years, a number of fund sponsors have adopted a distribution arrangement designed to achieve the business goals of multiple class funds without the need to obtain Commission relief under section 18. This "master-feeder" arrangement contemplates the use of a two-tier structure in which one fund invests in

[1] *See* Off-the-Page Prospectuses for Open-End Management Investment Companies, Securities Act Release No. 6982 (Mar. 5, 1993), 58 FR 16141.

[2] SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, 330-332 (1992).

another fund.[3] Although master-feeder structures are functionally similar to multiple class funds, they do not need exemptive relief and are currently subject to different disclosure requirements.

Proposed disclosure amendments would apply to both multiple class and feeder funds. Prospectuses would be required to include a prominent legend following the fee table providing information regarding the availability of any other classes or feeder funds not offered in that prospectus. If any classes or feeder funds are offered or made available through the same broker, dealer, bank, or other financial intermediary and permit investors to choose among alternative arrangements for sales and related charges (for example "dual distribution" classes), a prospectus for any of those classes or feeder funds would be required to provide full cross-disclosure about the others in response to Items 2 through 9 of Form N-1A. If more than one class or feeder fund is offered in a prospectus, or if there is cross-disclosure about another class or feeder fund, the prospectus would be required to discuss the differences among those classes or feeder funds and include a line graph comparing the hypothetical value of holdings of those classes or feeder funds upon redemption at the end of each year during a ten year period. These requirements should help investors determine and compare the expenses they may pay and the return they may receive under various circumstances.

Proposed amendments to advertising and sales literature disclosure requirements are similar to the prospectus proposals. Multiple class and master-feeder funds would be required to include a legend in advertising and sales literature similar to the proposed legend following the fee table in the prospectus. An amendment to rule 482 would require multiple class and master-feeder fund advertising that contains performance figures to include, with equal prominence, the performance of all classes and feeder funds that are subject to the cross-disclosure requirement. Another amendment to rule 482 would require advertisements to provide long-term return information for a fund's portfolio even if that information does not exist for the class or feeder fund that is the subject of the advertisement.

The proposal would revise the recently proposed amendments to rule 482 to delete those amendments' prohibition on the use of off-the-page prospectuses (advertisements containing an order form) by multiple class and master-feeder funds. As re-proposed, those amendments to rule 482 would permit multiple class funds and feeder funds to use off-the-page prospectuses.

I. Background

Many mutual funds issue more than one class of shares representing interests in the same portfolio of securities. Some of these funds use different classes to offer investors a choice of methods for paying for the costs of selling fund shares. These funds typically offer a class with a front-end sales load[4] and a low distribution fee[5] (or no such fee) and a class with a higher distribution fee and a contingent deferred sales load ("CDSL").[6] The latter arrangement is commonly called a "spread load." A spread load class also may feature an automatic conversion of its shares for shares in a class with a lower distribution fee after a specified period.[7] More recently, some funds have been offering a third class with a so-called "level load," which class bears a relatively high distribution fee but no front-end load or CDSL.[8]

Many funds issue different classes in order to use different channels of distribution and to reach different investor markets. These funds typically target different investor markets, offering each a separate class with an arrangement for shareholder services or a distribution plan that is tailored to that market.[9] For example, these funds may create a separate class or classes for financial institutions that invest on behalf of their customers, such as banks, pension plans, and insurance companies. The institutions already may provide certain services to their customers (*e.g.*, maintaining client records, processing purchase orders, and responding to customer inquiries).[10] Multiple classes allow funds to design classes with fees and services that complement those of the institutions. In some cases, the same fund may offer both classes designed for different distribution channels and classes providing a choice of methods for paying distribution costs.[11]

Because institutions investing for their own account may need less service than retail investors participating directly or through intermediaries, funds may offer them a separate class with reduced fees and sales loads.[12] On

[3] Master-feeder funds are often referred to as "core and feeder" or "hub and spoke" funds; "Hub & Spoke" is a registered service mark of Signature Financial Group, Inc.

[4] A front-end sales load is a charge paid by the investor at the time of purchase.

[5] A distribution fee is a charge to fund assets that may be used to pay certain distribution expenses in accordance with rule 12b-1. 17 CFR 270.12b-1. Such fees often are referred to as "rule 12b-1 fees."

[6] *See, e.g.*, Putnam Adjustable Rate U.S. Government Fund, Investment Company Act Release Nos. 18637 (Mar. 30, 1992), 57 FR 11639 (Notice of Application) and 18676 (Apr. 24, 1992), 51 SEC Docket 799 (Order). A CDSL is a sales charge that is assessed when shares are redeemed. It generally declines over time and is designed to recover any distribution costs that have not yet been recovered from the distribution fees. To impose a CDSL, funds request exemptions from sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a-2(a)(32), -2(a)(35), and -22(d)] and rule 22c-1[17 CFR 270.22c-1]. *See e.g.*, Smith Barney Equity Funds, Investment Company Act Release Nos. 19005 (Oct. 7, 1992), 57 FR 47156, 47158 (Notice of Application) and 19079 (Nov. 3, 1992), 52 SEC Docket 3640 (Order).

[7] The Commission's orders require that such conversions occur on the basis of the relative net asset values of the classes and not involve any load or other fee. *See, e.g.*, Colonial Advanced Strategies Gold Trust, Investment Company Act Release Nos. 18650 (Apr. 10, 1992), 57 FR 13780, 13785 (Notice of Application) and 18692 (May 6, 1991), 51 SEC Docket 898 (Order).

[8] *See, e.g.*, PaineWebber America Fund, Investment Company Act Release Nos. 18758 (June 4, 1992), 57 FR 25093, 25094 (Notice of Application) and 18820 (June 30, 1992), 51 SEC Docket 1844 (Order).

[9] *See, e.g.*, SEI Liquid Asset Trust, Investment Company Act Release Nos. 17878 (Nov. 27, 1990), 55 FR 49967, 49968 (Notice of Application) and 17915 (Dec. 24, 1990), 47 SEC Docket 2014 (Order); Centerland Fund, Investment Company Act Release Nos. 18508 (Jan. 30, 1992), 57 FR 4662, 4663 (Notice of Application) and 18566 (Feb. 25, 1992), 50 SEC Docket 1909 (Order). Shareholder services may include establishing and maintaining customer accounts and records, providing periodic account statements, arranging for bank wires, processing dividend payments, forwarding fund communications (such as proxies, shareholder reports and dividend, distribution, and tax notices), answering routine customer inquiries, and assisting with changes in dividend options. Distribution services may include advertising and marketing, sales support services, and preparing, printing, and mailing sales literature, prospectuses, and other reports to prospective investors. The scope of "shareholder services" in this context may differ from that of the term "service fee" in the rule on maximum mutual funds sales charges of the National Association of Securities Dealers, Inc. ("NASD"). NASD, Rules of Fair Practice, Art. III, section 26(b)(9). That term "is not intended to include transfer agent, custodian, or similar fees" or "charges for the maintenance of records, recordkeeping and related costs." NASD Notice to Members No. 93-12 (Feb. 1993).

[10] Fiduciary obligations under federal banking or pension laws may restrict an institution's ability to invest customer accounts in shares of funds that impose fees for services the institution already provides. *See* 12 CFR 9.12(a) (restricting bank fiduciaries from accepting shareholder servicing fees). *See also* Employee Retirement Income Security Act section 406(a)(i), 29 U.S.C. 1106(a)(1). Several funds have created separate classes for institutions depending on whether they have agency or custodial relationships, as opposed to fiduciary relationships, with their customers. *See, e.g.*, The Kent Funds, Investment Company Act Release Nos. 19033 (Oct. 15, 1992), 57 FR 48415 (Notice of Application) and 19094 (Nov. 12, 1992), 52 SEC Docket 3743 (Order).

[11] *See, e.g.*, The New England Funds, Investment Company Act Release Nos. 19067 (Oct. 28, 1992), 57 FR 52663 (Notice of Application) and 19116 (Nov. 24, 1992), 52 SEC Docket 4261 (Order).

[12] *See, e.g.*, PaineWebber, *supra* note 8, 57 FR at 25094.

the other hand, individual investors using retail brokers may have greater service needs that funds may meet by offering a different class with relatively higher fees and loads.

Investment company sponsors seeking to implement multiple class arrangements have asserted that the arrangements offer a number of benefits. Multiple classes avoid the duplicative portfolio and fund management costs that are required by "clone funds"[13] and thus may be a less expensive alternative to the creation of these funds. Moreover, multiple classes may enable funds to attract larger asset bases, which, in turn, may permit them to spread fixed costs over more shares, qualify for discounts in advisory fees known as "breakpoints," and otherwise experience economies of scale, all of which may lower per share fees and expenses.[14] Funds also have maintained that a larger asset base permits greater portfolio liquidity and diversification.[15]

The issuance of multiple classes implicates sections 18(f)(1), 18(g), and 18(i) of the Investment Company Act.[16] Section 18(f)(1) generally makes it unlawful for a registered open-end management investment company to issue any class of "senior security." Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends. Section 18(i) requires that every share of stock issued by a registered management investment company be voting stock, with the same voting rights as every other outstanding voting stock.

The issuance of multiple classes may conflict with section 18(f)(1) because a class with lower expenses will have a greater net asset value or higher dividend per share than other classes.[17] A class with a higher net asset value may be considered to have a priority as to the distribution of assets; similarly, a class receiving a higher dividend may be considered to have a priority over classes with lower dividends. The issuance of multiple classes also may conflict with section 18(i) unless each class has the same voting rights.[18] Section 18 is, to a large extent, designed to prohibit material differences among the rights of shareholders in a fund. This section implements the policy expressed in section 1(b)(3) of the Investment Company Act[19] of preventing funds from "issu[ing] securities containing inequitable or discriminatory provisions." Thus, funds have applied for exemptions from these sections to issue multiple classes.

Section 18(f)(1) was intended to protect investors from certain abuses associated with complex investment company capital structures, including excessive leverage, conflicts of interest among classes, and investor confusion.[20] Section 18(i) addresses certain inequitable and discriminatory shareholder voting provisions that were associated with many investment company securities before the enactment of the Investment Company Act.[21] Multiple class funds do not involve leverage because each class represents interests in the same portfolio of investments and participates in all the portfolio's gains and losses. Multiple class funds, however, arguably could implicate the other concerns underlying these sections.

The issuance of classes of shares with different rights and obligations may create conflicts among those classes. For example, it may not be clear whether certain expenses appropriately represent expenses of the fund or expenses of a particular class. Voting rights may be of concern in multiple class funds because each class pays for its own service or distribution arrangements and might approve different expenses and terms than would be approved by shareholders who do not pay for those arrangements. In such a case, equal shareholder voting could be inappropriate.[22] Fee and load variations among classes, if not adequately disclosed, also may confuse investors and make comparisons with other funds more difficult.

Since 1985, the Commission has issued over 90 exemptive orders allowing funds to issue multiple classes.[23] The orders impose as many as 20 conditions intended to ensure that multiple class funds do not present the investor protection concerns that section 18 was designed to address.[24] Among other things, the conditions limit class differences and subject them to oversight by the fund's board of directors.

An exemptive rule would simplify the process for issuing classes and, by eliminating the need for funds to apply for orders, save time and reduce expenses. It also would reduce the Commission's burden of reviewing the applications. Therefore, the Commission is proposing such a rule, which is designed to streamline the conditions imposed on multiple class funds while preserving investor protection. The Commission also is proposing amendments to rule 12b–1 to clarify its applications to multiple class funds. Finally, the Commission is proposing certain related disclosure and reporting requirements that would apply both to multiple class funds and to master-feeder funds.

Consistent regulatory treatment of multiple class and master-feeder funds is appropriate because of certain similarities between them. In master-feeder structures, one or more open-end management investment companies with their own service or distribution arrangements (the "feeder funds") hold as their only investment securities shares of a single open-end management investment company (the "master fund") that has the same investment objective as the feeder funds. This fund structure generally relies on a statutory

[13] Clone funds are separate funds with similar portfolios but different distribution or service arrangements. For small investor markets, clone funds may not be viable. *See, e.g.*, Arch Fund, Inc., Investment Company Act Release Nos. 15489 (Dec. 22, 1986), 51 FR 51250, 51251 (Notice of Application) and 15532 (Jan. 13, 1987), 37 SEC Docket 568 (Order) ("Applicants believe that it would be inefficient, and in some instances economically or operationally infeasible, to organize a separate investment Portfolio for each class of New Shares created").

[14] *See, e.g.*, G.T. Global Growth Series, Investment Company Act Release Nos. 18961 (Sept. 17, 1992), 57 FR 43992 (Notice of Application) and 19022 (Oct. 14, 1992), 52 SEC Docket 2887 (Order).

[15] *See, e.g.*, MarketMaster Trust, Investment Company Act Release Nos. 17785 (Oct. 9, 1990), 55 FR 42136 (Notice of Application) and 17838 (Nov. 5, 1990), 47 SEC Docket 1324 (Order).

[16] 15 U.S.C. 80a–18(f)(1), (g), (i).

[17] Because each class has different asset-based service or distribution fees, the classes have different total expenses and, thus, different net incomes. Differences in net income may be reflected in different net asset values, different dividends, or both.

[18] *Cf.* Comm. on Interstate and Foreign Commerce, Investment Company Act Amendments of 1970, H.R. Rep. No. 1382, 91st Cong., 2d Sess. 28 (1970) and Comm. on Banking and Currency, Investment Company Amendments Act of 1969, S. Rep. No. 184, 91st Cong., 1st Sess. 38 (1969) (both discussing the need to clarify section 18(i) to permit separate voting rights for classes of shareholders in series funds when their interests may be distinct).

[19] 15 U.S.C. 80a–1(b)(3).

[20] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 272–74, 1044 (1940).

[21] *Id.* at 265–75, 1025–37.

[22] For example, when each class pays all the expenses of its shareholder services or distribution plan, one class has no interest in whether the other classes' services are being provided on a cost-effective basis. It does, however, have an interest in whether the services attract new investors to the fund, if fund-wide economies of scale are realized as a result. If shareholders who do not bear the expenses of an arrangement are permitted to vote on it, they could approve higher fees and expenses than the class itself would choose.

[23] *See, e.g.*, orders cited *supra* notes 4–13. Multiple class funds have become a particularly significant phenomenon in the last three years: since January 1, 1990, the Commission has issued more than 70 multiple class orders.

[24] The conditions vary somewhat depending on the particular features of the structure (*e.g.*, whether the fund intends to offer conversion rights or to allocate expenses other than service and distribution fees).

exemption,[25] in contract to the multiple class arrangement, which necessitates exemptive relief from certain provisions of section 18.[26] Like multiple class funds, feeder funds may be sold to customers of different institutions (such as brokers, banks, and insurance companies) and may target different markets (such as retail investors, institutional investors, and bank trust customers, as well as off-shore investors). Like the multiple class structure, the master-feeder structure also may be used to offer investors a choice of methods for paying distribution costs: *e.g.*, a choice between a feeder fund with a front-end sales charge and a low asset-based distribution fee and a feeder fund with a higher asset-based distribution fee and a CDSL but no front-end sales charge. Thus far, however, this use is infrequent.[27]

II. Discussion

A. Rule 18f–3

Proposed rule 18f–3 would create a limited exemption from sections 18(f)(1) and 18(i) for funds that issue multiple classes of shares with varying arrangements for shareholder services and distribution. Multiple class funds with existing exemptive orders would be allowed to use the rule but would not be required to do so.[28]

Proposed rule 18f–3 includes a number of conditions that would require certain differences in the rights and obligations of different classes, permit certain other differences among classes, and specify the matters on which class voting is required. The rule also would prescribe how income and expenses must be allocated and delineate the responsibilities of the board of directors, including the directors who are not "interested persons."[29] Finally, the rule would permit, but not require, different classes to have different exchange privileges and conversion rights.

1. Limits on Class Differences

The exemptive orders issued to date by the Commission for multiple class funds have addressed the potential for conflicts among classes by limiting the permissible differences in shareholder or distribution services and payments applicable to each class; certain other expenses borne by the classes; and the voting rights applicable to the classes.[30] The orders require that all classes represent interests in the same portfolio of investments and be identical in all respects except for differences in fees and expenses related to their different arrangements, separate voting on their different arrangements and other matters for which separate class voting is appropriate, and any differences in exchange privileges, conversion, features, and class designations.[31]

Proposed paragraph (a) essentially would codify this approach.[32] Paragraph (a)(1) would require that each class have a different arrangement for distribution or shareholder services, paragraph (a)(2) would require that each class bear all of the expenses of its arrangement, paragraph (a)(3) would require that each class have the exclusive right to vote on matters relating solely to its arrangement, and paragraph (a)(4) would require that each class vote separately on matters in which the interest of that class are different from the interests of any other class. Paragraph (a)(5) would require that fund shareholders have, in all other respects, the same rights and obligations, regardless of class.

a. Differences in shareholder service or distribution arrangements and other expenses. Proposed paragraph (a)(1)(i) would require that each class have a different arrangement for shareholder services, the distribution of securities, or both. Paragraph (a)(1)(i) is intended to encompass all of the class arrangements that the Commission has exempted by order. Thus, an arrangement for shareholder services could include any services provided to shareholders of one class, including transfer agency services and services related to shareholder relationships and account administration. An arrangement for the distribution of securities could include various distribution activities on behalf of the fund and the terms of payment for those activities.[33]

An arrangement would be considered a different arrangement if it involved differences in the amount or form of payment, the nature and extent of services provided, or both. For example, a class that pays a front-end load and a class with a rule 12b–1 fee would be considered to have different distribution arrangements because they differ in the amount, the form (by shareholders individually versus by the class as a whole), and timing (at purchase versus over time) of distribution charges.

Paragraph (a)(1)(ii) also provides that certain other expenses may be allocated to an individual class. Thus, under paragraph (a)(1), funds would have to determine whether each expense should be allocated to the fund as a whole (a fund expense) or to each class individually (a class expense).[34] Expenses may be treated as expenses of a class if they are directly related to the arrangement of that class for shareholder services or distribution, or if they are actually incurred in a different amount *pro rata*. Paragraph (a)(1)(ii) expressly provides that a fund may not allocate advisory or custodial fees or other expenses related to management of the fund's assets. Class allocations would have to be approved by the board of directors following the procedures specified in paragraph (c).

Some expenses may not always be classified automatically as fund expenses or class expenses. In their applications, funds have treated in varied fashion expenses for services that are available to all classes but are used more by one class than another. For example transfer agency services are available to all shareholders but arguably may be used more by some classes than others. Some funds have requested exemptions to allocate

[25] Section 12(d)(1)(E) of the Investment Company Act has been interpreted to except the master-feeder structure from the general prohibition against fund holding companies or "funds of funds." 15 U.S.C. 80a–12(d)(1)(E) (the exception applies if the only investment security held by a registered investment company is the security of another investment company).

[26] Unlike the classes of multiple class funds, the feeder funds of master-feeder funds are considered separate issuers, whose securities are not senior securities subject to the limitations of section 18. *See supra* notes 16 to 22 and accompanying text. Consequently, feeder funds do not require exemptive relief from section 18 to offer their shares.

[27] *But see, e.g.*, Hyperion Short Duration U.S. Government Fund, Prospectus, File Nos. 33–38378 and 811–6262 (Feb. 26, 1993) (front-end load) and Hyperion Short Duration U.S. Government Fund II, Prospectus, File Nos. 33–36380 and 811–6210 (Feb. 26, 1993) (spread load); Eaton Vance Municipals Trust II, Registration Statement, File Nos. 33–71320 and 811–8134 (Nov. 5, 1993) (different feeder funds are different series of same trust and offer choice of level load, spread load, and front-end load).

[28] In either case, funds would be required to comply with the proposed disclosure requirements discussed below.

[29] *See* section 2(a)(19) of the Investment Company Act, 15 U.S.C. 80a–2(a)(19). This release refers to such directors as "independent directors."

[30] To a large degree, similar conflicts may arise today with separate funds in the same investment company complex, when different funds share the administrators and providers of services. For example, funds and fund complexes allocate the shared cost of responding to shareholder inquiries.

[31] *See, e.g.*, Smith Barney, *supra* note 6, 57 FR at 47159.

[32] Exchange privileges and conversion features are discussed below in connection with proposed paragraph (d). *See infra* section II.A.4.

[33] *See supra* note 9 for more detailed examples of shareholder and distribution services.

[34] The orders do this through two conditions. First, each class bears a separate fee for its separate distribution or service arrangement. Second, the orders permit certain specified fund expenses to be allocated at different rates for each class. *See, e.g.*, Goldman Sachs Equity Portfolios, Inc., Investment Company Act Release Nos. 19241 (Jan. 26, 1993), 58 FR 6830, 6834 (Notice of Application) and 19309 (Mar. 3, 1993), 53 SEC Docket 2308 (Order) (conditions 1 and 7).

transfer agency fees on a class basis, while others have allocated them to all shareholders *pro rata*.[35] Funds also have sought to allocate on a class basis expenses such as printing and postage related to preparing and distributing shareholder reports, prospectuses, and proxies of a specific class, administrative expenses and services required to support the shareholders of a class, and directors' fees incurred as a result of issues relating to one class of shares.[36] Other funds, however, have not requested that they be able to allocate these expenses on a class basis.[37] This variation may relate, in part, to tax considerations.[38]

Paragraph (a)(1) would not create a bright-line test to classify expenses or provide a list of permissible and impermissible class expenses. Instead, under that provision, it would be appropriate to treat some expenses as class expenses or not depending on the relation to the arrangement of a class or the actual extent to which expenses are incurred in different amounts. The existence of any actual difference would depend on whether, for example, certain services are provided to one class to a different degree than to other classes. These determinations would be left to the board of directors making the findings required under paragraph (c).

The Commission requests comment on whether rule 18f-3 should provide more specific limits on differential allocation of expenses. One alternative would be to limit such allocation to rule 12b-1 fees, shareholder servicing fees, and transfer agency expenses. Commenters are asked to address whether establishing a brighter line between class expenses and general fund expenses would be desirable, or whether it would, instead, interfere with fair allocation of expenses among classes. Commenters are encouraged to supply examples of expenses that properly should be classified as class expenses.

Proposed paragraph (a)(2) would require that each class bear all expenses of its arrangement except to the extent of any waiver or reimbursement. Paragraph (a)(2) addresses only expenses that are charged as the costs of those arrangements; it would not prohibit the other party to a contract or other arrangement from providing its goods or services at a reduced rate or free of charge. Moreover, paragraph (a)(2) expressly provides for waiver or reimbursement of class expenses by the fund's adviser or underwriter.[39] Because paragraph (a)(2) only provides for waiver of the class expenses of an individual class, the amount of any such waiver or reimbursement may not exceed the amount of those expenses.[40] Any waiver or reimbursement beyond those expenses must be allocated *pro rata* among the classes based on their relative net asset values.

The rule does not provide an exemption from section 18 for different waivers or reimbursements of fund expenses, such as investment advisory fees. The Commission believes that it would not be appropriate for an adviser to waiver its advisory fees for one class and not for other classes.

b. Class voting. So that voting in multiple class funds is consistent with the purposes of section 18(i), proposed paragraph (a)(3) would require that each class have the exclusive right to approve matters submitted to shareholders that relate solely to its different arrangement. Paragraph (a)(3) would govern which class of shareholders would vote on a matter, but would not affect whether the matter is one required to be submitted to shareholders. For example, if the board of directors decided to adopt a shareholder services plan for one class of shareholders that was not subject to rule 12b-1, a shareholder vote to approve that plan would not be required.[41] If, however, the board of directors decided that the fund should submit the matter for shareholder approval, paragraph (a)(3) would require that the matter be submitted only to the class of shareholders subject to the plan.

Proposed paragraph (a)(4) would require that each class have the right to vote separately on matters in which its interests are different from those of other classes. For the most part, classes are likely to have different interests only in matters that involve the arrangements of the classes under paragraph (a)(1) and hence fall within paragraph (a)(3). However, should a matter arise that does not involve those arrangements, paragraph (a)(4) would ensure that each class has a separate vote. Like paragraph (a)(3), paragraph (a)(4) would govern all shareholder votes that are subject to it, but would not affect whether or not a shareholder vote is required.

c. Fund-wide rights and obligations. The multiple class exemptive orders require that all classes in a multiple class fund be identical except for differences expressly permitted by order. Similarly, proposed paragraph (a)(5) would require that a fund relying on the rule establish the same rights and obligations for all shareholders regardless of class, except as provided by paragraphs (a)(1), (2), (3), and (4). Thus, paragraph (a)(5) effectively would require multiple class funds to allocate all expenses of the fund that are not class expenses, and voting rights on matters that affect all shareholders equally, to all fund shareholders *pro rata*.[42]

[35] *Compare* Kidder Peabody California Tax Exempt Money Fund, Investment Company Act Release Nos. 19226 (Jan. 22, 1993), 58 FR 6545 (Notice of Application) and 19269 (Feb. 17, 1993) 53 SEC Docket 1558 (Order) (class expenses include transfer agency fees), *with* Goldman Sachs, *supra* note 34, 58 FR at 6834 (class expenses do not include transfer agency fees).

[36] Other expenses that sometimes are treated as class expenses include blue sky registration fees incurred by a class, Securities Act registration fees incurred by a class, and litigation or other legal expenses relating solely to a class. *See, e.g.*, Dreyfus A Bonds Plus, Inc., Investment Company Act Release Nos. 19165 (Dec. 18, 1992), 57 FR 61944 (Notice of Application) and 19214 (Jan. 14, 1993), 53 SEC Docket 518 (Order).

[37] *See, e.g.*, Declaration Funds, Investment Company Act Release Nos. 19172 (Dec. 21, 1993), 57 FR 61942 (Notice of Application), 19218 (Jan. 19, 1993), 53 SEC Docket 554 (Order), and 19218A (Feb. 22, 1993), 53 SEC Docket 1527 (Amended Order) (requesting exemption to allocate only plan fees).

[38] Funds are required to allocate most of their expenses other than rule 12b-1 fees and transfer agency fees on a *pro rata* basis without regard to class in order to avoid the issuance of a "preferential dividend" and the consequent loss of pass-through tax treatment under Subchapter M of the Internal Revenue Code. The Internal Revenue Service has allowed funds to allocate varying *de minimis* class expenses. *See, e.g.*, IRS Private Letter Rulings No. 9234005 (May 11, 1992) (expenses for class shareholder meeting expenses and printing and postage costs for distributing prospectuses, shareholder reports, and proxies to current class shareholders), and No. 9336009 (June 4, 1993) (permitting differences in transfer agency fees, printing and postage expenses, SEC and state registration fees, litigation and other legal expenses related solely to one class, and certain fees and expenses of directors).

[39] *Cf.* Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980), 45 FR 73898 (adoption of rule 12b-1) (to the extent that an adviser's profits are "legitimate" and "not excessive," the adviser's payments for distribution expenses are not an indirect use of fund assets).

[40] This provision addresses only a waiver or reimbursement for a specific class. It does not address waivers or reimbursements that apply to all classes in the same proportion as the relative net asset value of each class or that cap the expenses of each class at the same percentage of net assets.

[41] The Commission has stated that "[w]hether particular shareholder or other services are 'primarily intended to result in the sale of fund shares' and therefore, must be paid under a 12b-1 plan, will depend on the surrounding circumstances." Payment Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 at n. 126 (June 13, 1988), 53 FR 23258, 23271 (proposing amendments to rule 12b-1).

[42] Allocation of expenses to all shareholders *pro rata* generally means allocation on the basis of relative net asset value. *See infra* section II.A.2. *Pro rata* allocation of voting rights generally means allocation on a per share basis but can also mean allocation on the basis of relative net asset value. *See* Sentinel Group Funds, Inc. (pub. avail. Oct. 27, 1992) (voting rights of different series in a fund may be tied to relative net asset values of each class to

Continued

2. Allocation of Fund-Wide Expenses

Proposed paragraph (b) would apply the general principle of paragraph (a)(5) specifically to the allocation of fund expenses. Paragraph (b) would provide that all income, gains and losses, and expenses of the fund[43] other than class expenses, must be allocated to each class on the basis of relative net asset value. This provision is intended to clarify an issue that has arisen under some exemptive applications. The exemptive orders have required the filing of a separate report from an expert in response to sub-item 77P of Form N-SAR.[44] In these reports, an expert has reported on the adequacy of accounting procedures unique to multiple class funds. The reports have stated whether the methodology and procedures for calculating net asset value of each class, including allocation of income, expenses, dividends, and distributions, are appropriate. In these reports, some applicants have proposed to allocate fund expenses and income on a per share basis, regardless of class, but this treatment has not been permitted. Such an approach is not appropriate and would not be permitted under paragraph (b).

Under these proposals a separate report from an expert would no longer be necessary. Instead, to assure that the registrant's internal control structure is adequate to perform the accounting procedures unique to multiple class funds, the Commission is proposing to amend sub-item 77B of Form N-SAR to state a requirement that accountants preparing the report on internal control refer expressly to the procedures for calculating the classes' net asset values. Sub-item 77B requires independent accountants to report on the company's system of internal accounting control (internal control structure). The report is to be based on the review, study and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements. The proposed amendment would add a specific reference in the accountant's report on internal control (structure) directed to the procedures for calculating multiple equity class net assets. While an audit of the financial statements would include a review of the accounting system, which would likely include an evaluation of such procedure, specifying that the independent accountant's report must include a reference should ensure a uniform level of responses.

3. Board Review

The multiple class exemptive orders[45] address potential conflicts of interest among classes by looking to fund boards of directors.[46] The Commission's orders include conditions requiring the boards to approve the issuance of multiple classes and to include in the minutes of their meetings a detailed discussion of the reasons for approval; to review and approve the specific allocations of class expenses; and to monitor for any conflicts of interest among classes and take any actions reasonably necessary to eliminate them.[47]

Like the exemptive orders, proposed rule 18f-3 would give boards of directors, particularly the independent directors, significant responsibility. Proposed paragraph (c) would require that the fund adopt a written plan specifying all of the differences among classes. The plan would have to set forth the different shareholder service and distribution arrangements for each class, any allocation of other expenses, and any conversion features or exchange privileges. Thus, the plan would provide the board of directors with a clear statement of the differences among the classes.

Paragraph (c) also would require that the board, including a majority of the independent directors, approve the plan before the issuance of multiple classes and annually thereafter.[48] In doing so, it would have to find that the plan is fair to, and in the best interests of, each class and the company as a whole.[49] Thus, the rule would replace several board reviews required by the orders with one finding that the written plan be fair to, and in the best interests of, each class individually and the fund. In making this finding, the board should focus on the relationship among the classes and examine potential conflicts of interest among classes regarding allocation of fees, services, and voting rights. Most significantly, the board should evaluate the level of services provided to each class and the cost of those services to ensure that the services are appropriate and that the allocation of expenses is reasonable.[50]

Proposed amendments to Forms N-1A and N-14 would require a copy of the rule 18f-3 plan to be filed as an exhibit.[51]

4. Exchange Privileges and Conversions

In addition to the differences among classes provided under paragraph (a), the exemptive orders have allowed classes to differ in exchange privileges and conversion features. Proposed paragraph (d) would codify these

avoid vesting unfair voting power in classes with per share net asset values that are significantly lower than those of other classes). The Commission requests comment whether rule 18f-3 should *require* voting to be allocated on the basis of relative net asset value.

[43] As is clear from the definition of "company" in the introductory paragraph of the rule, in the case of a fund with more than one series of securities, the "income, realized and unrealized capital gains and losses, and expenses of the company" and the "net asset value of the company" in paragraph (a)(5) refer to the specific series in question.

[44] 17 CFR 274.101.

[45] *E.g.*, Smith Barney, *supra* note 6, 57 FR at 47159.

[46] The definition of "director" in section 2(a)(12) of the Investment Company Act also includes any persons performing similar functions for any organization, whether incorporated or unincorporated, including any natural person serving as trustee of a management investment company created as a common-law trust. 15 U.S.C. 80a-2(a)(12).

[47] *E.g.*, Dreyfus, *supra* note 36, 57 FR at 61948. In addition, the orders typically have required the independent directors to approve quarterly and annual expense reports presented to the board under rule 12b-1(b)(3)(ii), have referenced the board's fiduciary responsibilities under the Investment Company Act and, when bank intermediaries are involved, under federal banking laws have required funds to develop written guidelines for the directors setting forth the conditions of the orders and the duties and responsibilities of the boards for the use of multiple classes. *E.g.*, *id.* (conditions 4, 6, 7, 9, and 14).

[48] The Commission has taken a number of steps recently to reduce burdens on fund boards of directors. *E.g.*, Exemption of Acquisition of Securities Issued by Persons Engaged in Securities-Related Businesses, Investment Company Act Release No. 19716 (Sept. 16, 1993), 58 FR 49425 (amending rule 12d3-1 [17 CFR 270.12d3-1]); and Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19719 (Sept. 17, 1993), 58 FR 49919 (amending rules 10f-3, 17a-7, 17e-1, 17f-4, and 22c-1 [17 CFR 270.10f-3, .17a-7, .17e-1, .17f-4, and .22c-1]). The Commission believes that boards are most effective when they are evaluating potential conflicts between funds and their advisers, not when they are involved with day-to-day activities of funds or are making findings that involve more ritual than substance. Because of the conflict between funds and their advisers over advisory and other fees, the Investment Company Act places a great deal of responsibility on boards to evaluate fees paid to advisers and their affiliated persons. *See, e.g.*, Investment Company Act section 15(a),(c), 15 U.S.C. 80a-15 (a), (c). Multiple class arrangements involve potential conflicts over fees. Therefore, the Commission believes that board review of multiple class arrangements is appropriate.

[49] Section 36(b) of the Act, 15 U.S.C. 80a-35(b), imposes a fiduciary duty on fund investment advisers and their affiliated persons as to their receipt of compensation from the fund. That section does not contemplate multiple class funds. The Commission believes, however, that a determination of whether class-specific compensation (such as a rule 12b-1 fee) paid to a fund's investment adviser or an affiliated person of the adviser meets the standards of that section should be made on a class-by-class basis, and would depend on all the facts and circumstances, including the fees paid by other classes of the fund, and the effect of any waiver or reimbursement.

[50] In this regard, rule 12b-1 requires board review of expenditures under plans of distribution. Such review could be performed concurrently with the review of the multiple class plan.

[51] New Item 24(b)(18) of form N-1A, and new Item 16, Exhibit (17) of Form N-14.

provisions of the orders. Paragraph (d)(1) would let multiple class funds offer different exchange privileges to different classes. Proposed paragraph (d)(2) would allow funds to offer one or more classes with conversion features. This provision would specify that conversions must be made at net asset value and prescribe that a conversion feature must limit the total rule 12b–1 fees paid by shareholders with a conversion feature. Differences in exchange privileges and conversion features would be subject to board review and approval under paragraph (c) to determine that they are fair to each class individually and to the fund as a whole. In addition, the exchange privileges continue to be subject to section 11 of the Investment Company Act and the rules thereunder.[52]

If a fund has a class with a conversion feature ("purchase class"), proposed paragraph (a)(4) would require that any material increase in the rule 12b–1 fee charged to the class into which the purchase class converts (the "target class") also be approved by a separate vote of the purchase class. If the target class approves the increase but the purchase class does not, paragraph (d)(2) would provide that the fund could not increase the rule 12b–1 fee of the target class unless it established a separate target class for shareholders in the purchase class. That separate class would have to have the same fees and terms as the target class did before the increase.

B. Rule 12b–1

Rule 12b–1 was adopted in 1980 before the issuance of any orders permitting multiple class funds. The wording of the rule implicitly assumes that a fund has a single class of securities and does not specify how its procedures apply when the fund includes separate classes.

The Commission is proposing to amend rule 12b–1 by adding new paragraph (g), which would provide that if a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and any action that is taken on the plan must be taken separately for each class.[53] Thus, a plan would be subject to separate requirements of director and shareholder approval for each class. Thus, in determining under paragraph (e) that a distribution plan presents a "reasonable likelihood of benefit" to the company and its shareholders, the board would be required to make that finding separately for each class. Similarly, where rule 12b–1 requires that a plan for the distribution of securities be approved by a majority of the fund's outstanding voting securities, the proposed amendment would require shareholder approval by the outstanding voting securities of each separate class only.[54] The amendment is consistent with the orders, which have not allowed shareholders not subject to a plan to vote on it.

The amendment also would be consistent with paragraph (a)(3) of proposed rule 18f–3. That provision requires that each class have exclusive voting rights on any matter submitted to shareholders that relates solely to the shareholder servicing or distribution arrangement of that class.[55]

C. Disclosure

1. Prospectus Disclosure

Current exemptive orders generally require *every* prospectus of a multiple class fund to disclose the respective expenses, performance, distribution arrangements, services, fees, sales charges, and exchange privileges of *all* classes, regardless of whether each class is offered through that prospectus.[56] This cross-disclosure requirement is intended to highlight the existence of the different classes and provide information about investors' choices among those classes. The orders, however, do not expressly require information to be disclosed with equal prominence for all classes. Therefore, practice varies. Some prospectuses provide expenses for one class in the fee table and for other classes in notes following the fee table, and other prospectuses put disclosure about other classes in the text further back in the prospectus.

Some orders have included an exception from the cross-disclosure requirement for classes of shares that are available solely to institutional investors investing for their own account, institutional intermediaries that have investment discretion over each underlying account, and certain persons related to the fund, its adviser, or principal underwriter ("institutional or inside investors").[57] Under these orders, prospectuses for classes available to the general public must disclose only the identity of the class not available for purchase and identify those persons eligible to participate in them. This approach recognizes that certain classes are not available to the general public, either through direct investment or by exercising investment discretion through an intermediary such as a bank or an employee benefit plan. Detailed information concerning these classes may have little relevance to an individual investor's evaluation of the class best suited to his or her investment needs, and may confuse rather than inform investors.

As noted above, funds may use the master-feeder structure to achieve many of the same marketing objectives as the multiple class structure. Unlike multiple class funds, however, which generally must disclose the material features of each class regardless of how that class is marketed, feeder funds currently are not required to provide detailed prospectus disclosure concerning other feeder funds investing in the same master fund. Each feeder fund prospectus must contain only a statement that other feeder funds invest in the master fund and that their expenses and consequently their performance may differ, and a toll-free

[52] 15 U.S.C. 80a–11(a); 17 CFR 270.11a–1, –2, and –3 (requiring offers of exchange to be made on the basis of net asset value, with exceptions).

[53] In the case of funds issuing more than one series of shares, rule 12b–1 has been interpreted to treat each series as a separate fund. *See* Inv. Co. Act Rel. 16431, *supra* note 41, at n.202 and accompanying text.

[54] As noted in the text above, under paragraph (d)(2) of proposed rule 18f–3, however, any shareholder vote on the rule 12b–1 plan of a target class also would require a separate vote of any purchase class. Proposed new paragraph (g) of rule 12b–1 would contain an express cross-reference to rule 18f–3 to address this limited exception expressly.

[55] The orders also have required that multiple class funds adopt and operate their shareholder service plans in accordance with the procedures set forth in rule 12b–1 (b) through (f), other than the rule's requirements for shareholder approval. Rule 18f–3 would not retain this requirement, in light of the requirement under paragraph (c) that a multiple class fund's board review the fairness of the fund's plan.

[56] *E.g.*, Merrill Lynch California Municipal Series Trust, et al., Investment Company Act Release Nos. 16503 (July 28, 1988), 53 FR 29294 (Notice of Application) and 16535 (Aug. 23, 1988), 41 SEC Docket 955 (Order).

[57] *E.g.*, John Hancock Asset Allocation Fund, Investment Company Act Release Nos. 18921 (Sept. 1, 1992), 57 FR 40934 (Notice of Application) and 18984 (Sept. 29, 1992), 52 SEC Docket 2575 (Order) (disclosure not required about class offered solely to certain unaffiliated benefit plans in which investment discretion is vested with a separate trustee (excluding self-directed plans), tax-exempt retirement plans for employees of the fund's adviser and its affiliates, certain unit investment trusts, banks and insurance companies purchasing for their own account, investment companies not affiliated with the adviser, and endowment funds of non-profit organizations); Shearson Lehman Appreciation Fund Inc., Investment Company Act Release Nos. 18770 (June 11, 1992), 57 FR 27830 (Notice of Application) and 18832 (July 7, 1992), 51 SEC Docket 2021 (Order) (disclosure not required about class offered solely to, among others, employees of the fund's principal underwriter and its affiliates, directors, general partners, or trustees of any investment company for which the principal underwriter serves as distributor, and the spouses and minor children of the foregoing).

telephone number for information about the availability of other feeder funds.[58]

The Commission is proposing to modify the prospectus disclosure requirements for multiple class funds and master-feeder funds to make them generally consistent and to promote understanding of investors' options among these funds' sales and service arrangements. The proposal seeks to respond to concerns that the complexity of sales and service charges may confuse many investors; some reports indicate that many investors may not understand that they are paying sales or related charges or the effect different sales and related charges will have on performance.[59] These concerns are greatest with rule 12b-1 fees and contingent deferred sales charges, whose significance may not be fully appreciated by investors because they are not paid at the time of purchase and because the amounts that investors ultimately will pay cannot be determined precisely at that time.

Thus, the proposed amendments would require the prospectuses of both multiple class and feeder funds to include a prominent legend following the fee table providing information about the availability of other classes or feeder funds, unless all classes or feeder funds are offered through the same prospectus. A prospectus for a multiple class or feeder fund would be required to include full cross-disclosure about all classes or feeder funds investing in the same master fund that are offered or made available through the same broker, dealer, bank, or other financial intermediary and that permit investors to choose among alternative arrangements for sales and related charges. For example, classes with a "dual distribution" arrangement (a choice between a class with a front-end load and a class with a spread load) would be subject to this requirement. If a prospectus offers more than one class or feeder fund, or contains cross-disclosure about other classes or feeder funds, the prospectus would be required to discuss the differences among the classes or feeder funds that are offered in the prospectus or subject to the cross-disclosure requirement; that discussion would be required to include a line graph comparing the hypothetical performance of those classes or feeder funds over a ten year period, assuming a $10,000 initial investment and a 5% annual return for all classes or feeder funds before expenses; this graph would show the circumstances in which each would produce the highest total return upon redemption. Thus, when investors are offered alternative sales and related charges, the proposed prospectus requirements should focus investor attention on a comparison of sales and service charge options and make it easier to understand when a given option is likely to produce the lowest costs and hence the highest return. These amendments would apply to all multiple class funds, no matter whether they rely on rule 18f-3 or continue to rely on exemptive orders for their exemption from section 18.[60]

The proposed amendments would not provide the only prospectus disclosure requirements for these funds. Certain other disclosure requirements applicable to master-feeder funds would remain in effect notwithstanding the proposal or adoption of these amendments.[61] The proposed amendments, however, would not include certain other disclosure currently required for multiple class funds under the exemptions.[62] The Commission requests comment on whether other amendments are necessary to address differences among multiple class, master-feeder, and single class funds. For example, should the Commission impose standardized class designations (*e.g.*, Class A for front-end sales charges, Class B for spread loads, etc.) upon all multiple class funds, or would variations in class structures make such a requirement unworkable?

a. Legend concerning classes or feeder funds not offered through a prospectus. The Commission is proposing to revise Instruction 1 to Item 2(a) of Form N-1A[63] to require every prospectus of a multiple class or feeder fund to include a prominent legend in the narrative following the fee table unless all classes or all feeder funds are offered through the same prospectus.[64] The legend would state that a multiple class fund issues other classes or that other feeder funds invest in the master fund, and that because sales charges and expenses vary among classes and feeder funds, performance also varies. The legend would be required to identify those other classes[65] or feeder funds, and to include a toll-free telephone number that investors could use to obtain further information about other classes or feeder funds not offered through the prospectus. As under the exemptive orders, in multiple class fund prospectuses, the legend also would be

[58] Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993) (hereinafter "1993 Generic Comment Letter"), Comment II.H: feeder fund prospectuses also must contain: (i) Certain information regarding the master fund (*e.g.*, its investment objectives and policies), (ii) a unified fee table summarizing the fees of both the master fund and the feeder fund, (iii) a discussion of certain factors, including whether the aggregate fees assessed at the master fund and feeder fund levels would be more or less than if the feeder fund invested directly in the securities held by the master fund, that the feeder fund's directors considered when adopting the master-feeder structure, (iv) a discussion of the pass-through voting procedures followed by the feeder fund when the master fund requests a vote of its security holders, and (v) a discussion of the consequences of a feeder fund's being required to redeem its shares in the master fund in the event that the feeder fund's shareholders fail to approve a change in the feeder fund's investment objectives that conforms with changes in the master fund's investment objectives. These prospectus disclosure requirements closely resemble the standards recently adopted by the North American Securities Administrators Association for registration of master-feeder funds at the state level. *See* "Guidelines for the Registration of Master Fund/Feeder Funds," NASAA Reports (CCH) ¶ 2252.

[59] Several news reports have indicated that the complexity of distribution charge options can be confusing to investors. *See, e.g.*, Carole Gould, *Clearing Up Confusion Over Class*, N.Y. Times, Nov. 14, 1993, at F14; Gene Colter, *In ABCs of Shares, "B" is for Beware*, Wall St. J., Oct. 5, 1993, at R22 (spread loads in particular may confuse investors, who may believe that they are holding no-load funds); Robert N. Veres, *Alphabet Soup*, Worth, July/August 1993, at 88 (the array of classes and distribution charges "can bewilder even brokers and financial advisors"); Carole Gould, *Looking Ahead, Long and Hard*, N.Y. Times, June 6, 1993, at F16 (the multiple class fund can create a "byzantine pricing structure" that confuses investors); Allen Myerson, *No Front or Back Fees But Watch That Middle*, N.Y. Times, May 29, 1993, at D31 (investors baffled by the level load); Amey Stone, *Will Supermarket-Style Pricing Work With Mutual Funds*, **Financial Planning**, Feb. 1993, at 37 (president of complex describes level load as designed to look or feel nothing like a load); Amy Dunkin, *Mastering the Maze of Fund Loads and Fees*, Bus. Wk., Aug. 24, 1992, at 78 ("Figuring out what impact the sales charges and expenses have on your return is getting more difficult").

[60] For example, an Investment Company Institute committee has been considering proposed standard nomenclature for multiple class funds. *See* 1993 ICI Securities Law Procedures Conference at V-5.

[61] Thus, the Division's guidelines in the 1993 Generic Comment Letter for feeder fund prospectus disclosure would continue to apply with one exception: following the adoption of these amendments, the Division would no longer require a general description of the master-feeder structure on the cover page. *See* 1993 Generic Comment Letter, *supra* note 58 (Comment II.H.(a)).

[62] For example, when multiple class funds provide the net asset value or public offering price of any class for publication in a newspaper or similar listing, the exemptions have required the funds to provide this information for all classes. The Commission is not proposing such a requirement here.

[63] 17 CFR 239.15A, 274.11A.

[64] Rule 8b-12(d) under the Act requires the body of all printed registration statements to be in roman type at least as large as 10 point modern type. 17 CFR 270.8b-12(d). The legend would be required to appear in the text and therefore must be printed in at least 10 point modern type. Disclosure is "prominent" if it appears in a typographically distinctive manner (*e.g.*, boldface, italics, red letters, etc.). *See* 1993 Generic Comment Letter, *supra* note 58 (Comment II.J.).

[65] Thus, the legend would provide for multiple class funds some of the disclosure required by Item 6(d) of Form N-1A, which requires identification of other classes in the prospectus and a statement whether those classes have any preference over the security being offered.

required to state that a sales representative may receive different compensation for selling one class than for another class.

Proposed new Item 32(d) of Form N–1A would require an undertaking to provide investors calling the toll-free telephone number with information about purchasing procedures and eligibility requirements for each class or feeder fund, and comparable information to be provided about any investment vehicle other than a mutual fund that invests only in the same master fund.[66] The undertaking would also require funds to provide prospectuses for other classes or feeder funds upon request.

The proposed legend requirement is intended to alert investors to the existence of other classes and feeder funds and how to obtain information about them. Thus, it would substitute for the more extensive information about other classes that now is required under the exemptive orders to appear in the prospectus.[67] Current disclosure requirements for most feeder funds would be unchanged under the proposal, except that the proposal would require specifically that some of the disclosure now required for feeder fund prospectuses be presented in the legend following the fee table.[68]

The Commission requests comment on whether, instead of requiring that the legend identify all other classes or feeder funds, the Commission should amend Item 6(d) (which already requires identification of all classes) to require identification also of all feeder funds, and require the legend to include a cross-reference to the Item 6(d) disclosure.

b. Cross-disclosure about certain other classes or feeder funds. Proposed new General Instruction I to Form N–1A would require a prospectus offering any class or feeder fund to provide disclosure responding to Items 2 through 9 of Form N–1A for all other classes or feeder funds investing in the same master fund that are offered or made available through the same broker, dealer, bank, or other financial intermediary[69] and have alternative arrangements for sales and related charges, whether or not those classes or feeder funds are offered in the same prospectus. This requirement would ensure that investors have available the information necessary for choosing among different sales charges and related expenses while investing in the same underlying portfolio. The principal purpose of the proposed cross-disclosure requirement, coupled with proposed new Item 6(h) discussed below, is to focus the attention of investors on a comparison among different forms and/or amounts of sales charges and related expenses. This arrangement would facilitate comparisons among classes or feeder funds that have alternative arrangements for sales and related charges by providing information in a readily accessible format. When, as under Items 2 and 3 of Form N–1A, information is required to be presented in tabular form, those tables must list separately in parallel and adjacent columns data for each class or feeder fund that is offered in the prospectus or about which cross-disclosure is required.

The determination of whether classes or feeder funds have alternative arrangements for sales and related charges and therefore require cross-disclosure would depend on the facts and circumstances of each situation. Generally, classes or feeder funds would be considered to have alternative sales and related charges if they differ primarily in offering investors different methods for paying distribution costs (*e.g.*, a choice among a front-end load, a spread load, and a level load).[70] By contrast, a class or feeder fund offered exclusively to institutional or inside investors[71] would not be considered to have an alternative arrangement to a class or feeder fund offered to the general public. The typical case to which this requirement would apply is a dual distribution arrangement.[72]

Under proposed new General Instruction I and the proposed legend requirement, an investor's existing or potential relationship to a broker, dealer, bank, or other financial intermediary would determine whether the investor would find information about various classes or feeder funds in the same prospectus or would be referred to a toll-free telephone number for that information. If classes or feeder funds are sold to customers of the same financial intermediary and differ primarily in the sales charge arrangements, cross-disclosure would be required; the cross-disclosure requirement, together with the requirement of a discussion of differences among classes or feeder funds, would focus investor attention on the differences among sales charges and related expenses.

If classes or feeder funds are sold to customers of different financial intermediaries, or if they are sold to customers of the same intermediary but differ primarily in the services provided, the proposal assumes that they are being offered to investors with different existing or potential customer relationships. Those different relationships would involve different conditions and charges that generally would not be required to be disclosed in the prospectus in any event.[73] Thus, an

[66] A pension fund, bank collective trust fund or other commingled fund, as well as another public or private investment vehicle also could invest in a master fund.

[67] See supra note 56 and accompanying text: prospectuses generally are required to provide cross-disclosure about expenses, performance, distribution arrangements, services, fees, sales charges, and exchange privileges of classes other than institutional or inside investor classes. Prospectuses for classes offered to the general public are not required, however, to provide that cross-disclosure about institutional or inside investor classes; instead, they are required only to identify the institutional or inside investor class and the category of investors eligible to purchase that class. See *supra* note 57 and accompanying text (defining institutional and inside investors). Because, however, the proposed legend would be more conspicuous than the disclosure of the existence of the institutional or inside investor class provided by many multiple class funds under the exemptive orders, investors should be more likely to notice it. Currently, many multiple class funds place this disclosure at the end of the prospectus.

[68] In general, the substance of the legend, including the inclusion of a telephone number that investors may use to obtain further information, closely resembles a current feeder fund prospectus disclosure requirement. See 1993 Generic Comment Letter, *supra* note 58 (Comment II.H.(c)).

[69] Other financial intermediaries would be any other entities that, like brokers or dealers, act as agents or principals in the sale of a fund's shares, or that, like certain banks, provide shareholder services under an agreement with a fund.

[70] As an illustration of the proposed requirement, assume a fund offers four classes, with Class A and Class B sold to retail investors through brokers, Class C available only to institutions investing for their own account, and Class D available through banks to retail investors. Class A has a 5.0% front-end sales load and a .25% asset-based service fee, Class B has a .75% asset-based distribution fee and a 5.0% CDSL that declines 1.0% per year, Class C has no sales charges or asset-based distribution fees, and Class D has no sales charge but a .75% asset-based distribution fee and a .25% asset-based service fee. A prospectus for Class A must contain full cross-disclosure about Class B, and vice versa. Prospectuses for Classes A and B would not be required to include cross-disclosure about Classes C and D. Although Class D shares also are offered to retail investors, Class D is available only to customers of a financial intermediary that does not offer Classes A and B to its customers; therefore, cross-disclosure about Class D would not be required. Furthermore, if Classes A and B were each available only through a separate bank, the prospectus for each class would not be required to provide cross-disclosure about the other.

[71] See *supra* note 57 and accompanying text.

[72] See, e.g., Merrill Lynch California Municipal Bond Trust, *supra* note 56.

[73] For example, the prospectus would not be required to disclose all the terms and costs of specific customer relationships or transactions with particular financial intermediaries such as brokers or banks. Disclosure is not always required about the amount of transaction fees or ongoing fees, such as account fees, that are charged by financial intermediaries. See, *e.g.*, Form N–1A, Items 7(b)(v) and 8(b). Item 7(b)(v) requires disclosure whether

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investor would need to look outside the prospectus to learn about other customer relationships and to establish such a relationship in order to purchase certain classes or feeder funds. Because prospectuses currently are not required to disclose all of the costs and terms of establishing and maintaining these relationships and investing in these classes or feeder funds (and such disclosure, if required, would be lengthy, complex and constantly changing), the Commission is proposing to provide for investors to obtain those classes or feeder funds by calling the toll-free number listed in the legend following the fee table.

The cross-disclosure requirement should result in minimal change for current multiple class and master-feeder funds. The multiple class exemptive orders already require cross-disclosure of virtually all the features that are likely to differ among classes; current disclosure, however, may not be as extensive or in the same format as what would be required under the proposal. For example, in prospectuses of funds operating under current exemptive orders, sales charge and expense disclosure may be found in footnotes or the text and not in parallel columns in the fee table; under the proposed new Instruction, such disclosure would be required to appear in the same form and extent as if the class or feeder were being offered in the same prospectus. In any event, virtually all funds with classes that would be subject to the cross-disclosure requirement already offer those classes in the same prospectus. Although feeder fund prospectuses have been required only to provide disclosure about both the feeder funds and the master fund,[74] few feeder funds currently have alternative arrangements for sales charges that would bring them within the proposed cross-disclosure requirement.[75]

The Commission requests comment on whether it is appropriate to limit the proposed cross-disclosure requirement to classes or feeder funds with alternative sales charge arrangements. Should prospectuses be required instead to provide cross-disclosure about all classes or feeder funds investing in the same portfolio, or all such classes or feeder funds other than those offered to institutional or inside investors,[76] or all classes or feeder funds offered or made available through the same financial intermediary? Such a requirement arguably might help investors understand all their possible options for investing in a portfolio, and might promote greater competition among different financial intermediaries. Would, however, such a requirement result in mandatory prospectus disclosure so complex that it would defeat the Commission's goal of promoting investor understanding?

c. Comparison of classes or feeder funds. If a prospectus offers two or more classes or feeder funds, or provides cross-disclosure about one or more classes or feeder funds, proposed new Item 6(h) would require the prospectus to discuss the differences among the classes or feeder funds that are offered in the prospectus or about which the prospectus provides cross-disclosure under General Instruction I. It also would require the prospectus to provide a line graph comparing the performance of those classes or feeder funds over a hypothetical ten-year period. Like the line graph required under Item 5A, the graph would compare the net asset value on the first day of the first year to the subsequent net asset values at redemption on the last day of each year starting with a $10,000 initial investment; unlike the graph under Item 5A, this graph would be hypothetical and not based on historical performance.[77] The graph would show, for example, the circumstances under which holding shares of a class or feeder fund for a given length of time would produce the highest return; with this comparison, investors could consider how long they are likely to hold their shares in determining which class or feeder fund to purchase.[78]

The computation of those net asset value figures would use a five percent annual return before expenses for all classes or feeder funds. This five percent rate like that under the example in Item 2, is used to ensure comparability and illustrate the hypothetical nature of the line graph. The Commission requests comment on whether Item 6(h) would require more than one rate of return in order to illustrate differences among different market conditions,[79] or should permit the use of a rate other than five percent selected by the issuer so long as the rate is reasonable in comparison to the historical performance of the fund or other funds with comparable investment objectives. The Commission also requests comment on whether Item 6(h) should require textual discussion instead of the proposed line graph.

The graph would be required to be accompanied by a brief statement explaining that the graph is a hypothetical illustration of the effect on performance of the expenses of the different classes or feeder funds. The statement also must explain the graph's assumptions and state that the assumed five percent return should not serve as a basis for predicting future returns.

The line graph would complement the example in the fee table required by Item 2: The example requires disclosure of total expenses over periods of one, three, five, and ten years; thus it may not identify the point at which one class or feeder fund would come to have a

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any person such as a broker-dealer or bank may impose any charges in connection with purchases, unless a registrant believes those charges are disclosed in a wrapper. Item 6(b) requires disclosure whether a broker-dealer may impose charges for selling shares to a registrant through the broker-dealer. In either case, the amount of such fees need not be disclosed. When banks or other financial institutions impose service fees, a footnote should be added to the fee table to inform investors that such fees exist; and when there is only one institution levying an additional fee, that fee may have to be included as an item in the fee table. Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 4 (Jan. 17, 1992) (Comment II.C).

[74] See "Hub-And-Spoke" Funds: A Report Prepared By the Division of Investment Management at n. 22 (report delivered to The Honorable John D. Dingell on April 15, 1992). The master fund is a co-issuer with each feeder fund under Securities Act rule 140. The master fund and its officers and directors sign each feeder fund's registration statement. 17 CFR 230.140.

[75] See *supra* note 27 and accompanying text for examples of feeder funds investing in the same master fund that are offered or made available through the same intermediaries and have alternative sales charge arrangements; such funds would appear to be subject to the proposed cross-disclosure requirement.

[76] See *supra* note 57 and accompanying text (defining institutional and inside investors). The rationale for this alternative would be that when one class or feeder fund is offered through a broker, and another class or feeder fund is made available through a bank, investors would be eligible in theory to purchase each class or feeder fund, either through the broker or by opening an account with the bank, and hence should receive information in the prospectus about those other choices.

[77] The proposed Instructions to new Item 6(h) also are based on the Instructions to Item 5A; they have been modified to reflect the differences between historical and hypothetical performance, and between a comparison to an index and a comparison among different classes or feeder funds. Unlike Item 5A disclosure, Item 6(h) disclosure would be required to appear in the prospectus; it would not be sufficient to include this disclosure in a fund's annual report.

[78] Cf. Vanessa O'Connell, Mastering the ABCs of Fund Shares, Money, Sept. 1993, at 44 (providing hypothetical example in which level-load class would have the highest value if an investor stays in the fund for five or fewer years, spread load would have the highest value for an investor redeeming in year six, and front-end shares for an investor holding for seven years or longer).

[79] For example, prospectuses for variable life insurance contracts include tables showing how contract values can change over time at hypothetical gross investment rates of zero, four, and eight percent, or zero, six, and twelve percent. Cf. also Regulation S-K, Item 402(c), 17 CFR 229.402(c) (executive compensation disclosure instructions regarding stock options require valuation of options assuming five or ten percent annual rate of stock price appreciation).

higher value on redemption than another class or feeder fund. When a prospectus includes the disclosure required by proposed Item 6(h), the legend following the fee table also would be required to include a cross-reference to the location of the Item 6(h) disclosure in the prospectus. The Commission requests comment on whether this disclosure should be required to follow the fee table.

d. Alternative regulatory approaches. The Commission requests comment on whether prospectus disclosure requirements alone are effective to ensure that investors understand their options among these funds' sales and related charges before making an investment decision. Various reports suggest that many investors find these funds complicated, and do not understand what sales charges they will be paying;[80] these reports raise questions whether adequate information about sales charges is communicated to investors today.

The Commission requests comment on whether these reports of investor confusion are accurate. If so, is it likely that the recently effective amendments to the National Association of Securities Dealers, Inc. ("NASD") Rules of Fair Practice regarding asset-based sales charges will lessen investor confusion?[81]

The Commission also requests comment on whether some other regulatory approach is necessary to address these concerns. Should the Commission require multiple class and master-feeder funds to deliver a prospectus or some shorter document before sale?[82] For example, representatives might provide an off-the-page prospectus (if available) or some other document containing information about sales charges and a comparison such as that required by proposed Item 6(h)[83]. Or should the Commission work with the NASD to set standards for basic information that representatives must communicate to customers, whether orally or in writing, before investment in multiple class and master-feeder funds?

2. Advertising and Sales Literature

Multiple class orders generally require advertising and sales literature to include expense and performance data for all classes of shares whenever they provide this information for any one class.[84] This requirement addresses concerns that advertising and sales literature featuring the performance of only one class might be misleading. Investors, for example, could be misled if the performance of a class available only to institutions were advertised without disclosure that classes available to the general public would have higher sales charges and expenses and, consequently, poorer performance.

The same orders that do not require prospectus disclosure about institutional or inside classes also permit a comparable exception in advertising and sales literature disclosure. Under this exception, advertising or sales literature need not include performance or expense data for classes that are available solely to institutional or inside investors.[85] Moreover, the orders do not explicitly require any information regarding the multiple class structure to be included in advertisements or sales literature that do not contain performance or expense data. For master-feeder funds, there are currently no Commission guidelines or requirements regarding advertising and sales literature.

a. Legends concerning other classes or feeder funds. The Commission proposes to amend rule 134 under the Securities Act by adding new paragraph (a)(3)(iv) to specifically address multiple class and master-feeder fund advertising and sales literature.[86] Because master-feeder arrangements serve many of the same functions as multiple class funds and raise many of the same concerns, the Commission believes that, as with prospectus disclosure, advertising for both types of funds should be subject to similar requirements.[87] Proposed new paragraph (a)(3)(iv) would require multiple class and master-feeder funds to include a legend in advertising and sales literature similar to the proposed legend following the fee table in the prospectus. The legend would disclose that a multiple class fund issues other classes or that other feeder funds invest in the master fund, and that because sales charges and expenses vary among classes and feeder funds, performance also varies.[88] Unlike the prospectus legend, the advertising legend would not be required to list the names of other classes or feeder funds. In addition, the legend would include a toll-free telephone number that investors may use to obtain further information concerning other classes or feeder funds not featured in the advertising or sales literature. The proposal would require that the legend by in a type at least as large as, and of a style different from, but at least as prominent as, that used in the major portion of the advertisement.[89] These format requirements are intended to prevent the legend from being placed in a footnote or in any other inconspicuous location that might not draw investor attention. The legend would not be required that advertising or sales literature includes all classes of a fund or all feeder funds that invest in a master fund.

Proposed new paragraph (a)(8) of rule 482 would require a legend similar to the legend proposed for rule 134.[90] The Commission also is proposing to add a legend requirement for sales literature subject to rule 34b–1 under the Investment Company Act.[91] Proposed new paragraph (b)(1)(iii) of rule 34b–1 would require sales literature used by multiple class or feeder funds that contains performance figures for fewer than all classes of a fund or all feeder funds that invest in the same master fund to include the legend required by proposed new paragraph (a)(8) of rule 482.

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[80] See *supra* note 59 (for references to press reports).

[81] NASD Rules of Fair Practice, Article III, Section 26, NASD Manual (CCH) ¶ 2176. Among other changes, these amendments preclude the use of the term no-load and similar terms for funds with rule 12b–1 or service fees exceeding 0.25%.

[82] But see Protecting Investors, *supra* note 2, at 351 (recommending that delivery of the section 10(a) prospectus should not be required before all mutual fund sales in the absence of evidence that investors are dissatisfied with, or being harmed by, the current practice of requiring the delivery of the statutory prospectus at the earlier of the confirmation of the sale or the delivery of the security in the case of mutual fund shares sold through brokers).

[83] For example, such a document might consist of photocopies of pertinent pages of the section 10(a) prospectus. As with rule 15c2–8 [17 CFR 240.15c2–81], the Commission could adopt such a rule under the authority in section 15(c)(2) of the Securities Exchange Act [15 U.S.C. 78o(c)(2)], which provides the Commission with rulemaking authority over fraudulent, deceptive, and manipulative acts and practices.

[84] E.g., Merrill Lynch California Municipal Bond Trust, *supra* note 56, 53 FR 29294.

[85] See *supra* note 57 and accompanying text. In contrast to their requirements for prospectus disclosure, however, the exemptions do not require any disclosure in advertising or sales literature regarding the excepted classes.

[86] 17 CFR 230.134. Existing paragraph (a)(3)(iv) would be renumbered as paragraph (a)(3)(v). Rule 134 permits advertising and sales literature with content strictly limited to certain items set forth in paragraph (a)(3)(ii) of the rule. Rule 134 does not provide for the use of performance figures.

[87] See *supra* section II.C.1.

[88] The Commission is proposing to require that the legend discuss expenses and performance even though rule 134 does not provide for the use of performance data such as yield and total return figures; rule 134 advertisements, however, may include rankings based on performance data.

[89] This standard is the same as that required by paragraph (a)(3)(iii) for legends in mutual fund print advertisements and sales literature. 17 CFR 230.134(a)(3)(iii).

[90] 17 CFR 230.482.

[91] 17 CFR 270.34b–1. Rule 34b–1 generally requires any pamphlet, circular, or other sales literature that contains investment company performance data to comply with certain of the disclosure requirements of rule 482.

b. Performance information. Proposed new paragraph (a)(9) of rule 482 would require multiple class and masterfeeder fund advertising that contains performance figures to include, with equal prominence, the performance of all classes and feeder funds that are subject to the prospectus cross-disclosure requirement.[92] Thus, for multiple class funds, the proposal would require generally less extensive expense and performance information than the exemptions do at present. The equal prominence requirement is intended to address the concern that advertisements or sales literature might disclose the performance of some classes inconspicuously, *e.g.*, in a footnote or in print much smaller than that used for the performance figures of another class. The Commission requests comment, however, on whether the requirement of equal prominence may result in unduly bulky performance disclosure that might emphasize performance data at the expense of other disclosure or might inhibit the disclosure of performance data. Should the Commission instead require performance information to be presented in a table? Would the proposed legend (discussed above) be sufficient to inform investors of the fund's capital structure, the possible availability of classes or feeder funds not otherwise mentioned in the advertising or sales literature and a means of obtaining further information? The Commission also requests comment on whether rules 134, 482, and 34b–1 should require funds to disclose with equal prominence performance or expense data for *all* classes or feeder funds except classes or feeder funds offered exclusively to institutional or inside investors[93] to the extent that performance or expense data for any class or feeder fund are included in that advertising or sales literature.

Under Securities Act rule 482 and Investment Company Act rule 34b–1, advertisements or sales literature containing performance data for open-end investment companies other than money market funds must include one, five, and ten year average annual total return.[94] When an advertisement or sales literature contains performance data for a class or feeder fund with a shorter performance history than other classes or feeder funds, the advertisement or sales literature might be misleading if it did not include long-term performance data; for example, short-term disclosure alone might be misleading if the performance were excellent in the short-term, but poor over the longer term. The exemptive orders generally require disclosure of the performance of all classes.[95]

The proposed additional proviso for paragraph (e)(3) of rule 482 would require long-term total return information to be provided for another class or another feeder fund or the master fund when that information is not available for the class or feeder fund advertised. The proviso would require that when an advertisement contains performance figures for a class or feeder fund for which average annual total return information is available for less than the one, five, and ten year periods required by paragraph (e)(3), and this information is available for a longer period for another class, feeder fund, or master fund, then the advertisement must include quotations of average annual total return for the securities of the other class or feeder fund or master fund together with any necessary explanation.[96] This requirement is intended to ensure that funds do not attempt to hide poor past performance by creating a new class. Funds must select the class or feeder fund or master fund with performance figures for the longest period if none has been offered for ten years or more. If more than one class or feeder fund or master fund has been offered for ten years or more, then the fund may select a class or feeder fund or master fund from this group.[97] When presenting performance figures for a class or feeder fund or master fund, funds must be careful to include any additional information necessary to ensure that such performance data are not misleading;[98] For example, they should disclose the effect of differences in sales charges or other expenses. The Commission requests comment on whether rule 482 instead should be amended to provide that, when complete long-term total return information is not available for a class or feeder fund, the advertisement must include long-term total return figures that incorporate the performance of another class or the master fund, adjusted to reflect applicable sales loads and account fees.[99] The Commission also requests comment on whether issues of long-term performance data for multiple class and master-feeder funds should continue to be treated interpretively under the general requirements of rule 482, instead of under the specific amendment proposed here.

3. Off-the-Page Prospectuses

The Commission recently proposed amendments to rule 482 to permit open-end management investment companies to use advertisements containing applications to purchase their securities ("off-the-page prospectuses").[100] Proposed paragraph (g)(1)(v), however, would prohibit the use of off-the-page prospectuses by multiple class and master-feeder funds. The proposing release stated that these types of funds would not be eligible to use off-the-page prospectuses because of the complexity of the disclosure that would be necessary to comply with the proposed amendments. The proposing release also stated that the Commission would later consider whether multiple class and master-feeder funds should be able to use off-the-page prospectuses.[101] Although a few commenters agreed that multiple class and master-feeder funds

[92] Proposed new paragraph (b)(1)(iii) of rule 34b–1 would extend this requirement to sales literature.

[93] See *supra* note 57 and accompanying text (defining institutional and inside investors).

[94] 17 CFR 230.482(e)(3), 270.34b–1. An important purpose for requiring the presentation of long-term average annual return quotations in advertising or sales literature that contains performance figures is to provide investors with information on the fund's performance over the business cycle. *See, e.g.*, Advertising By Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines, Securities Act Release No. 6660 (Sept. 7, 1986), 51 FR 34384, 34386.

[95] *Supra* note 56 and accompanying text. *Cf.* Merrill Lynch Asset Management, Inc. (pub. avail. Mar. 9, 1990) (fund permitted to advertise performance for a new class since sales of the new class commenced, rather than restating the fund's historical performance data for that class; because investors would have available the performance of the older class, they "in no way would be denied information about the long-term performance of the Fund").

[96] Proposed new paragraph (b)(1)(iii) of rule 34b–1 would extend this requirement to sales literature.

[97] In the case of classes or feeder funds with alternative sales charge arrangements, this provision may not have much effect, because the performance of all such classes would be required to appear in the same advertisement.

[98] *See, e.g.*, Sec. Act Rel. 6660, *supra* note 94, 51 FR 34384, 34391 (whoever sponsors an advertisement or sales literature, whether the fund, the underwriter, or the dealer, bears the primary responsibility for assuring that the advertisement or sales literature is not false or misleading). *Cf.* Kidder Peabody Equity Income Fund, Inc. (pub. avail. Nov. 1, 1991) (when a fund changed from a CDSL with a 1.0% 12b–1 fee to a front-end load with a 0.5% 12b–1 fee, historical performance data must be based on rule 12b–1 fees actually charged and may not be recalculated to reflect the changed 12b–1 fee); Investment Company Institute (pub. avail. May 13, 1988) (a fund must adjust performance data to reflect its *current* sales load for each of the one, five, and ten year periods under rule 482).

[99] *See* The Managers Core Trust (pub. avail. Jan. 28, 1993) (when an existing fund becomes a master fund, the new feeder fund may restate the historical performance data of the master fund to reflect any applicable sales loads and account fees at the feeder fund)

[100] *See* Off-the-Page Prospectuses for Open-End Management Investment Companies, Securities Act Release No. 6982 (Mar. 5, 1993), 58 FR 16141.

[101] *Id.*, 58 FR at 16144.

should not be eligible to use off-the-page prospectuses,[102] most commenters argued that these types of funds would not require extraordinary disclosure [103] and that the disclosure required under the exemptions could fit in an off-the-page prospectus without confusion.[104]

In light of these comments and the other changes to rule 482 proposed in this release, the Commission is proposing to revise proposed rule 482(g) to delete the provision excluding multiple class funds and feeder funds from eligibility to use off-the-page prospectuses. A new General Instruction to paragraph (g)(2) would require cross-disclosure for all classes or feeder funds that are subject to the prospectus cross-disclosure requirement. Like other advertisements under rule 482, off-the-page prospectuses also would be subject to the legend requirement of proposed paragraph (a)(8). In addition, off-the-page prospectuses would be required to include the discussion and line graph required under proposed new Item 6(h) of Form N-1A concerning differences among classes or feeder funds. The Commission requests comment on whether any other disclosure requirements are necessary to address the specific features of these types of funds.

III. Cost/Benefit of Proposed Action

Taken as a whole, proposed rule 18f-3 and the proposed rule and form amendments should not impose greater burdens of reporting or recordkeeping or greater regulatory compliance costs than those imposed by the multiple class exemptive orders; and the proposed disclosure requirements also should impose little burden on feeder funds. Under proposed rule 18f-3, multiple class funds would be subject to fewer requirements and lower costs than under the exemptive orders. Any additional time required to comply with proposed rule 18f-3's written plan requirement should be minimal because multiple class funds already would have to commit any material class differences to writing in order to enter into distribution or service agreements, or to disclose their terms. The proposed amendment to rule 12b-1 should not impose any additional costs because it essentially would incorporate in the rule existing requirements in the exemptive orders for multiple class funds.

The proposed amendment to Form N-SAR would merely articulate what good accounting practice should already dictate and would be less burdensome than the condition in the multiple class exemptive orders requiring that multiple class funds file a separate expert's report on internal control relating to fund procedures for calculating each class's net assets. The proposed legend and cross-disclosure requirements should impose little burden, because they essentially would involve only disclosure that already exists in other disclosure documents. Any burden of this disclosure would be outweighed by the benefits of more informed investment decisions.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 18f-3 and the proposed amendments to rules 12b-1 and 34b-1 under the Investment Company Act, to rules 134 and 482 under the Securities Act, and to Forms N-1A, N-14, and N-SAR. The analysis explains that the proposals are intended to allow mutual funds to issue multiple classes of shares without the burden of obtaining individual exemptive orders. The disclosure proposals are intended to minimize investor confusion and focus investor attention on differences in sales charges and related expenses; the disclosure proposals also are intended to clarify and consolidate disclosure and reporting requirements for multiple class and master-feeder funds, including small entities. The Analysis states that the Commission considered significant alternatives to the proposal, including establishing different compliance or reporting requirements, and exempting small entities from the rule 18f-3 plan and the disclosure requirements. The Commission concluded that the alternatives would remove little, if any, burden, while removing significant investor protections. To obtain a copy of the Initial Regulatory Flexibility Analysis, write to Roseanne Harford, Division of Investment Management, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rule 18f-3 under the authority granted to the Commission in section 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 6(c), 18(i), and 37(a)], and the amendment to rule 12b-1 under section 12(b) of the Investment Company Act [15 U.S.C. § 12(b)]. The Commission is proposing the amendment to Form N-SAR under sections 30 and 38(b) of the Investment Company Act [15 U.S.C. 80a-29, and 37(b)], the amendments to Form N-1A under sections 6, 7(a), 10, and 19(a) of the Securities Act [15 U.S.C. 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 24(a), and 37(a)]. The amendments to rule 482 are proposed under sections 10(b) and 19(a) of the Securities Act [15 U.S.C. 77j(b) and 77s(a)]. The amendment to rule 34b-1 is proposed under section 38(a) of the Investment Company Act [15 U.S.C. 37(a)].

VI. Text of Proposed Rule and Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Investment companies, Reporting and record keeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 79ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section 230.134 is amended by redesignating paragraph (a)(3)(iv) as paragraph (a)(3)(v) and adding paragraph (a)(3)(iv) to read as follows:

§ 230.134 Communications not deemed a prospectus.

(a) * * *

(3) * * *

(iv) in the case of a multiple class fund or a feeder fund (as defined in § 230.482(a)(8)), if a communication contains information regarding fewer than all classes of shares of the same series or fewer than all feeder funds that invest in the same master fund, and uses either legend required by paragraph (a)(3)(iii) of this section, a legend disclosing: that the fund issues other

[102] *See* Letter from North American Securities Administrators Association to Jonathan G. Katz, Secretary, SEC (June 23, 1993), File No. S7-11-93; Letter from Savings & Community Bankers of America to Jonathan G. Katz, Secretary, SEC (July 21, 1993), File No. S7-11-93.

[103] *See, e.g.*, Letter from American Bar Association to Jonathan G. Katz, Secretary, SEC (June 23, 1993), File No. S7-11-93.

[104] *See, e.g.*, Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC (June 23, 1993), File No. S7-11-93; Letter from the Vanguard Group of Investment Companies to Jonathan G. Katz, Secretary, SEC (June 23, 1993), File No. S7-11-93.

classes or that other feeder funds invest in the master fund, that because sales charges and expenses vary among classes or feeder funds, performance also varies, and a toll-free telephone number investors may use to obtain information concerning other classes or feeder funds; *provided* that, if such communication is printed, the legend shall be in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, and that if such communication is used in a radio or television advertisement, the legend shall be given emphasis equal to that used in the major portion of the advertisement.

* * * * *

3. Section 230.482 is amended by adding paragraphs (a)(8) and (a)(9) preceding the Note to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) * * *

(8) In the case of a multiple class fund or a feeder fund, unless it contains performance data for all classes offered by a multiple class fund or all feeder funds that invest in the same master fund, it includes a legend set in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement that discloses that the fund issues other classes or that other feeder funds may invest in the master fund, that because sales charges and expenses vary among classes or feeder funds, performance also varies, and a toll-free telephone number investors may use to obtain information concerning other classes or feeder funds. A "multiple class fund" is an open-end management investment company that issues more than one class of shares, each of which represents interests in the same portfolio of securities, and either meets the requirements of § 270.18f-3 of this chapter or operates pursuant to an exemptive order. A "feeder fund" is an open-end management investment company, other than a periodic payment plan, that holds shares of a single open-end management investment company (the "master fund") as its only investment securities.

(9) In the case of an advertisement containing performance data for any of two or more classes of a multiple class fund or two or more feeder funds that invest in the same master fund that are offered or made available through the same broker, dealer, bank, or other financial intermediary and that have alternative arrangements for sales and related charges, it includes performance data for all such classes or feeder funds set forth with equal prominence.

* * * * *

4. Section 230.482 is amended by removing the word "and" at the end of paragraph (e)(3)(iv) and adding concluding text to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

and *provided further*, that if an advertisement is for securities of a class or feeder fund for which average annual total return information is available for less than the one, five, and ten year periods required by this paragraph, and information for such longer period is available for another class or for the master fund or another feeder fund that holds shares of the same master fund as its only investment securities, any quotations of average annual total return for the securities offered in the advertisement shall be accompanied by quotations of average annual total return for a class or feeder fund or master fund (which other average annual total return information need not be set out with equal prominence) that has been offered for the longest time or for at least ten years, together with any necessary explanation; and

* * * * *

5. Section 230.482 is amended by amending paragraph (g), as proposed on March 19, 1993, in 58 FR 16149 (March 25, 1993), by adding the word "and" following the semicolon at the end of paragraph (g)(1)(iii), removing the semicolon and the word "and" at the end of paragraph (g)(1)(iv) and adding in its place a period, removing paragraph (g)(1)(v), removing the word "and" following the semicolon at the end of paragraph (g)(2)(vi)(A), adding the word "and" following the semicolon at the end of paragraph (g)(2)(vi)(B), adding paragraph (g)(2)(vi)(C), removing the words "General Instruction" following paragraph (g)(2)(ix), adding in their place the words "General Instructions", redesignating the existing text in the General Instruction as General Instruction 1, and adding General Instruction 2, to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(g) * * *

(2) * * *

(vi) * * *

(C) In the case of a multiple class or feeder fund, a discussion of the differences among all classes or all feeder funds holding shares of the same master fund as their only investment securities that are offered through the same section 10(a) prospectus or that are offered or made available through the same broker, dealer, bank, or other financial intermediary and that have alternative arrangements for sales and related charges; and a line graph comparing the initial account value at the beginning of a hypothetical ten-year period with the subsequent account values at the end of each of the years (assuming a $10,000 investment in each class or feeder fund at the beginning of the first year, redemption on the last day of each year, and a 5% annual return before operating expenses for all such classes or feeder funds), accompanied by a brief statement explaining that the graph is a hypothetical illustration of the effect on performance, over a ten-year period, of the expenses of the different classes or feeder funds, assuming a $10,000 initial investment and a 5% return before expenses, and that the assumed 5% return should not serve as a basis for predicting future returns.

* * * * *

General Instructions

* * * * *

2. In any advertisement for one or more classes of a multiple class fund or one or more feeder funds investing in a master fund, provide information in response to paragraphs (g)(2) (ii) through (ix) of this section for all classes or all feeder funds investing in the same master fund that are offered or made available through the same broker, dealer, bank, or other financial intermediary and that have alternative arrangements for sales and related charges.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1, *et seq.*, 80a-37, 80a-39 unless otherwise noted.

* * * * *

7. Section 270.12b-1 is amended by adding paragraph (g) to read as follows:

§ 270.12b-1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one class of shares, the provisions of the

plan must be severable for each class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each class, *provided, however,* that under § 270.18f–3 any shareholder vote on a plan of a target class must also require a vote of any purchase class.

8. By adding § 270.18f–3 to read as follows:

§ 270.18f–3 Multiple class companies.

Notwithstanding Sections 18(f)(1) and 18(i) of the Act, a registered open-end management investment company or series or class thereof established in accordance with Section 18(f)(2) of the Act whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] ("company") may issue more than one class of voting stock, *provided that:*

(a) Each class:

(1)(i) Must have a different arrangement for shareholder services or the distribution of securities or both, and

(ii) May have a different allocation of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, that are:

(A) Directly related to that arrangement, or

(B) Actually incurred in a materially different amount for that class than for other classes on the basis of the net asset value of that class in relation to the net asset value of the company;

(2) Must bear all of its expenses under paragraph (a)(1) of this section, except to the extent that the company's investment adviser or principal underwriter may waive or reimburse those expenses;

(3) Must have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(4) Must have separate voting rights on any matter submitted to shareholders in which the interests of one class are different from the interests of any other class; and

(5) Must have in all other respects the same rights and obligations as each other class.

(b) Income, realized and unrealized capital gains and losses, and expenses of the company not allocated to a particular class pursuant to paragraph (a) of this section must be allocated to each class on the basis of the net asset value of that class in relation to the net asset value of the company.

(c) Any payments made under paragraph (a) of this section must be made pursuant to a written plan setting forth the separate arrangement and allocation of each class, and any related conversion features or exchange privileges. Before the issuance of any share of each class, at least annually thereafter, and before any material amendment of a plan, the directors of the company, and the directors who are not interested persons of the company, must find that the plan, including the allocation of expenses, is fair to, and in the best interests of, each class individually and the company as a whole. The directors must request and evaluate, and any agreement relating to a class arrangement must require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(d) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege whereby securities of the class may be exchanged for securities of another company; or

(2) A conversion feature whereby shares of one class of the company (the "purchase class") will be exchanged automatically for shares of another class of the company (the "target class") after a specified period of time, *provided that:*

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The payments authorized under a plan adopted pursuant to § 270.12b–1 ("rule 12b–1 plan") for the target class are lower than the payments authorized under a rule 12b–1 plan for the purchase class; and

(iii) If the amount of payments authorized under a rule 12b–1 plan for the target class is increased materially without approval of the shareholders of the purchase class, the fund will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

9. Section 270.34b–1 is amended by removing the word "and" at the end of paragraph (b)(1)(i), removing the period and adding a semicolon in its place at the end of paragraph (b)(1)(ii), and adding paragraph (b)(1)(iii) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) * * *

(iii) In the case of a multiple class fund or a feeder fund (as defined in paragraph (a)(8) of § 230.482 of this chapter) the disclosure required by paragraphs (a)(8) and (a)(9) of § 230.482 of this chapter, unless such performance data are included for all classes of a multiple class fund or all feeder funds investing in the same master fund.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

11. The authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, unless otherwise noted.

* * * * *

Note: The following forms do not, and the amendments will not, appear in the Code of Federal Regulations.

12. By adding General Instruction I to Form N–1A [§§ 239.15A and 274.11A] to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

I. Multiple Class and Master-Feeder Funds

In any registration statement on this Form for one or more classes of a multiple class fund or one or more feeder funds investing in a master fund (as defined in Securities Act rule 482(a)(8) [17 CFR 230.482(a)(8)], provide information in response to Items 2 through 9 for all classes or all feeder funds investing in the same master fund that are offered or made available through the same broker, dealer, bank, or other financial intermediary and that have alternative arrangements for sales and related charges.

13. By amending Form N–1A [§§ 239.15A and 274.11A] by adding the following sentence to the end of Instruction 1 to Item 2(a):

Form N–1A

* * * * *

Item 2. Synopsis

(a) * * *

General Instructions

(1) * * * If the Registrant has issued any class of shares of the same series not offered through the prospectus, or if any

feeder funds not offered through the prospectus invest in the same master fund as the Registrant, include a prominent statement in the narrative disclosing, as applicable (i) that the fund issues other classes or that other feeder funds invest in the master fund, (ii) the names or designations of those other classes or feeder funds, (iii) that, because sales charges and expenses vary among classes and feeder funds, performance also varies, and (iv) a toll-free telephone number investors may use to obtain information concerning other classes or feeder funds. If the prospectus includes the disclosure required by Item 6(h), state the location in the prospectus of that disclosure. If the Registrant has issued more than one class of shares, state that sales representatives may receive different compensation for one class than for another class.

* * * * *

14. By adding Item 6(h) to Form N-1A (§§ 239.15A and 274.11A) to read as follows:

Form N-1A

* * * * *

Item 6. Capital Stock and Other Securities

* * * * *

(h) Discuss the differences among all classes or among all feeder funds investing in the same master fund that are offered in the same prospectus or about which the prospectus contains disclosure pursuant to General Instruction I; and provide a line graph comparing the initial account value at the beginning of a hypothetical ten-year period with the subsequent account values at the end of each of the years, assuming a $10,000 investment in each class or feeder fund at the beginning of the first year, redemption on the last day of each year, and a 5% annual return before operating expenses for all such classes or feeder funds. Immediately next to the graph, provide a brief statement explaining that the graph is a hypothetical illustration of the effect on performance, over a ten-year period, of the expenses of the different classes or feeder funds, assuming a $10,000 initial investment and a 5% return before expenses, and that the assumed 5% return should not serve as a basis for predicting future returns.

Instructions

In preparing the line graph comparison:

1. *Computation:*

a. Assume that the initial investment is made on the first day of the first year at the public offering price stated in the prospectus.

b. Base subsequent account values on a 5% annual return for each class or feeder fund before subtraction of operating expenses, assuming the operating expenses stated in the fee table, adjusted to their actual level absent any reimbursement or waiver.

c. If any class or feeder fund requires a minimum initial investment of more than $10,000, base the line graph on initial investment of the highest minimum amount.

d. If any class has a conversion feature, assume that shares are converted at the time and on the terms disclosed in the prospectus.

2. *Sales Load.* Reflect any front-end sales load (or any other fee charged at the time of purchasing shares) by beginning the line graph at the amount that actually would be invested, *i.e.*, a dollar amount below $10,000. Assume that the maximum sales load (and other charges deducted from payments) is deducted from the initial $10,000 investment. In the case of a class or feeder fund that charges a deferred sales load (or other amounts at redemption or upon closing of an account), assume the deduction of the maximum deferred sales load (or other charges) that would be applicable for a complete redemption on the last day of each year (*i.e.*, assume redemption before any reduction in the amount of any deferred sales load or other charges).

3. *Dividends and Distributions.* Assume all dividends and distributions by each class or feeder fund are reinvested. If any sales load is charged upon reinvestment of dividends and distributions, the brief statement next to the graph must state that the graph does not include the effect of that sales load on reinvestment.

4. *Account Fees.* Reflect all recurring fees that are charges to all accounts.

a. For any account fees that vary with the size of the account, assume a $10,000 account size (unless using a higher initial investment according to Instruction 1.c.).

b. If recurring fees charged to shareholder accounts are paid other than by redemption of fund shares, they should be appropriately reflected.

5. *Scale.* Construct the axis of the graph measuring dollar amounts using a linear scale.

* * * * *

15. By amending Form N-1A (§§ 239.15A and 274.11A) by adding paragraph (b)(18) to Item 24 before the Instructions to read as follows:

Form N-1A

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(18) copies of any plan entered into by Registrant pursuant to Rule 18f-3 under the 1940 Act, and any agreement with any person relating to implementation of such plan.

* * * * *

16. By amending Form N-1A (§§ 239.15A and 274.11A) by adding paragraph (d) to Item 32 to read as follows:

Form N-1A

* * * * *

Item 32. Undertakings

* * * * *

(d) If the legend described in instruction 1 to Item 2(a) requires the inclusion in the prospectus of a legend containing a toll-free telephone number, an undertaking to provide to persons calling that number information about: any eligibility requirements for purchasing shares of each other class or other feeder fund investing in the same master fund; the procedures for investing in each such class or feeder fund; and in the case of a master-feeder fund, comparable information for any other publicly offered investment vehicle whose only investment securities are securities of the same master fund; and an undertaking to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any Prospectus or Statement of Additional Information for those other classes, feeder funds, or other investment vehicles.

* * * * *

17. By amending Form N-14 (17 CFR 239.23) by revising Items 5(a) and 16(10) to read as follows:

Form N-14

* * * * *

Item 5. Information About the Registrant

* * * * *

(a) if the registrant is an open-end management investment company, furnish the information required by Items 3, 4(a) and (b), 5, 5A, 6(a), (c), (d), (e), (f), (g), and (h), and 7 through 9 of Form N-1A under the 1940 Act; *provided, however,* that the information required by Item 5A may be omitted if the prospectus is accompanied by an annual report to shareholders

containing the information otherwise required by Item 5A;

* * * * *

Item 16. Exhibits

* * * * *

(10) copies of any plan entered into by registrant pursuant to Rule 12b–1 under the 1940 Act (17 CFR 270.12b–1) and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act, and any agreement with any person relating to implementation of the plan;

* * * * *

18. By amending Form N–SAR (§ 274.101) by revising the first paragraph of Sub-item 77B to read as follows:

Form N–SAR

* * * * *

General Instructions

* * * * *

Instructions to Specific Items

Item 77: Attachments

* * * * *

Sub-Item 77B: Accountant's report on internal control structure.

Except as provided below, a management investment company shall furnish a report of its independent accountant on the company's system of accounting controls. The accountant's report shall be based on the review, study, and evaluation of the accounting system (including procedures for calculating multiple equity class net assets), internal accounting controls and procedures for safeguarding securities made during the audit of the financial statements. The report should disclose material weaknesses in the accounting system (including procedures for calculating multiple equity class net assets), system of internal accounting control and procedures for safeguarding securities, which exist as of the end of the registrant's fiscal year. Disclosure of a material weakness should include an indication of any corrective action taken or proposed.

* * * * *

Dated: December 15, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31161 Filed 12–22–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–71–93]

RIN 1545–AS16

Credit for Employer Social Security Taxes Paid on Employee Tips

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The temporary regulations clarify that the credit is effective for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also clarify that the credit applies only to taxes paid on tips reported to the employer by its employees. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 22, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for March 29, 1994, at 10 a.m., must be received by March 8, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–71–93) room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (EE–71–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, seventh floor, 7400 corridor, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Michael Slaughter, 202–622–7190; concerning the regulations, Karin Loverud, 202–622–6060. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 1.45B–1T to the Income Tax Regulations.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, March 29, 1994, at 10 a.m., in the IRS Auditorium, 7400 corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by February 22, 1994, and want to present oral comments at the hearing must submit, not later than March 8, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.45B–1 is added to read as follows:

§ 1.45B–1 Credit for certain employer social security taxes paid with respect to employee tips.

(The text of this proposed section is the same as the text of § 1.45B–1T published elsewhere in this issue of the **Federal Register.**)

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31012 Filed 12–22–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[GL–351–90]

RIN 1545–A060

Civil Actions by Persons Other Than Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations add language to the existing regulations regarding civil actions by persons other than taxpayers, to clarify language that is ambiguous or confusing. The proposed regulations are intended to provide that when the IRS levies on property that is in the custody of an agency of the Federal Government, a third party (i.e., someone other than the taxpayer) who is injured by such levy may have a cause of action against the Government for wrongful levy.

DATES: Written comments and requests for a public hearing must be received by February 22, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (GL–0351–90), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:T:R (GL–0351–90), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7426 of the Internal Revenue Code (Code).

Explanation of Provisions

The existing regulations under section 7426 of the Code (§ 301.7426–1(a)(1)) provide that if property has been levied upon or sold pursuant to a levy, a third party (i.e., a person other than the taxpayer who was assessed the tax out of which the levy arose) may bring a civil action against the United States based upon the claim that the third party has an interest in or lien on the property that is senior to that of the United States and that such property was wrongfully levied upon. The regulations specify that no action is permitted under section 7426 "unless there has been a levy upon the property claimed" and provide, as an example, that "no cause of action arises under this section where the United States sets-off an amount due to the taxpayer against taxes owed by him since no levy has been made."

The above-quoted regulation has created confusion as to whether a third party has a cause of action under section 7426 where the IRS levies on an amount owed the taxpayer by another agency of the Federal Government rather than requesting a setoff of that amount against taxes owed by the taxpayer. See, for example, *United States* v. *Warren Corporation*, 805 F.2d 449 (1st Cir. 1986); and *Arford* v. *United States*, 934 F.2d 229 (9th Cir. 1991).

Under current law the IRS has the option to levy or to request a setoff, but more often than not the IRS levies rather than requests a setoff. Where a levy is made, both the IRS and the other Federal agency are subject to the provisions of the Code relating to levies, including section 7426. The IRS may, alternatively, seek to collect taxes by making requests for setoff to Federal agencies that hold amounts owed to taxpayers. In such cases, the IRS is not subject to the provisions of the Code relating to levies, but, rather, is subject to the standards and implementing regulations of the agency from which it seeks the setoff.

Because the existing regulations do not specifically acknowledge the right of the IRS to proceed by either levy or setoff against property or rights to property in the custody of Federal agencies, the proposed regulations would add language acknowledging the existence and differing treatment of these separate mechanisms. Specifically, the proposed amendment provides that if a levy is made by the IRS on a debt owed to the taxpayer by another Federal agency, a person other than the taxpayer against whom the tax is assessed may have a cause of action under section 7426. In addition, the proposed regulations provide that if the IRS receives payment from another Federal agency pursuant to a request for setoff, no cause of action arises under section 7426 because no levy has been made.

Proposed Effective Date

The amendment is proposed to be effective as of December 23, 1993.

Special Analyses

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

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these proposed regulations is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7426–1 is amended as follows:

1. Paragraph (a)(1) is revised to read as set forth below.

2. Paragraph (c) is added to read as set forth below.

§ 301.7426–1 Civil actions by persons other than taxpayers.

(a) *Actions permitted*—(1) *Wrongful levy*—(i) *In general.*

If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim—

(A) That such person has an interest in, or lien on, such property which is senior to the interest of the United States; and

(B) That such property was wrongfully levied upon.

(ii) *Debt owed by another Federal agency.* Section 7426 and this paragraph (a) apply when a levy is made by the Internal Revenue Service on a debt owed to a taxpayer by another Federal agency. By contrast, section 7426 and this paragraph (a) do not apply if the Internal Revenue Service requests payment from another Federal agency pursuant to a request for setoff.

* * * * *

(c) *Effective date.* Paragraph (a)(1) of this section is effective as of December 23, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31014 Filed 12–22–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–93–114]

Drawbridge Operation Regulations; Treasure Island Causeway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Treasure Island (the bridge owner), the Coast Guard proposed to modify the regulations governing the Treasure Island drawbridge over the Gulf Intracoastal Waterway, mile 119.0, Treasure Island, Pinellas County, Florida. This proposal is being made to relieve highway congestion, while still meeting the reasonable needs of navigation.

DATES: Comments must be received on or before February 7, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–350–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney at (305) 536–4103.

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 [CGD07–93–114] and the specific section of this proposal to which each comment applies and give the reason for each comment. Each person wanting acknowledgment 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 Mr. Ian MacCartney at the above address. A public hearing may be held if written requests for a hearing are received and it is determined that the opportunity for oral presentations will aid this rulemaking. The Coast Guard may 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 Ian MacCartney, Project Manager, and Lt. J. M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal except that from 3 p.m to 6 p.m. Monday through Friday, and from 11 a.m. to 6 p.m. Saturdays, Sundays and Federal holidays, the draw need be opened only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given. The City of Treasure Island requested that the bridge open only on the hour and half hour during certain periods of each day to help reduce traffic delays particularly during morning and afternoon commuter hours and on weekends. Although highway traffic use of this bridge does not justify the change requested by the City, this change is being proposed to relieve highway congestion, while still meeting the reasonable needs of navigation.

Discussion of Proposed Rule

The Coast Guard evaluation of traffic and bridge opening data indicates that while vehicular traffic volumes remain low even during morning and afternoon commuter periods. However, periodic back-to-back bridge openings do not allow accumulated traffic to always clear after each opening. The Coast Guard proposes to expand the existing 15 minute opening schedule to include weekdays and weekends from 7 a.m. to 7 p.m. This will eliminate back-to-back openings and help to reduce traffic delays without unreasonably impacting navigation.

Regulatory Assessment

This proposal is not considered 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 full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Coast Guard must consider whether this proposal 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). Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant 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 in accordance with 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, promulgation of operating instructions or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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. In § 117.287, paragraph (g) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 7 a.m. to 7 p.m. the draw need open only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

* * * * *

Dated: December 2, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 93–31394 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO11–1–5486 and CO30–1–5843; FRL–4817–7]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing limited approval of the State implementation plan (SIP) submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on January 15, 1992, and a subsequent revision was submitted on March 17, 1993 to satisfy certain federal requirements for an approvable moderate area nonattainment area PM–10 SIP for Aspen, Colorado. EPA is proposing this limited approval under sections 110(k)(3) and 301(a) of the amended Clean Air Act (Act) for the purpose of strengthening the SIP. EPA is proposing to fully approve the few elements of the State's submittal which are separable and independent of the provisions that the State has not adequately addressed. In the case that the State submits provisions which adequately address the outstanding deficiencies, EPA will withdraw this limited approval and will instead propose full approval of the PM–10 SIP for Aspen.

In addition, EPA is proposing to amend the nonattainment area boundary for the Aspen nonattainment area to include some of the surrounding area around Aspen.

DATES: Comments on this proposed action must be received in writing by January 24, 1994.

ADDRESSES: Written comments should be addressed to:

Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

Aspen, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Aspen.)) The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this notice on the Colorado moderate PM–10 SIP for the Aspen

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992. See section 189(a) of the Act. Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline. See section 172(c)(9) of the Act and 57 FR 13543-44. EPA will address these requirements, as appropriate, in future actions.

II. Proposed Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-66). In this action, EPA is proposing a limited approval of the Aspen plan revision which was due to EPA on November 15, 1991 and submitted by the State on January 15, 1992 and on March 17, 1993, with the exception of the voluntary no-drive day provision in Section III.C.6 of the State regulation for Aspen. (EPA will take action on the no-drive provision in a separate notice.) The State's submittals did not adequately meet the requirements of sections 110(a)(2)(K), 189(a)(1)(B), 172(c)(1), 189(a)(1)(C), 172(c)(2), and 189(c) of the Act. Specifically, the State's submittals did not (1) follow EPA modeling guidance in demonstrating that the plan will provide for expeditious attainment, (2) provide for the implementation of all available control measures necessary to assure timely attainment (or show that the adoption of such measures would be economically or technologically infeasible), or (3) adequately demonstrate that quantitative milestones and RFP would be satisfied. To address these shortcomings, the State included a commitment to submit a revised attainment demonstration consistent with EPA guidance (based on a revised emissions inventory and chemical mass balance (CMB) analysis) by May 31, 1993. If the revised demonstration showed that additional controls were needed to satisfy RACM and demonstrate attainment, the State committed to propose such additional control measures needed to the Colorado Air Quality Control Commission (AQCC) for adoption by July 31, 1993.

On July 26, 1993, the State submitted its preliminary analysis of the revised attainment demonstration (based on the revised CMB data and emissions inventory) to EPA. The results indicated that the area could not demonstrate timely attainment of the PM-10 NAAQS without the adoption of additional control measures. Subsequently, the State proposed additional PM-10 control measures for the Aspen area to the AQCC on August 16, 1993. In its July 26, 1993 letter, the State indicated that these measures would be adopted at a November 12, 1993 AQCC meeting. These control measures and a revised attainment demonstration which shows that the controls will provide for expeditious attainment of the PM-10 NAAQS have not yet been formally submitted to EPA for approval in the SIP.

In light of the information showing that the control measures submitted in the State's March 17, 1993 SIP submittal will not provide for timely attainment of the PM-10 NAAQS, EPA believes it cannot proceed with full approval at this time. Nevertheless, there are a few elements of the SIP submittal which are separable and independent of the results of the revised attainment demonstration. EPA is proposing to approve those elements as noted in this notice and in the Technical Support Document (TSD) accompanying this notice. The remaining elements of the SIP submittal are impacted by the revised attainment demonstration. Consequently, EPA is proposing to grant "limited" approval of these elements.

EPA may grant a limited approval of these control measures under section 110(k)(3) of the Act, in light of EPA's authority under section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the provisions are not being fully approved under section 110(k)(3) and part D, title I of the Act because they do not meet the specific Clean Air Act requirements identified above and reiterated elsewhere in this document and supporting information. However, EPA believes the control measures already adopted and submitted will achieve PM-10 emissions reductions in the Aspen area. Thus, EPA is proposing to approve those elements for the limited purpose of strengthening the SIP and, most importantly, making the measures adopted and submitted by the State federally enforceable. (See, e.g., sections 113 and 302(q) of the Act.) EPA's proposed limited approval does not pertain to the State's voluntary no-drive day provision in section III.C.6. of the State regulation for Aspen; EPA will take action on that provision in a separate notice.

EPA is also providing notice that if the State does not adopt and submit the additional control measures necessary to demonstrate attainment of the PM-10 NAAQS consistent with its remaining commitments, EPA will take the disapproval action that is the companion of this proposed limited approval. EPA will consider the applicable Clean Air Act deadlines in proceeding with this disapproval.

In the alternative, if the State submits adequate controls necessary to demonstrate expeditious attainment of the PM-10 NAAQS as called for by its commitments and if the State's submittal meets the other relevant requirements of the Act, then EPA will review the additional control measures and, if appropriate, will withdraw this limited approval and instead propose full approval of the PM-10 plan for Aspen relative to those moderate area PM-10 SIP requirements which were due November 15, 1991.

Lastly, EPA is proposing to amend the nonattainment area boundary for the Aspen nonattainment area to include

some of the surrounding area around Aspen. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration persuasively showing that the revised boundary more accurately represents the Aspen airshed. (See section 110(k)(6) of the Act.)

Since the Aspen PM-10 SIP was not submitted by November 15, 1991 as required, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit the SIP and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Aspen PM-10 SIP was submitted on January 15, 1992, EPA found the submittal to be complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated March 16, 1992. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

After providing more than 30 days of prior public notice, the State of Colorado held a public hearing on November 21, 1991 to entertain public comment on the implementation plan for Aspen. The plan for Aspen was subsequently adopted by the State and submitted by the Governor to EPA on January 15, 1992 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1992). The submittal was found to be complete, and a letter dated March 16, 1992 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

On March 17, 1993, the State submitted a revision to the Aspen SIP, which contained commitments and revised control measures for the Aspen nonattainment area. This revision was submitted pursuant to a January 21, 1993 public hearing, for which the State again provided more than 30 days of prior public notice. EPA found the March 1993 submittal to be administratively and technically complete on May 18, 1993. In this action, EPA proposes limited approval of these PM-10 SIP submittals for Aspen, except for the few separable elements of the submittals which EPA is proposing to fully approve, and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of this inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventory must be received prior to or with the submission (see 57 FR 13539).

The State of Colorado originally submitted a winter season emissions inventory in the January 15, 1992 submittal for the base year of 1988. A winter season emissions inventory was calculated because the highest PM-10 concentrations generally occur in the winter season in Aspen. EPA, however, did not agree with the use of a base year of 1988 because the design value reflects monitoring data through 1990 and thus could be influenced by the changes in emissions occurring through 1990. EPA also had concerns that the AP-42 default factors used by the State for re-entrained road dust likely underestimated emissions from these sources in high elevation mountain towns, such as Aspen. Lastly, EPA commented to the State that the emission factors used for wood burning, which were based on pounds of PM-10 per hour of operation (rather than pounds of PM-10 per ton of wood burned as is used in AP-42), could lead to an unreliable estimation of emissions from residential wood combustion. Therefore, the State provided commitments in its March 17, 1993 SIP revision to conduct silt loading studies and wood burning surveys during the winter of 1992-93 and to utilize the data to revise the emissions inventory to reflect a base year of 1990. The revised emissions inventory would then be used with a revised CMB analysis to assess the adequacy of the existing control measures in demonstrating expeditious attainment of the PM-10 NAAQS.

The State fulfilled its commitment by submitting a revised emissions inventory on September 20, 1993. The results of the silt loading study showed that emissions from re-entrained road dust in Aspen were much higher than the AP-42 default emission factors, as was suspected by EPA. The State also revised the wood burning emissions inventory to be consistent with the units of measurement used in the AP-42 default emission factors for wood burning. The resulting emissions inventory identified area sources as the primary cause of high PM-10 concentrations, with re-entrained road dust contributing 97.6 percent, residential wood combustion contributing 2 percent, restaurant charbroiler grills contributing 0.2 percent, and tailpipe emissions contributing 0.2 percent. No stationary sources were identified in the Aspen area. EPA has reviewed the revised emissions inventory and believes it is accurate and comprehensive. For further information on the emissions inventory, refer to the TSD accompanying this notice.

As stated previously, on July 26, 1993, the State submitted its preliminary analysis of the impact that the CMB data and revised emissions inventory had on the attainment and maintenance demonstrations in Aspen. The revised analysis indicated that the area could not demonstrate timely attainment or maintenance of the PM-10 NAAQS without the adoption of additional control measures. Consequently, as more fully discussed in Section II. under "Proposed Action," EPA is proposing limited approval of the Aspen control measures and related requirements already adopted because they strengthen the SIP. However, for those elements which are separable and independent from the results of the revised demonstration (including, for example, the emissions inventory), EPA is proposing to fully approve those elements, if adequate.

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

EPA believes the emissions inventory is a separable component of the moderate area PM-10 SIP for Aspen because it represents an assessment of the PM-10 emissions in the area prior to the adoption of control measures, and it will not change as a result of any additional control measures adopted. Thus, EPA is proposing to fully approve the emissions inventory because it generally appears to be accurate and comprehensive and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of section 172(c)(3) of the Act.[3] For further details, see the TSD.

3. Existing Control Measures

In the March 17, 1993 SIP submittal, the State targeted three source categories for emissions reductions: re-entrained road dust, residential wood combustion, and charbroiler grill emissions. Specifically, the State adopted transportation control measures, street sweeping and sanding provisions, a voluntary wood burning curtailment program, limits on installation of new wood stoves and fireplaces, and requirements for new restaurant charbroiler grills to control PM-10 emissions.

The following table represents the benefits that these control measures are projected to result in towards attaining the PM-10 NAAQS in Aspen:

Source	Control	Benefit towards reducing PM-10 emissions
Re-entrained road dust	Mass transit service expansion	No credit taken for this strategy.
	Crosstown shuttle service	Reduction of 400 VMT/day.[1]
	Commercial core paid parking	Reduction of 12,100 VMT/day.[1]
	Specs for street sanding materials	No credit taken at this time.
	Street sweeping	4.85% reduction in re-entrained road dust emissions from applicable roadways.
Residential wood combustion	Voluntary wood burning curtailment	10% reduction in residential wood combustion emissions.
	Limitations on installation of new wood stoves and fireplaces.	Effectiveness incorporated into future year emissions inventories.
Charbroiler grills	Requires PM-10 controls on new charbroiler grills.	Effectiveness incorporated into future year emissions inventories.

[1] The reductions in vehicle-miles-travelled (i.e., VMT) will ultimately result in an emissions decrease from re-entrained road dust emissions.

The State's submittal also consisted of a voluntary no-drive day provision. EPA will take action on that provision in a separate notice.

The State did not take credit for the mass transit service expansion because the additional buses are needed to meet the increased demand in ridership expected due to the parking fee strategy in downtown Aspen. Also, the State did not request credit for the clean sand strategy because the State had not yet determined baseline silt content values of the sand which was previously applied (i.e., prior to this control) to the roads in the Aspen area. EPA understands that the State is currently undertaking an analysis to demonstrate the benefits from the clean sand program, and the State may request credit for this program in the future.

The requirements described in the table will be implemented through Section III. of the Colorado regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements" (effective 3/2/93). This State regulation requires implementation of these control measures by December 10, 1993. These control measures are expected to result in a significant reduction of PM-10 emissions in the Aspen area by the end of 1994.

As noted, States are required to submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 for initial moderate PM-10 nonattainment areas (see sections 172(c)(1) and 189(a)(1)(C) of the Act). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561). However, as further discussed below, the State did not provide for the implementation of control measures which assure timely attainment, nor did the State show that the adoption of available control measures would be economically or technologically infeasible.

While the State's March 17, 1993 SIP submittal indicated that the controls discussed above were adequate to demonstrate attainment of the PM-10 NAAQS, the demonstration of attainment included in the submittal did not follow EPA guidance. To address this shortcoming, the State included a commitment in the SIP to revise the attainment demonstration (based on a revised CMB analyses and emissions inventory) consistent with EPA guidance and to submit any additional control measures, if necessary, to the AQCC for adoption by July 31, 1993. On July 26, 1993, the State submitted the preliminary results of the revised demonstration which indicated that additional control measures would be necessary to adequately demonstrate timely attainment and maintenance of the PM-10 NAAQS. Subsequently, the State proposed additional control measures to the AQCC for adoption on August 19, 1993.

Because this new information indicates that the State has not adopted those available control measures necessary for expeditious attainment of the PM-10 NAAQS (or shown that all economically and technologically feasible control measures have been implemented and timely attainment is impracticable), the SIP submittal for Aspen cannot be considered to satisfy the RACM requirement at this time. Consequently, EPA is proposing limited approval of the PM-10 control measures submitted for Aspen in Section III. of the Colorado regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements" (effective 3/2/93), with the exception of the voluntary no-drive day provision in Section III.C.6. Pursuant to sections 110(k)(3) and 301(a) of the Act, EPA is proposing limited approval of these measures to strengthen the SIP and, most importantly, to make the measures adopted and submitted by the State federally enforceable. EPA believes the control measures already adopted will result in reductions in PM-10 emissions in the Aspen area and, thus, advance the Act's PM-10 air quality-related protection goals in Aspen. See "Proposed Action" in Section II. of this

[3] The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM-10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

notice and the TSD for further information.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act; see also section 110(a)(2)(k) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

EPA policy specifies that the preferred approach for estimating the air quality impacts of emissions of PM–10 is to use receptor modeling in combination with dispersion modeling. However, on July 5, 1990, EPA issued guidance providing that, in certain situations, it may be more appropriate to rely on a receptor model demonstration alone as the basis for the attainment demonstration (see July 5, 1990 memo to Regional Air Branch Chiefs from Robert D. Bauman, Chief of SO_2/ Particulate Matter Programs Branch and Joseph Tikvart, Chief of Source Receptor Analysis Branch). Aspen met the criteria discussed in the July 5, 1990 memo to justify using receptor modeling alone and had originally planned to use this approach in its attainment demonstration. However, after further review, the State determined that the CMB data which would be used in the receptor modeling was inadequate and decided to base the attainment and maintenance demonstration on simple emissions rollback modeling. Emissions rollback modeling involves using the ratio of the design day ambient concentration to the design day emissions and projecting future concentrations. EPA believes this is an inadequate and inappropriate modeling methodology for demonstrating attainment in this area, as explained to the State in a letter dated June 10, 1993 and in the TSD.

Accordingly, the State included a commitment in its March 17, 1993 SIP submittal to conduct CMB analyses on all filters greater than 100 μg/m³ and to use this information (combined with a revised emissions inventory) to assess the adequacy of the control measures in demonstrating attainment of the PM–10 NAAQS. If the revised demonstration showed that additional controls were needed, the State committed to propose such additional control measures to the Colorado AQCC for adoption by July 31, 1993.

The attainment and maintenance demonstrations presented in the March 17, 1993 submittal indicated that the NAAQS for PM–10 would be attained in the Aspen area by 1994 and maintained through December 31, 1997. The 24-hour PM–10 NAAQS is 150 μg/m³, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (id.). The demonstration provided in the March 1993 SIP submittal predicted a 24-hour design concentration in the attainment year of 1994 of 148 μg/m³. The demonstration also predicted a 24-hour design concentration in 1997 of 149 μg/m³. Thus, the State's initial demonstrations based on the inadequate modeling method showed that the control measures adopted for the Aspen area would result in attainment and maintenance of the PM–10 NAAQS.

However, on July 26, 1993, the State submitted its preliminary analysis of the revised attainment and maintenance demonstrations (based on the revised CMB data and emissions inventory), which indicated that the area could not demonstrate timely attainment of the PM–10 NAAQS without the adoption of additional control measures. Subsequently, the State proposed additional PM–10 control measures for the Aspen area to the AQCC on August 16, 1993.

In light of this new information, the SIP submittal for Aspen cannot be considered to adequately demonstrate attainment of the PM–10 NAAQS. However, EPA believes the control measures already adopted and submitted will achieve PM–10 emissions reductions in the Aspen area. Therefore, as discussed, EPA is proposing limited approval of the control measures to strengthen the SIP and, most importantly, to make the measures already adopted and submitted by the State federally enforceable. (See discussion under Section II., "Proposed Action," and the TSD for further information.)

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of the State's submittal of air quality and emissions data, as revised on September 20, 1993, for the Aspen nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to particulate matter emissions from area sources, mainly re-entrained road dust from paved and unpaved roads and residential wood combustion. In addition, the emissions inventory for this area did not reveal any major stationary sources of PM–10 precursors. Consequently, EPA is proposing to find that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Aspen. The consequence of this finding is to exclude these major stationary sources from the applicability of PM–10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the TSD accompanying this notice. Note that while EPA is making a general finding for this area, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) of the Act as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The State's March 17, 1993 submittal initially demonstrated that the control measures adopted would provide adequate annual incremental reductions to demonstrate attainment of the PM–10 NAAQS by December 31, 1994. However, as discussed in Section II.A.4. above, the State did not follow EPA's modeling guidance in calculating its attainment demonstration, and the State included commitments in the Aspen PM–10 SIP to revise its attainment demonstration (based on a revised CMB analyses and emissions inventory) consistent with EPA guidance. The State submitted the preliminary results of this analyses on July 26, 1993, which

indicated that the area could not demonstrate timely attainment of the PM-10 NAAQS without the adoption of additional control measures. Subsequently, the State proposed additional PM-10 control measures for the Aspen area to the AQCC on August 16, 1993.

In light of this new information showing that the SIP submittals will not provide for timely attainment and because the submittals do not alternatively contain provisions designed to address the quantitative milestone and RFP requirements, the SIP submittals for Aspen cannot be considered to adequately satisfy these requirements. However, EPA does believe that the control measures already adopted and submitted will achieve PM-10 emissions reductions in the Aspen area. Therefore, as discussed, EPA is proposing limited approval of the Aspen control measures to strengthen the SIP and, most importantly, to make the measures already adopted and submitted by the State federally enforceable. (See discussion under Section II., "Proposed Action," and the TSD for further information.)

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The specific control measures currently contained in the SIP are addressed above under section II.A.3. entitled "Existing Control Measures." These control measures, which are included in Section III. of the State Regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements" (effective 3/2/93), apply to the types of activities identified in that discussion, including emissions from re-entrained road dust and residential wood combustion. The State regulation provides that these control measures apply throughout the Aspen PM-10 nonattainment area and requires implementation of the control measures by December 10, 1993. The only exemptions provided in the regulation are from the wood burning curtailment: EPA Phase II wood burning devices are exempt from the wood burning curtailment program in order to encourage conversions to cleaner wood burning devices. This is consistent with the recommendations for voluntary wood burning curtailment programs provided in EPA's Guidance Document for Residential Wood Combustion Emission Control Measures.

The State regulation for the Aspen nonattainment area also requires recordkeeping and reporting for each of the control measures. Specifically, users of street sanding materials and operators of street sweepers are required to submit monthly reports during the sanding/sweeping season detailing their compliance with the street sand and street sweeping requirements. The State regulation also requires the City of Aspen, Pitkin County, and other appropriate agencies to report to the State biannually on the effectiveness of the transportation control measures, the voluntary wood burning program, and the local ordinances concerning new wood stoves and restaurant charbroiler grills. The TSD contains further information on the enforceability requirements, including a description of the rules contained in the SIP, the sources subject to the State regulation, and the reporting/recordkeeping requirements.

EPA has reviewed this regulation for enforceability and has determined that it meets all of the criteria included in the September 23, 1987 Potter Memorandum.

The State of Colorado has a program that will ensure that the measures contained in the SIP submittals for Aspen are adequately enforced. The Colorado Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the AQCC. In addition, Colorado statute provides that the APCD shall enforce against any "person" who violates the emission control regulations of the AQCC, the requirements of the SIP, or the requirements of any permit. The definition of "person" includes, among other things, any "municipal corporation, county, city and county or other political subdivision of the State," such as the City of Aspen. Many of the control measures adopted by the AQCC in the State nonattainment regulation require the City of Aspen and Pitkin County to implement the measures. This is allowed under section 110(a)(2)(E) of the Act, as long as the State provides the necessary assurances that the State can ensure adequate implementation of the plan provisions. Since State statute allows for the enforcement against any county or city and since the State regulation containing the control measures was adopted by the AQCC, the APCD has adequate authority to ensure implementation of the control measures at the local level. State statute provides for civil penalties of up to $15,000 per day per violation for any person in violation of these requirements, and criminal penalties are also provided for in the State statute. Thus, the APCD has adequate enforcement capabilities to ensure compliance with the Aspen PM-10 regulations. The TSD contains further information on the State-wide regulations, enforceability requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

The control measures contained in the SIP submittals for Aspen appear to be enforceable, and the State's enforcement program for the control measures appears to be adequate. Accordingly, as discussed, EPA is proposing to grant limited approval of these measures to strengthen the SIP. However, EPA is reserving judgment on the enforceability of the outstanding control measures to be submitted and the ultimate adequacy of the enforcement program until EPA receives and reviews those measures necessary to remedy the State's PM-10 SIP deficiencies for Aspen.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs must include contingency measures. See generally 57 FR 13510-12 and 13543-44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM-10 NAAQS by the applicable statutory deadline. The Aspen SIP revisions addressed in this notice did not include any contingency measures. However, as noted, the States are not required to submit the contingency measures required in section 172(c)(9) of the Act, until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). The State is currently in the process of adopting contingency measures for Aspen. EPA will determine the adequacy of these measures and take action regarding this requirement, as appropriate.

9. Revisions to the Nonattainment Area Boundary

The Aspen nonattainment area boundary as announced on November 6, 1991 (see 56 FR 56736) is currently defined as the city limits of Aspen in 40 CFR 81.306. However, on June 20, 1991, the State adopted a more inclusive boundary for the Aspen PM-10 nonattainment area, which included some of the area surrounding the City of Aspen. This revised boundary was submitted with the Aspen PM-10 SIP in January of 1992. The SIP provided a demonstration showing that the revised boundary represented the reasonable Aspen airshed by considering the local topography, meteorology, and land use practices.

The information available at the time that the Aspen PM-10 nonattainment area designation was announced did not indicate that the boundary should include any of the surrounding area. However, the subsequent information presented in the SIP persuasively demonstrated that the revised nonattainment area boundary submitted with the SIP more accurately represents the Aspen airshed. See, e.g., 57 FR 56762, 56763 (November 30, 1992). Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to correct the Aspen PM-10 nonattainment area boundary in 40 CFR 81.306 to include some of the additional area surrounding the city of Aspen. The legal definition of the revised Aspen nonattainment area submitted by the State is as follows:

The area encompassed by the following Parcel ID numbers, as defined by the Pitkin County Planning Department: 2737-29, 2737-28, 2737-21, 2737-20, 2737-19, 2737-18, 2737-17, 2737-08, 2737-07, 2737-06, 2735-22, 2735-15, 2735-14, 2735-13, 2735-12, 2735-11, 2735-10, 2735-03, 2735-02, 2735-01, 2641-31, 2643-36, 2643-35, 2643-34, 2643-27, 2643-26.

A map displaying these Parcel ID numbers can be obtained by calling or writing the Pitkin County Planning Department at 130 South Galena Road, Aspen, Colorado 81611; (303) 920-5090. EPA is proposing to replace the boundary description currently in 40 CFR 81.306 with this revised boundary.

III. Implications of This Action

As discussed in Section II. above, EPA is proposing to grant a limited approval of certain significant aspects of the Aspen plan revisions, which were submitted by the State on January 15, 1992 and March 17, 1993 to satisfy those moderate area PM-10 SIP requirements due November 15, 1991. EPA is not proposing full approval of the control measures as meeting the RACM (including RACT) requirement because the submittals neither provided for the implementation of those control measures necessary to assure timely attainment of the PM-10 NAAQS in Aspen, nor showed that the adoption of available control measures would be economically or technologically infeasible. However, as discussed, EPA does believe the control measures submitted with the SIP will result in PM-10 emissions reductions in Aspen. Thus, EPA believes the control measures submitted warrant a limited approval for their strengthening effect on the SIP. Note that EPA's proposal does not include the voluntary no-drive day provision in Section III.C.6. of the State regulation for Aspen; EPA will act on that provision in a separate notice. EPA is also proposing to fully approve the few elements of the State's submittal which are separable and independent of the provisions that the State has not adequately addressed.

Pursuant to sections 110(k)(3) and 301(a) of the Act, EPA is proposing the limited approval for the purposes of making the PM-10 control measures already adopted federally enforceable and to advance the Act's PM-10 air quality-related protection goals in the Aspen area. This approval is limited in the sense that the provisions are not being fully approved under section 110(k)(3) and part D, title I of the Act because they do not meet the specific Clean Air Act requirements identified in this document and supporting information. Thus, the State is still required to correct the deficiencies which are preventing EPA from proposing a full approval of the Aspen PM-10 plan relative to the SIP requirements due on November 15, 1991.

In addition, EPA is providing notice that if the State does not adopt and submit the additional control measures necessary to demonstrate attainment of the PM-10 NAAQS consistent with its remaining commitments, EPA will take the disapproval action that is the companion of this proposed limited approval. EPA will consider the applicable Clean Air Act deadlines in proceeding with this disapproval.

In the alternative, if the State submits adequate controls necessary to demonstrate expeditious attainment of the PM-10 NAAQS as called for by its commitments, then EPA will review the additional control measures and, if appropriate, will withdraw this limited approval and instead propose full approval of the PM-10 plan for Aspen relative to those moderate area PM-10 SIP requirements which were due November 15, 1991.

As noted, additional submittals for the initial moderate PM-10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

EPA is also proposing to amend the nonattainment area boundary for the Aspen nonattainment area to include additional area surrounding Aspen.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this notice, EPA will consider any comments received by January 24, 1994.

V. Executive Order (EO) 12866

The OMB has exempted this rule from the requirements of section 6 of Executive Order 12866.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. sections 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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 and limited approvals of SIP submittals under sections 110 and 301, 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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: December 6, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–31360 Filed 12–22–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7078]

Proposed Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Directorate has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Putnam County (Unincorporated Areas).	Castle Lake	Entire shoreline	None	*71
		Clearwater Lake	Entire shoreline	None	*84
		Clubhouse Lake	Entire shoreline	None	*89
		Crane Ponds	Entire shoreline	None	*40
		Cue Lake	Entire shoreline	None	*93
		Georges Lake	Entire shoreline	None	*101
		Halfmoon Lake	Entire shoreline	None	*99
		Lake Grandin	Entire shoreline	None	*84
		Long Lake	Entire shoreline	None	*93
		Putnam Prairie/Wall Lake	Entire shoreline	None	*97
		Redwater Lake	Entire shoreline	None	*82
		Saratoga Lake	Entire shoreline	None	*67

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Star Lake	Entire shoreline	None	*79
		Sugarbowl Lake	Entire shoreline	None	*40
		Acosta Creek	Approximately 250 feet upstream of confluence with St. Johns River.	*6	*7
			Approximately 3.15 miles upstream of confluence with St. Johns River.	None	*60
		Dunns Creek	At U.S. Highway No. 17	*7	*6
			Approximately 1.6 miles downstream of Crescent Lake	*7	*6
		Etonia Creek	Approximately 1,500 feet downstream of Bardin Road.	None	*18
			At Holloway Road	None	*84
		Falling Branch	At confluence with Etonia Creek	None	*66
			Approximately 400 feet above Philchard Road.	None	*101
		Simms Creek	Approximately 1,000 feet downstream of USGS gage station.	None	*19
			At Putnam-Clay County line	None	*89
		Tributary 1 to Simms Creek.	At confluence with Simms Creek	None	*32
			Approximately 2.0 miles upstream of confluence of Tributary 1-A to Simms Creek.	None	*105
		Tributary 1-A to Simms Creek.	At confluence with Tributary 1 to Simms Creek.	None	*75
			Approximately 1.62 miles upstream of confluence with Tributary 1 of Simms Creek.	None	*101
		Tributary 2 to Simms Creek.	At confluence with Simms Creek	None	*36
			At Putnam-Clay County line	None	*106

Maps available for inspection at the Putnam County Building and Zoning Department, Putnam County Courthouse, Palatka, Florida.

Send comments to Mr. Gary Adams, Putnam County Administrator, P.O. Box 758, Palatka, Florida 32178.

Florida	St. Petersburg (City) Pinellas County.	Boca Ciega Bay	At intersection of Villagrande Avenue and Grevilla Avenue.	*11	*12
			Approximately 50 feet southwest of the intersection of Hibiscus Avenue South and Villagrande Avenue.	*12	*13

Maps available for inspection at the Municipal Services Building, 475 Central Avenue, St. Petersburg, Florida.

Send comments to the Honorable David J. Fischer, Mayor of the City of St. Petersburg, Pinellas County, P.O. Box 2842, St. Petersburg, Florida 33731.

Kentucky	Hyden, City (Leslie County).	Middle Fork Kentucky River.	At downstream corporate limits	None	*854
			Approximately 200 feet upstream of State Route 80.	None	*859

Maps available for inspection at the City Hall, Dryhill Road, Hyden, Kentucky.

Send comments to The Honorable Marvin Branon, Mayor of the City of Hyden, Leslie County, P.O. Box 972, Hyden, Kentucky 41749.

Kentucky	Leslie County (Unincorporated Areas).	Middle Fork Kentucky River	Approximately 1.0 mile downstream of City of Hyden corporate limits.	None	*850
			Approximately 1.1 miles upstream of Leslie County High School bridge.	None	*869

Maps available for inspection at the County Emergency Operations Center, Wendover Road, Hyden, Kentucky.

Send comments to The Honorable C. Allen Muncy, Leslie County Judge Executive, County Courthouse, Main Street, P.O. Box 619, Hyden, Kentucky 41749.

Michigan	Marquette (City) Marquette County.	Carp River	At the Lake Superior and Ishpeming Railroad.	None	*607
			Approximately 820 feet upstream of U.S. Route 41.	None	*611

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Municipal Services Center, Public Works Department, 850 West Baraga Avenue, Marquette, Michigan.					
Send comments to Mr. Dale Iman, Manager of the City of Marquette, 300 West Baraga Avenue, Marquette, Michigan 49855.					
Minnesota	Paynesville (City) Stearns County.	North Fork Crow River	Approximately 250 feet upstream of County Route 123 Bridge.		*1,150
			Approximately 2,700 feet upstream of Routes 4 and 55.		*1,160
Maps available for inspection at the Paynesville City Hall, 221 Washburne Avenue, Paynesville, Minnesota.					
Send comments to The Honorable Joseph H. Voss, Mayor of the City of Paynesville, Stearns County, 221 Washburne Avenue, Paynesville, Minnesota 56362.					
Minnesota	St. Cloud (City) Stearns, Benton, and Sherburne Counties.	Sauk River	Approximately 1.0 mile upstream of confluence with Mississippi River.	*1,010	*1,011
			At abandoned County Highway 134 bridge.	*1,049	*1,048
		Mississippi River	Approximately 0.82 mile downstream of St. Cloud Dam.	*970	*971
			Approximately 3 miles upstream of St. Cloud Dam.	*993	*992
Maps available for inspection at the City Hall, 400 Second Street South, St. Cloud, Minnesota.					
Send comments to the Honorable Chuck Winkelman, Mayor of the City of St. Cloud, Stearns, Benton, and Sherburne Counties, 400 Second Street South, St. Cloud, Minnesota 56301.					
Minnesota	Stearns County, Unincorporated Areas.	Sauk River	Approximately 200 feet upstream of confluence with Mississippi River.	*997	*998
			Approximately 1 mile downstream of County Highway 121 Bridge.	*1,055	*1,056
		Mississippi River	Approximately 0.3 mile downstream of City of St. Cloud downstream corporate limits.	*970	*971
			At downstream side of Minnesota Highway 152 Bridge.	*993	*992
Maps available for inspection at the Stearns County Administration Building, Planning Department, Room 343, 705 Courthouse Square, St. Cloud, Minnesota.					
Send comments to Mr. George Rindelaub, Stearns County Administrator, Stearns County Administration Center, 705 Courthouse Square, St. Cloud, Minnesota 56303.					
Minnesota	Waite Park (City) Stearns County.	Sauk River	At Burlington Northern Railroad Bridge	None	*1,044
			Approximately 1.2 miles upstream of Burlington Northern Railroad Bridge.	None	*1,047
Maps available for inspection at the City Hall, 253 Fifth Avenue North, Waite Park, Minnesota.					
Send comments to the Honorable Al Ringsmuth, Mayor of the City of Waite Park, Stearns County, P.O. Box 339, Waite Park, Minnesota 56387.					
Ohio	Hamilton County Unincorporated Areas.	West Fork Mill Creek	Approximately 300 feet downstream of Pippin Road.	*774	*773
			At Blue Rock Road	None	*825
Maps available for inspection at the Hamilton County Department of Public Works, Hamilton County Administration Building, room 800, 138 East Court Street, Cincinnati, Ohio.					
Send comments to Mr. David J. Krings, Hamilton County Administrator, Hamilton County Administration Building, room 603, 138 East Court Street, Cincinnati, Ohio 45202.					
South Carolina	Cayce, City (Lexington County).	Tributary SM-2	At North Eden Drive	None	*150
			Approximately 125 feet upstream of Old Frink Street	None	*170

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Cayce City Hall, Community Development Office, 1800 12th Street, Cayce, South Carolina.					
Send comments to The Honorable Avery B. Wilkerson, Jr., Mayor of the City of Cayce, Lexington County, P.O. Box 2004, Cayce, South Carolina 29171.					
South Carolina	City of Columbia Richland County.	Pen Branch	At upstream side of Woodlake Drive	*159	*160
			Approximately 800 feet upstream of Trenholm Road.	*173	*174
Maps available for inspection at the City of Columbia Office of Utilities and Engineering, 1225 Laurel Street, Columbia, South Carolina.					
Send comments to The Honorable Robert Coble, Mayor of the City of Columbia, City Hall, 1737 Main Street, Columbia, South Carolina 29217.					
South Carolina	Irmo, Town (Lexington County).	Moccasin Branch	Interstate Route 26 (northbound) western lane.	None	*313
			Approximately 550 feet upstream of U.S. Routes 76 and 176 (Broad River Road).	None	*323
Maps available for inspection at the Irmo Town Hall, 7300 Woodrow Street, Irmo, South Carolina.					
Send comments to The Honorable John Gibbons, Mayor of the Town of Irmo, 7300 Woodrow Street, P.O. Box 406, Irmo, South Carolina 29063.					
South Carolina	Lexington County (Unincorporated Areas).	Yost Creek	Approximately 500 feet upstream of confluence with Rawls Creek.	*204	*205
			Approximately 60 feet upstream of Lincreek Road.	None	*308
		Tributary SM–2	Approximately 70 feet upstream of confluence with Six Mile Creek.	*143	*144
			Approximately 130 feet upstream of Old Frink Street.	None	*170
		Savana Branch	Approximately 1,850 feet upstream of confluence with Congaree Creek.	*144	*145
			At downstream side of Edmund Highway	None	*160
		Tributary K–2	Just upstream of Piney Grove Road	None	*222
			Approximately 285 feet upstream of the unnamed road.	None	*243
		Twelve Mile Creek	At Corley Mill Road	None	*192
			Approximately 1.4 miles upstream of Mineral Springs Road.	None	*243
		Fourteen Mile Creek	At confluence with Twelve Mile Creek	None	*192
			Approximately 0.6 mile upstream of Old Chapin Road.	None	*359
		Tributary SM–5	Approximately 75 feet upstream of Rainbow Drive.	None	*224
			Approximately 825 feet upstream of Rainbow Drive.	None	*226
		Stoop Creek	Approximately 60 feet downstream of CSX Transportation.	*184	*183
			Approximately 0.5 mile upstream of Interstate 26.	None	*223
		Shallow Flooding	Area between Savana Branch and Congaree Creek south of Old Dunbar Road.	None	#2
Maps available for inspection at the Lexington County Administrator, Lexington County Administration Building, Planning and Development Office, 212 South Lake Drive, Lexington, South Carolina.					
Send comments to Mr, Edward M. Parler, Lexington County Administrator, Lexington County, Administration Building, 212 South Lake Drive, Lexington, South Carolina 29072.					
South Carolina	Lexington, Town (Lexington County).	Fourteen Mile Creek	Approximately 2,275 feet upstream of Whiteford Way.	None	*282
		Twelve Mile Creek	Approximately 0.6 mile upstream of Old Chapin Road.	None	*359
			Approximately 1.0 mile upstream of Mineral Springs Road.	None	*239
			Approximately 900 feet downstream of confluence of Tributary TM–1.	*255	*252

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Lexington Town Hall, Building Department, 111 Maiden Lane, Lexington, South Carolina. Send comments to The Honorable Elias Mack, Mayor of the Town of Lexington, P.O. Box 397, Lexington, South Carolina 29071.					
South Carolina	Pine Ridge, (Lexington County).	Shallow Flooding	Area between Savana Branch and Congaree Creek south of Old Dunbar Road.	None	#2
Maps available for inspection at the Pine Ridge Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina. Send comments to The Honorable Ben Campbell, Mayor of Pine Ridge, Lexington County, 1015 Fish Hatchery Road, West Columbia, South Carolina 29172.					
South Carolina	Richland County, Unincorporated Areas.	Little Jackson Creek	Approximately 420 feet downstream of O'Neil Court.	*212	*213
			Approximately 100 feet upstream of the confluence of Lightwood Knot Branch.	*214	*215
Maps available for inspection at the Planning and Zoning Department, County Administration Building, 220 Hampden, Columbia, South Carolina. Send comments to Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.					
South Carolina	Springdale, Town (Lexington County).	Tributary SM–5	At Rainbow Drive	None	*220
			Approximately 75 feet upstream of Rainbow Drive.	None	*224
Maps available for inspection at the Springdale Town Hall, 2915 Platt Spring Road, Springdale, South Carolina. Send comments to The Honorable Pat G. Smith, Mayor of the Town of Springdale, 2915 Platt Spring Road, Springdale, South Carolina 29170.					
Virginia	Bluefield (Twn) Tazewell County.	Beaver Pond Creek	At confluence with Bluestone River	*2,369	*2,368
			Approximately 0.4 mile upstream of upstream crossing of State Route 102.	None	*2,430
Maps available for inspection at the Municipal Building, 600 Virginia Avenue, Bluefield, Virginia. Send comments to Mr. Art Mead, Bluefield Town Manager, P.O. Box 1026, Bluefield, Virginia 24605.					
Virginia	Wise County (Unincorporated Areas).	Powell River	At the upstream side of State Route 790 .	None	*1,997
			Approximately 790 feet upstream of State Highway 610.	None	*2,012
Maps available for inspection at the Wise County Courthouse, Building Official's Office, 206 East Main Street, Wise, Virginia. Send comments to Mr. Scott H. Davis, Wise County Administrator, P.O. Box 570, Wise, Virginia 24293.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93–31267 Filed 12–22–93; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 67

[Docket No. FEMA–7077]

Proposed Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of

1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Directorate has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared. .

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Texas	Hardin County (Unincorporated Areas)	Gustan Street Ditch	Approximately 1,000 feet upstream of South Fannin Street.	None	*43
			Immediately upstream of South Ann Street.	None	*44

Maps are available for review at Hardin County Floodplain, 300 Monroe Street, Kountze, Texas.

Send comments to The Honorable Tom Mayfield, Hardin County Judge, P.O. Box 760, Kountze, Texas 77625.

Texas	City of Sourlake Hardin County	Gustan Street Ditch	Approximately 1,000 feet upstream of South Fannin Street.	None	*43
			At Elm Street	None	*44
			Approximately 200 feet upstream of Hartel Street.	None	*47

Maps are available for review at 121 West Barkley Street, Sourlake, Texas.

Send comments to The Honorable Jack Bennett, Mayor, City of Sourlake, P.O. Box 2009, Sourlake, Texas 77659.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-31266 Filed 12-22-93; 8:45 am]

BILLING CODE 6718-03-P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[No. 40888]

Reconsideration of Special Tariff Authorities Authorizing the Publication of Customer Account Codes in Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Proposed rule; withdrawal.

SUMMARY: In a decision served September 1, 1993 and published at 58 FR 47104 (Sept. 7, 1993), the Commission proposed a regulation which would permit tariffs to continue to identify traffic to which rates apply by undisclosed customer account (or shipper) codes provided such tariffs include appropriately specific commodity and origin/destination information. Since then, however, the Negotiated Rates Act of 1993, enacted on December 3, 1993, has amended 49 U.S.C. 10762 by adding subsection (h), which requires carriers using customer account code tariffs to set forth in the tariff the name of the customer for each account code. Carriers are required by the statute to comply with its requirements by June 1, 1994. Because section 10762(h) supersedes the proposed rule, the ICC is withdrawing the proposal and discontinuing this proceeding.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927-5597 or Ronald A. Hall (202) 927-5595; TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the ICC'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: December 14, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-31399 Filed 12-22-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Deer Creek Summer Steelhead

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

ACTION: Notice of finding; initiation of status review and request for information.

SUMMARY: NMFS has received a petition to list indigenous, naturally spawning Deer Creek summer steelhead (*Oncorhynchus mykiss*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). The petition presents substantial scientific information indicating that the action may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action. Information received during this status review will be used also in NMFS' ongoing review of all coastal steelhead populations in California, Oregon, and Washington.

DATES: Comments and information must be received by February 22, 1994.

ADDRESSES: Copies of the petition are available from, and comments should be submitted to Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE. 11th Avenue, room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 230-5430 or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

Petition Received

On September 21, 1993, the Secretary of Commerce received a petition from Washington Trout to list indigenous, naturally spawning Deer Creek summer steelhead, and to designate critical habitat under the ESA. The Assistant Administrator for Fisheries, NOAA (AA), makes a finding that the petition presents substantial scientific information indicating that the petitioned action may be warranted based on the criteria specified in 50 CFR 424.14(b)(2), and based on evidence presented in the petition that the petitioned population may qualify as a "species" under the ESA in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (56 FR 58612, November 20, 1991). Under section 4(b)(3)(A) of the ESA, this finding requires that a review of the status of Deer Creek summer steelhead be conducted to determine if the petitioned action is warranted. Information received during this status review will be used in NMFS' ongoing review of all coastal steelhead populations in California, Oregon, and Washington (58 FR 29390, May 20, 1993).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available.

Biological Information Solicited

The Deer Creek basin is situated north and northeast of Oso, Washington, where Deer Creek enters the North Fork of the Stillaguamish River. To ensure that the Deer Creek status review is

complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning: (1) Whether or not the stock qualifies as a "species" under the ESA in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (56 FR 58612, November 20, 1991) and (2) whether or not the stock is endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information in the following areas: Influence of historical and present hatchery fish releases on naturally spawning stocks of steelhead; separation of hatchery and natural steelhead escapement; alteration of steelhead freshwater and marine habitats; age structure and life history of steelhead; migration timing and behavior of juvenile and adult steelhead; relationship between summer and winter steelhead; relationship between steelhead and resident rainbow trout; and interactions of steelhead with other salmonids. This information should address all steelhead populations in the Deer Creek basin, as well as steelhead populations along the Washington coast, Puget Sound, Strait of Juan De Fuca, and Strait of Georgia. Copies of the petition are available (see ADDRESSES).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for Deer Creek summer steelhead. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the recovery of the species. Essential features should include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications, and (2) the commenter's name, address, and association, institution, or business.

Nancy Foster,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 93-31330 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 630

[Docket No. 931078-3278; I.D. 100593C]

RIN 0648-AF42

Atlantic Swordfish Fishery

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement, on an experimental basis, a voluntary, pilot program that would allow retention of undersized swordfish in excess of the trip allowance for donation, through charitable organizations, to needy individuals. The intended effect is to investigate the potential for avoiding waste of swordfish that would otherwise be brought aboard already dead and subsequently would be discarded to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit.

DATES: Written comments must be received on or before January 24, 1994.

ADDRESSES: Copies of documents supporting this action may be obtained from, and comments on the proposed rule should be sent to, Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the information collection requirements should be sent to Richard H. Schaefer and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan (FMP) for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of the ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background

At the 1990 meeting of ICCAT, member nations recommended international measures to reduce fishing mortality of swordfish. In June 1991, NMFS implemented regulations, consistent with the ICCAT recommendations, which included a minimum size limit of 41 pounds (18.6 kg) dressed weight or 31 inches (78.7 cm) carcass length, with a trip allowance for undersized swordfish in an amount not exceeding 15 percent of the total number of swordfish landed.

Although large swordfish are the preferred target of U.S. swordfish vessels, harvest of some undersized swordfish is unavoidable in most cases. Under current regulations, undersized swordfish in excess of the trip allowance must be discarded, despite the fact that many of these fish are dead prior to being brought aboard the vessel. This results in waste of the resource. If discards are not accurately reported, loss of information critical to proper stock assessment, in general, and to evaluation of the minimum size limit, in particular, also occurs.

NMFS, in cooperation with Blue Water Fishermen's Association, other members of the swordfish industry, National Fisheries Institute, and Second Harvest National Food Bank Network (Second Harvest), proposes a pilot program that would provide information regarding the harvest, discard, mortality,

catch per unit of effort, and biological characteristics of undersized swordfish and would allow donation of undersized swordfish in excess of the trip allowance through Second Harvest to needy individuals. Under the pilot program, voluntary participants selected by NMFS would be allowed to land undersized swordfish that were dead prior to being brought aboard the vessel in excess of the trip allowance for undersized swordfish. These swordfish could be received only by specified dealers; could not be purchased, sold, bartered, or traded; and would be distributed by Second Harvest food banks, through charitable organizations, to needy individuals. Reporting and marking requirements would ensure integrity of the program and would obtain additional scientific information regarding catch and mortality of swordfish less than the minimum size limit.

Second Harvest is an organization, exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, that solicits surplus products and distributes such products to organizations engaged in feeding the needy, the ill, or infants. Through a network of 185 food banks, more than 45,000 qualified recipient organizations that are exempt from Federal income tax under section 501(c)(3) serve food and meals to millions of needy Americans. Last year, the Second Harvest network distributed more than 500 million pounds of food. Donated products are transferred only to organizations that have exemption letters issued by the Internal Revenue Service that verify their tax exempt status.

NMFS and the majority of the swordfish industry recognize the importance of minimizing the catch and mortality of undersized swordfish and remain committed to that objective. However, under current conditions, some unavoidable harvest of undersized swordfish occurs. NMFS is interested in pursuing this pilot program in order to maximize the scientific and charitable benefits resulting from the unavoidable harvest of undersized swordfish, without undermining the objective of minimizing the mortality of undersized swordfish.

At the November 1992 ICCAT meeting, the U.S. delegation discussed the proposed pilot program. It was agreed that the program was consistent with current ICCAT recommendations for swordfish and that it would be useful for evaluating effectiveness of the minimum-size regulation. The United States will provide ICCAT with all data collected from the program.

Program Objectives

1. Improve scientific information regarding catch, mortality, discard rate, and biological characteristics of undersized swordfish. The program would provide an alternative source of data for estimating discards in excess of the trip allowance for undersized swordfish; discourage unreported discarding of dead undersized swordfish; and provide an opportunity to obtain additional information (e.g., age, size, sex) about undersized swordfish. This would be important in maintaining catch per unit of effort indices for small swordfish, which are critical to ICCAT stock assessments.

2. Avoid waste of a valuable resource. Dead fish that would have been discarded would be donated, through an organized, controlled program, to needy individuals.

3. Encourage the continued tagging and release of all live undersized swordfish, as well as small bluefin tuna, bigeye tuna, yellowfin tuna, and sharks.

4. Implement the program in a manner that will not jeopardize or undermine the broader management objective of minimizing the mortality of undersized swordfish.

Description of the Program

Non-profit

Although participants would incur costs associated with donated fish (harvesters—handling and processing; dealers—storage; Second Harvest—distribution), they would receive no direct economic benefit from landing and donating the undersized swordfish. Any purchase, sale, trade, or barter of fish landed under the donation program would be prohibited.

Selection Process

NMFS would select participants (dealers and vessels) from among volunteers. Factors that would be considered in the selection process include:

(1) History of voluntary participation in NOAA/NMFS cooperative scientific programs, e.g., tag and release, sea sampling, collection of biological samples;

(2) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(3) Representative coverage of the fishery, to the extent possible; and

(4) Compliance record of volunteers.

Scope of the Program

The pilot program would be divided into seven geographical regions: Gulf of Mexico, Florida east coast, South Atlantic Bight, Mid-Atlantic Bight, northeast coastal, northeast distant waters, and Caribbean. Three to four vessels and cooperating dealers would be selected to participate in each region. Assuming the program is implemented early in 1994, initial efforts would be directed at establishing the program in the Gulf of Mexico region, because of seasonality of the fishery. After the logistics and any unforeseen problems were resolved, additional regions would be added at the rate of one every 2 to 3 months until the program is established in all seven regions.

Responsibilities of Participating Fishermen

A selection letter from NMFS, identifying the vessel as a participant in the program, would be required to be maintained aboard the vessel and made available for inspection.

Undersized swordfish that are dead when brought on board the vessel and are to be donated would be required to be properly prepared and stored. Live undersized swordfish would be required to be tagged, released, and reported to NMFS on logbook and tagging records.

Participants would be required to properly handle, record, and transfer to selected dealers all swordfish in excess of the trip allowance for undersized swordfish, i.e., such swordfish could not be retained for the crew, purchased, sold, bartered, traded, or given to anyone other than a selected dealer for transfer to an authorized recipient (Second Harvest).

Donated swordfish would be required to be landed and tagged for the donation program, using donation tags provided by NMFS, by fishermen at the facilities of dealers selected by NMFS to participate in the donation program. Existing regulations require that fish remain in whole or dressed form through off-loading. A list of selected dealers would be provided by NMFS.

The vessel owner or operator would be required to notify NMFS and the dealer 24 hours in advance, or as otherwise specified by NMFS, of landing information, including date, approximate time, location, and estimated number of fish to be donated. Specific instructions would be provided by NMFS to address logistics and to facilitate shorter notification in areas where the fishing grounds, such as the Florida Straits, are close to the landing locations.

The individual carcass weights of all donated fish would be required to be clearly indicated, using a NMFS-specified code, on the tally (weigh-out)

sheets that must be submitted to NMFS, as specified in the current regulations.

As is currently specified in the regulations, transfer of swordfish between vessels is prohibited.

Responsibilities of Participating Dealers

A selection letter from NMFS, identifying the dealer as a participant in the program, would be required to be maintained at the dealer's place of business and be made available for inspection.

Donated swordfish could be received only from vessels selected by NMFS. A list of selected vessels would be provided by NMFS to participating dealers.

Dealers would be responsible for weighing all undersized swordfish to be donated and recording the individual carcass weights, using a NMFS-specified code, on the dealer reports currently required. (Information regarding vessel and dealer identification, and date fish were received would be included on those reports.) Reports would be submitted to NMFS twice monthly, as currently required by the regulations.

Swordfish for donation would be required to be separated from swordfish eligible for sale, to the extent practicable, and maintained with the donation tag installed.

The dealer would be required to obtain a receipt from Second Harvest for all swordfish donated. A copy of the receipt would be required to be submitted to the vessel that landed the swordfish (along with normal dealer weigh-out/trip settlement sheets).

Responsibilities of Second Harvest

Donated swordfish would be precluded from purchase, sale, barter, or trade.

Donated swordfish would be required to be made available for use as soon as possible to ensure the greatest freshness and palatability.

Second Harvest food banks would assume responsibility for donated swordfish upon receipt from the dealer, including transportation, quality control of product, processing, and distribution to the needy.

Transportation would be provided by Second Harvest food banks to ensure timely collection and distribution of donated swordfish.

Upon pickup of swordfish, Second Harvest food banks would provide dealers with receipts that include the permit numbers of fishing vessels and dealers involved in donating the swordfish, date of pickup, and number and individual carcass weights of all swordfish received. Second Harvest food banks would provide copies of receipts to Second Harvest headquarters, which will provide duplicate copies to NMFS.

Second Harvest's individual food banks would be responsible for distributing to local charities, which will process and prepare the swordfish for consumption by needy individuals.

Implementation

The pilot program would continue for 2 years, subject to review and evaluation. NMFS would monitor the program and prepare an annual report evaluating the results. Results from this study will be presented to ICCAT. If the program is achieving its purposes and there is concurrence from ICCAT, the program could be continued beyond 2 years; conversely, the program could be terminated earlier if the program is not achieving its purposes. In addition, the donation program would be terminated upon a finding that it is no longer in conformance with the recommendations of ICCAT.

Classification

This proposed rule is published under the authority of the ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this proposed rule is consistent with the recommendations of ICCAT and is necessary for management of the Atlantic swordfish fishery.

The economic effects of this action, as contained in the Regulatory Impact Review (RIR), are summarized as follows: Participating swordfish vessel owners (approximately 25) and swordfish dealers (approximately 10) would voluntarily incur moderate costs to participate in the donation program; unquantifiable benefits would accrue as a result of increased scientific information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit; unquantifiable but significant social benefits would accrue as a result of providing food to the needy; and benefits in terms of personal satisfaction would accrue from participating in the donation program.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because few of the vessels and dealers in the swordfish fishery will be affected. Accordingly, a regulatory flexibility analysis was not prepared.

This proposed rule contains four new collection-of-information requirements subject to the Paperwork Reduction Act, specifically, application to participate in the donation program, 24-hour notice of landing donated swordfish, making tagging of undersized fish mandatory for voluntary participants, and submission of receipts by Second Harvest headquarters to NMFS. The public reporting burdens for these collections of information are estimated to average 10, 3, 2 and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Requests to collect this information have been submitted to the Office of Management and Budget (OMB) for approval. This proposed rule also involves two collections of information subject to the Paperwork Reduction Act that have previously been approved by OMB, specifically, fishing vessel reports (OMB Control Number 0648–0016) and dealer reports (OMB Control Number 0648–0013). The public reporting burdens for these collections of information are estimated to average 6 and 30 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: December 16, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.7, paragraph (q) is revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(q) Land a swordfish that is smaller than the minimum size specified in § 630.23(a), except for the trip allowance for undersized swordfish, as specified in

§ 630.23(b), and except as authorized in § 630.51.

* * * * *

3. A new subpart D is added to read as follows:

Subpart D—Donation Program

630.50 Purpose.
630.51 Participation.
630.52 Termination.

Subpart D—Donation Program

§ 630.50 Purpose.

This subpart implements a program under which swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) may be retained for donation through a charitable organization to the needy. This program is intended to avoid waste of swordfish that would otherwise be discarded dead and to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit.

§ 630.51 Participation.

(a) *General.* Owners of vessels and dealers permitted under § 630.4 may volunteer to participate in the swordfish donation program by contacting the Chief, Highly Migratory Species Division, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, phone (301) 713–2347, Fax (301) 588–4967. The Chief, Highly Migratory Species Division, will select owners of vessels and dealers who may participate in the donation program and will keep selected vessel owners advised of the selected dealers.

(1) Factors that will be considered in the selection process include:

(i) History of voluntary participation in NOAA/NMFS cooperative scientific programs;

(ii) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(iii) Representative coverage of the fishery, to the extent possible; and

(iv) Compliance record of volunteers.

(2) Selected dealers will also be kept advised of the selected vessel owners and of authorized recipients of donated swordfish.

(b) *Vessels.* The owner of a vessel that has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may retain swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Landing a swordfish in excess of the trip allowance for undersized swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 630.7(q).

(1) The selection letter from the Chief, Highly Migratory Species Division, must be carried on board the fishing vessel and the operator must present it for inspection upon the request of an authorized officer.

(2) A swordfish that is less than the minimum allowable size specified in § 630.23(a) and that is alive when brought aboard the vessel must be released in a manner that will ensure maximum probability of survival. If caught by hook, it must be released by cutting the line near the hook without removing the swordfish from the water. A reasonable effort must be made to tag each swordfish released under this paragraph (b)(2). Tags for released swordfish will be provided by the Science and Research Director. A record of each tag and release must be maintained and submitted to the Science and Research Director on forms provided with the tags.

(3) A swordfish that is dead when brought aboard the vessel must be retained.

(4) A swordfish that is retained under the donation program of this subpart must be tagged upon landing at the facility of a selected dealer using a donation tag provided by the Chief, Highly Migratory Species Division.

(5) A swordfish that is retained under the donation program of this subpart may be off-loaded only to a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program. An owner or operator must notify the Chief, Highly Migratory Species Division, by phone at 301–713–2347 or Fax at 301–713–1035 and a selected dealer at least 24 hours prior to off-loading swordfish under the donation program, unless stated otherwise in the vessel owner's selection letter.

(6) A swordfish that is retained under the donation program of this subpart may not be sold, traded, or bartered or attempted to be sold, traded, or bartered.

(c) *Dealers.* A dealer who has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may receive and retain swordfish from the North Atlantic swordfish stock that are in excess of a vessel's trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in 50 CFR 620.7(a).

(1) The selection letter from the Chief, Highly Migratory Species Division, must be available on the dealer's premises and the dealer must present it for inspection upon the request of an authorized officer.

(2) Such swordfish may be received only from a vessel that has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(3) To the extent practicable, a swordfish that is received under the donation program must be kept separate from other swordfish possessed by the dealer. The donation tag on such swordfish may not be removed.

(4) A swordfish that is subject to the donation program of this subpart may not be purchased, sold, traded, or bartered or attempted to be purchased, sold, traded, or bartered.

(5) A swordfish that is received under the donation program may be transferred only to Second Harvest. The receipt specified in paragraph (d)(3) of this section must be obtained from Second Harvest. A copy of the receipt must be furnished by the dealer to the harvesting vessel.

(6) Individual carcass weights of swordfish received under the donation program must be included in the twice monthly reports required by § 630.5(b).

(d) *Second Harvest.* Second Harvest may receive and distribute swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in 50 CFR 620.7(a).

(1) Such swordfish may be received only from a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(2) Only swordfish with donation tags attached may be received.

(3) Upon receiving swordfish under the donation program, Second Harvest must provide a receipt that shows individual carcass weights of swordfish received, the permit number(s) of the vessel(s) that harvested the swordfish, the permit number of the dealer, and the date of receipt. Such receipt must be distributed as follows: Original and one copy to the dealer, and one copy to the Chief, Highly Migratory Species Division.

(4) A swordfish that is subject to the donation program of this subpart may not be purchased, sold, traded, or bartered or attempted to be purchased, sold, traded, or bartered.

(e) *Duration of selection.* A selection letter remains valid for the period specified therein, provided the permit issued under § 630.4 to the participating vessel or dealer remains valid, except that it will be revoked by the Chief, Highly Migratory Species Division—

(1) Upon the request of the participating vessel owner or dealer; or

(2) Upon final assessment of a penalty against the participating vessel owner or dealer for a violation of this part.

(f) *Transfer.* A selection letter issued under this subpart is not transferable or assignable. Such letter is valid only for the vessel or dealer for which it was issued.

§ 630.52 Termination.

Upon a finding by the Assistant Administrator that the intended purposes of the program are not being achieved, or that the program is no longer in conformance with the recommendations of the International Commission for the Conservation of Atlantic Tunas, the Assistant Administrator may terminate the program by publication of a final rule in the **Federal Register**.

[FR Doc. 93–31278 Filed 12–22–93; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register
Vol. 58, No. 245
Thursday, December 23, 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

Forms Under Review by Office of Management and Budget

December 17, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact persons.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Agricultural Stabilization and Conservation Service,

7 CFR 701—Conservation and Environmental Programs,
FIP-11, FIP-12, ASCS-18, ACP-153, 153-A, 310, 311, and 245
On occasion
Farms; 2,918,650 responses; 726,130 hours,
Priscilla L. Wright (202) 720-5783

Extension

- Food Safety and Inspection Service

Voluntary Reimbursable Inspection Services
MP Form 225, FSIS Form 9060-13, FSIS Form 9060-8, MP Form 85
On occasion; Recordkeeping
Businesses or other for-profit; 802 responses; 78 hours
Lee Puricelli (202) 720-7163

- Agricultural Marketing Service

Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping
Recordkeeping
Businesses or other for-profit; 550 recordkeepers; 1,174 hours
F. Tracy Schonrock (202) 720-3171

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR, Part 703, Wetlands Reserve Program
Recordkeeping; on occasion
Individuals or households; Farms; 37,000 responses; 28,483 hours
Lois Hubbard (202) 720-9563

- Agricultural Stabilization and Conservation Service

7 CFR 1427.1081 through 1088—Standards for Approval of Warehouses for Cotton and Cotton Linters
CCC-823, CCC-823-1A, and CCC-20, CCC-49
On occasion
Businesses or other for-profit; Small businesses or organizations; 1,305 responses; 42,995 hours
Howard Froehlich (202) 720-7398

New Collection—(Emergency Clearance Requested)

- National Agricultural Statistics Service

Native American Farmer Information Survey
One-time survey
Farms; 880 responses; 147 hours
Larry Gambrell (202) 720-5778

- Agricultural Marketing Service

Specified Commodities Imported Into the United States Exempt from Import Requirements, 7 CFR Parts 944, 980, and 999
FV-6
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,000 responses; 340 hours
Mark Hessel (202) 720-3923

- Food Safety and Inspection Service

Nutrition Labeling of Meat and Poultry Products, Recordkeeping
Businesses or other for-profit; 0 responses, 20,083 hours, Lee Puricelli (202) 720-7163

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 93-31356 Filed 12-22-93; 8:45 am]
BILLING CODE 3410-01-M

FOREST SERVICE

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern 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 Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or 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 January 1, 1994. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329-3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:

The Missoulian, Great Falls Tribune, and The Billings Gazette Regional

Forester decisions in Northern Idaho and Eastern Washington
The Spokesman Review
Regional Forester decisions in North Dakota—Bismarck Tribune
Beaverhead—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—
Billings Gazette (Montana)
Bismarck Tribune (North Dakota)
Rapid City Journal (South Dakota)
Deerlodge—Montana Standard
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: December 16, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester.

[FR Doc. 93-31340 Filed 12-22-93; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon, on Wednesday, February 2, 1994, at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor Conference Room, Honolulu, Hawaii 96815. The purpose of the meeting is to plan followup activities to the Advisory Committee's report, *A Broken Trust.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Andre S. Tatibouet or Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-31306 Filed 12-22-93; 8:45 am]

BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will meet on Thursday, January 27, 1994, from 6 p.m. until 8 p.m. at the Oklahoma State University, Building Services, 242 Student Union, Stillwater, Oklahoma 74078. The purpose of the meeting is to plan for an upcoming factfinding meeting and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 15, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-31305 Filed 12-22-93; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 671]

Volusia and Flagler Counties, FL; Establishment of a Foreign-Trade Zone

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Grant of authority: Establishment of a foreign-trade zone Volusia and Flagler Counties, Florida.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the County of Volusia, Florida (the Grantee), has made application (FTZ Docket 4-3, 58 FR 8930, 2/18/93) to the Board, requesting the establishment of a foreign-trade zone at sites in Volusia and Flagler Counties, Florida, at and adjacent to the Daytona Beach International Airport, a Customs user fee port facility; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval subject to an activation limit is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as ForeignTrade Zone No. 198, at the sites described in the application, subject to the Act and the Board's regulations, including § 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 17th day of December 1993. Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93-31397 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 62-93]

Proposed Foreign-Trade Zone—Tri-City Area TN/VA; Johnson City, Kingsport, Bristol, Sullivan County and Washington County, TN, and Bristol, VA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Airport Commission (an interstate public entity involving 6 Tri-City area municipalities), requesting authority to establish a general-purpose foreign-trade zone at sites in Johnson City, Kingsport, Bristol, Sullivan County and Washington County, Tennessee, and Bristol, Virginia (the Tri-City area). A request is pending with the U.S. Customs Service for designation of the Tri-City Regional Airport as a Customs user fee facility. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones

Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 13, 1993. The applicant is authorized to make the proposal under Chapter 85 of the Tennessee Code Annotated, and Chapter 14 of the Code of Virginia.

The proposed foreign-trade zone would consist of 7 sites (2,998 acres) in the Tri-City area. Site 1 (1,040 acres)—Tri-City Regional Airport complex, Blountville, Sullivan County, TN, located 15 miles from the Cities of Bristol, TN/VA, Kingsport, and Johnson City, TN—owned and operated by the applicant; Site 2 (440 acres)—St. John/Eldred Business Park, City of Johnson City, Washington County, TN—and has two private owners; Site 3 (330 acres)—Northeast Tennessee Business Park, adjacent to the Tri-City Regional Airport at the intersection of TN 357 and Hwy 75, City of Kingsport, Sullivan County, TN—owned by the City; Site 4 (129 acres)—Bristol Tennessee Industrial Park, Bristol, Sullivan County, TN—owned by the Bristol Tennessee Electric System; Site 5 (750 acres)—Tri-County Industrial Park, Piney Flats, Sullivan County, TN—owned by Sullivan County, the Cities of Johnson City, Bristol and Elizabethton, TN—operated by Sullivan County Industrial Commission; Site 6 (206 acres)—Regional Med-Tech Center, Johnson City, Washington County, TN—owned by 4 private owners; and, Site 7 (103 acres)—Linden/Hairston Industrial Park, Linden Drive at Bonham Road, Bristol, VA—owned by the City of Bristol. The zone project will be operated by the Greater Tri-City Foreign-Trade Zone, Inc.

The application contains evidence of the need for zone services in the Tri-City area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as pharmaceuticals, electronics, automotive and aerospace products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), an examiner has been designated to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on February 25, 1994, at 10 a.m., in the Auditorium of the Northeast State Technical Community College, State Highway 75, Blountville, Tennessee.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 1994).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Tri-City Regional Airport, Office of the Deputy Director, State Highway 75, Blountville, TN 37617.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: December 16, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–31386 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 669]

Shell Oil Co.; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Grant of authority for subzone status: Shell Oil Company, (Oil Refinery/Petrochemical Complex), Harris County, Texas.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish a special-purpose subzone for the crude oil refinery and petrochemical complex of Shell Oil Company, in Harris County (Houston area), Texas, was filed by the Board on August 14, 1992, and notice inviting public comment was given in the Federal Register (FTZ Docket 28–92, 57 FR 38667, 8/26/92); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84J) at the Shell Oil Company refinery and petrochemical complex in Harris County (Houston area), Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign crude oil or products used as fuel for the refinery shall be dutiable.

2. Shell shall elect privileged foreign status on foreign crude oil and other foreign products admitted to the subzone, except as indicated below.

3. Shell may elect nonprivileged foreign status with respect to foreign crude oil that is associated with sulfur by-product that results from the refining process, based on an appropriate allocation method to be determined by Customs. This initial approval is limited to a period of three years beginning from the date of activation, subject to extension.

Signed at Washington, DC, this 15th day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–31396 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 63–93]

Foreign-Trade Zone 185—Culpeper, Virginia; Application for Subzone; Merck & Co. Pharmaceutical Plant, Elkton, Virginia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Culpeper County Chamber of Commerce, grantee of FTZ 185, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc., (Merck) in Elkton, Virginia, adjacent to the Front Royal Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part

400). It was formally filed on December 14, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort (Subzone status is being requested for seven other Merck facilities).

Merck's Elkton plant (1,330 acres, 624,221 sq. ft., 82 bldgs.) is located on Route 340S, in Elkton (Rockingham County), Virginia, some 20 miles east of Harrisonburg. The facility (780 employees) is used to produce a range of patented prescription products, including "Primaxin", a broad spectrum antibiotic, "Mefoxin", an antibiotic for lower abdominal pain, and "Pepcid" ulcer treatment. The plant also produces certain veterinary products sold by the company's AgVet Division. The company may produce pharmaceutical intermediates and/or raw materials at the plant in the future. Finished products are shipped to Merck's West Point, Pennsylvania, facility (FTZ application pending, FTZ Doc. 29–93, 58 FR 38749, 7/20/93) for U.S. distribution or export. Some 50 percent of production is exported.

Currently, foreign-sourced materials account for 2 to 12 percent of the finished product value and include the following specific ingredients: Acetoxy azetidinone, HP–20 resin dianon, SP–07 (brominated polysytrine resin), D-carboxamide, TAC (thienylacetyl chloride), P–TSC (Paratoluene-sulfonchloride), and famotidine. The company also may purchase from abroad items in the following general product categories: gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products. The company may also source from abroad insecticides, rodenticides, fungicides and herbicides for the production of agricultural/veterinary products.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%, most falling in the 3.0%–6.3% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling in the 3.9%–7.9% range. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 22, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 8, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Culpeper County Chamber of Commerce, 133 West Davis Drive, Culpeper, Virginia 22701.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: December 17, 1993.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 93–31385 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 13, 1993, the Department of Commerce published the preliminary results and termination in part of the administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers three manufacturers/exporters of subject merchandise to the United States and the period February 1, 1991, through January 31, 1992. We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and two respondents. Based on our analysis, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 47860) the preliminary results and termination in part of the second administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan (55 FR 5642, February 16, 1990). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive.

For purposes of this review, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

The review covers three manufacturers/exporters of MTPs from Japan entered into the United States during the period February 1, 1991, through January 31, 1992. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. See "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992. On November 23, 1993, the

Department determined that Aida's FMX series cold forging press is within the scope of the order. See "Final Scope Ruling—Antidumping Duty Order on Mechanical Transfer Presses from Japan: Aida Engineering, Ltd." We have included the FMX press in our analysis for these final results.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review, as provided by 19 CFR 353.38. We received comments from the petitioner, Verson Division of Allied Products Corp., and two respondents, Hitachi Zosen Corp. (Hitachi Zosen) and Aida Engineering, Ltd. (Aida).

Comment 1: The petitioner and Aida maintain that the Department should treat U.S. installation and installation supervision expenses as U.S. movement charges, rather than as an element of constructed value (CV) and a circumstance-of-sale adjustment to foreign market value (FMV). Aida states that the Department's treatment of installation supervision costs is inconsistent with the Department's own treatment of such costs in the investigation of sales at less than fair value (LTFV), in which the Department determined that installation supervision expenses were movement charges (55 FR 335, January 4, 1990).

The petitioner also reiterates the Department's position in the LTFV investigation, emphasizing that it is necessary to disassemble the MTPs for shipment and delivery and then to reassemble them at the customer's location, and that this procedure is a condition of shipment. The petitioner also argues that these expenses should be excluded from the calculation of CV because they occur after the MTP has been shipped to the United States and are not incurred to manufacture the MTP.

Department's Position: We agree with the petitioner and Aida that because disassembly and reassembly are necessary to deliver the merchandise, installation and related supervision expenses are movement charges. Therefore, we have deducted installation and installation supervision costs from Aida's U.S. price and excluded them from the calculation of CV.

Comment 2: Aida states that the Department should not have added interest expense to the CV calculation because Aida's short-term interest income exceeded Aida's interest expense. Although Aida did not provide separate listings of short-term and long-term interest income, it did identify short-term interest income by providing the terms of deposit for each item of interest income.

Department's Position: The company identified short-term interest income in its supplemental questionnaire response by indicating the terms of deposit using the Japanese calendar instead of the Gregorian calendar, used in the United States. Upon review of Aida's comments, we agree that Aida did identify interest that is short term in nature. This income exceeds the interest expense, and therefore we have excluded interest expense from the calculation of CV.

Comment 3: Aida argues that the Department should not have included certain non-operating expenses in CV. It claims its prior year consumption tax is a pass-through to the Japanese government and therefore not an expense. Aida maintains that the record does not identify any of the non-operating expenses to the production of MTPs. Finally, Aida contends that the Department should apply non-operating income to offset any non-operating expenses that it includes in general expenses; for example, leased asset expenses should be offset by rental revenue on properties.

Department's Position: We disagree with Aida in part. Although Aida claims that the consumption tax is a pass-through item, we note that Aida's income statement includes a small amount of consumption tax as a "special loss." Ordinarily, if such a tax is a pass-through item, it would not appear on the income statement. Therefore, we have included the amount found on the income statement as a special loss in computing CV. Regarding the non-operating expenses, there is nothing on the record to indicate they are unrelated to the subject merchandise. However, we do agree with respondent with respect to rental revenue, and have consequently offset lease expenses with this revenue.

Comment 4: Hitachi Zosen claims that the Department's recalculation of corporate general and administrative expenses (G&A) is erroneous because it included G&A that does not relate to the machinery division. The company maintains that the Department's allocation methodology deviates from Hitachi Zosen's normal accounting system, which does not allocate G&A expenses of all its divisions to the machinery division. Second, the company states that machinery headquarters' G&A and sales offices' selling expenses were separately calculated and are already included in CV; hence, the Department has double-counted these expenses.

Hitachi Zosen also claims that the Department's recalculation of corporate research and development (R&D) expenses is in error because it has included product-line R&D that has already been included in the cost of manufacturing (COM).

Department's Position: G&A expenses are general in nature and not specifically identified with particular administrative units. The CV should reflect the fully absorbed costs of the subject merchandise and thus include the general expenses of the company, not just those of certain divisions. Therefore, it is the Department's practice to allocate G&A across the entire company, even if the Department's methodology does not conform to the company's normal accounting system. See Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea (54 FR 53141, December 27, 1989).

We agree that the machinery headquarters' G&A expense is part of the company's total G&A and, for these final results, have not separately added the machinery headquarters' G&A expenses to CV.

We do not agree with Hitachi Zosen's claim with respect to sales offices' selling expenses. Hitachi Zosen separately identified selling expenses on its income statement. Because there is no evidence that the sales offices' selling expenses were included in G&A, we decline to make this revision.

We also agree that our calculation of corporate R&D expenses should be revised to avoid double-counting product-line R&D that was already included in COM.

Comment 5: Hitachi Zosen submits that the Department erred in deducting export insurance expenses as a U.S. movement expense from U.S. price, and claims that the Department should add the amount of export insurance expenses to CV as a circumstance-of-sale adjustment. Hitachi Zosen states that the insurance in question insures exporters against the buyer's default in payment, not against loss or damage to the merchandise in transit, and therefore is a direct selling expense rather than a movement expense.

Department's Position: We agree in principle with Hitachi Zosen that this expense, as explained in Hitachi Zosen's comment, should be a direct selling expense; however, Hitachi Zosen has submitted no information for the record to substantiate this claim. Hitachi Zosen's questionnaire response states only that, "Hitachi Zosen considers this expense as a direct selling expense

* * *," but the response offers no explanation of the nature of the expense. See Hitachi Zosen's questionnaire response (section C), at page 17. Therefore, we have treated export insurance as we usually treat this expense, as a movement expense, and deducted it from U.S. price.

Comment 6: Hitachi Zosen has requested that the Department explicitly identify Fukui Machinery Co., Ltd., as covered by Hitachi Zosen's margin, if any, in these final results and in E-mail instructions to the Customs Service, because the Department collapsed these two related producers for sales reporting purposes.

Department's Position: We agree to state that both producers are covered by Hitachi Zosen's margin in these final results and in our instructions to the Customs Service.

In addition to the above changes resulting from our analysis of the comments received, we have adjusted the U.S. price for one sale by Aida to correct a clerical input error with respect to the supervision of installation charge.

Final Results of Review

As a result of our review, the Department has determined that the following margins exist for the period February 1, 1991, through January 31, 1992:

Manufacturer/exporter	Margin (percent)
Aida Engineering, Ltd.	0.87
Hitachi Zosen Corp.	[1] 0.00
Ishikawajima-Harima Heavy Industries	[2] 0.00

[1] Rate also applies to Fukui Machinery Co., Ltd.

[2] No shipments during the period. Rate is from the last final results of review for this company.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. The all others rate is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 16, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–31395 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–806]

Silicon Metal From the People's Republic of China; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from Midland Export Ltd. (Midland), the Department of Commerce (the Department) initiated an administrative review of all exporters of this merchandise on September 30, 1993 for the period June 1, 1992 through May 31, 1993. We are now terminating this review.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1993, the Department published in the **Federal Register** (58 FR 51053) a notice of initiation of administrative review of the antidumping duty order on silicon metal from the People's Republic of China at the request of an interested party, Midland. This notice stated that we would review all exports of this merchandise to the United States for the period June 1, 1992 through May 31, 1993.

On November 2, 1993, we requested additional information from Midland to bring its request into conformance with our regulations. Specifically, we requested that it clarify whether it was requesting the review under paragraphs (a)(1), (a)(2) or (a)(3) of 19 CFR 353.22. However, Midland failed to respond to our request.

Because of Midland's failure to respond to our request for additional information and the fact that no interested party other than Midland has requested an administrative review, a valid request for an administrative review of the antidumping duty order on silicon metal from the People's Republic of China has not been made, and we are terminating this review.

This termination is in accordance with 19 CFR 353.22(a).

Dated: December 15, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-31398 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DS-M

Department of Energy, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-076. *Applicant:* United States Department of Energy, Washington, DC 20585. *Instrument:* Fuel Cell Subsystem. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* See notice at 58 FR 42940, August 12, 1993. *Reasons:* The foreign instrument provides a liquid-cooled phosphoric acid fuel cell with a net power output of 47.5 kW that is suitable for propulsion of a passenger bus prototype. *Advice Received From:* Jet Propulsion Laboratory, November 10, 1993.

Docket Number: 93-102. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Langmuir Blodgett Dipping Trough. *Manufacturer:* Riegler and Kirstein GmbH, Germany. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Reasons:* The foreign instrument provides: (1) a trough area of 1200 cm^2, (2) a dipper with a 100 mm stroke and (3) a pressure measuring device. *Advice Received From:* National Institute of Standards and Technology, November 5, 1993.

Docket Number: 93-108. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Top-Loading Compact Dilution Refrigerator System, Model Kelvinox TLM. *Manufacturer:* Oxford Instruments, Inc., United Kingdom. *Intended Use:* See notice at 58 FR 49024, September 21, 1993. *Reasons:* The foreign instrument provides very rapid cooling of samples (from room temperature to 20 mK in three hours) and top-loading operation to maximize sample throughput. *Advice Received From:* National Institute of Standards and Technology, October 29, 1993.

Docket Number: 93-114. *Applicant:* National Renewable Energy Laboratory, Golden, CO 80401. *Instrument:* Automated Electron Microprobe, Model JXA-8900L/3CH/FCS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 51618, October 4, 1993. *Reasons:* The foreign instrument provides an intense electron beam to permit microvolume element analysis with large probe currents (10^{-12} to 10^{-5}A). Secondary image resolution of 6 nm at 35 kV. *Advice Received From:* National Institute of Standards and Technology, November 10, 1993.

The National Institute of Standards and Technology and Jet Propulsion Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-31388 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DS-F

Rutgers University; Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93-073. *Applicant:* Rutgers University, Fiber Optic Material Research Program, Brett & Bowser Road, Piscataway, NJ 08854. *Instrument:* Excimer Laser System, Model AQX-150. *Manufacturer:* MPB Technologies, Canada. *Date of Denial without Prejudice to Resubmission:* September 16, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-31390 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DS-F

University of Minnesota, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-026R. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* (2) Microelectrode Pullers, Models PN-3 and PP-83 and (3) 3-D Micromanipulators, Model M-2. *Manufacturer:* Narishige Scientific Instrument Co., Japan. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides micropipetts with 0.1 µm tips and patch-clamp microelectrodes with consistent reproducibility and a separate dedicated puller. *Advice Received From:* National Institutes of Health, October 21, 1993.

Docket Number: 93-113. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Ultrafine Differential Mobility Analyzer. *Manufacturer:* Norlin & Persson AB, Sweden. *Intended Use:* See notice at 58 FR 51618, October 4, 1993. *Reasons:* The foreign instrument provides monodisperse ultrafine aerosols with particle diameters in the 3.0 to 20 nm range with large dimensions and flow rate to minimize diffusional broadening. *Advice Received From:* Department of Energy, November 16, 1993.

Docket Number: 93-118. *Applicant:* Lehigh University, Bethlehem, PA 18015-3188. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GeoTek, Inc., United Kingdom. *Intended Use:* See notice at 58 FR 51618, October 4, 1993. *Reasons:* The foreign instrument

provides high precision measurements of: (1) compressional (p-wave) velocities, (2) gamma ray attenuation and (3) magnetic susceptibility. *Advice Received From:* A private research organization, July 26, 1993 (comparable case).

Docket Number: 93–128. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Electron Microprobe, Model SX 50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 58 FR 55043, October 25, 1993. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0 µm area. *Advice Received From:* National Institute of Standards and Technology, November 10, 1993 (comparable case).

The National Institutes of Health, Department of Energy, a private research organization and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–31389 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–F

Washington University; Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93–091. *Applicant:* Washington University, St. Louis, MO 63130. *Instrument:* Flanged Tip Handling System with Additional Sensor System. *Manufacturer:* SIG Packaging Technologies, Ltd., United Kingdom.

Comments: None received. *Decision:* Denied. *Reasons:* To justify eligibility for duty exemption, the applicant states that:

> ... we are currently building robotic systems designed to automate several of the tasks involved in the analysis of DNA. The flanged tip handling system will be used to automatically supply labware to these robotic systems. Currently, the appropriate labware must be manually loaded into racks, at a significant labor cost. Pre-racked labware may be purchased, but at a substantial increase in cost. Therefore, automation of the labware presentation using the flanged tip handling system will allow the purchase of labware in bulk. The result is a reduction in costs as well as an increase in laboratory throughput.

Upon reviewing the application, the National Institutes of Health, in a memorandum submitted September 17, 1993, stated that:

> The article is an accessory to a "robotic system" for automating a laboratory procedure. Specifically, in orienting and feeding bulk plastic pipet tips. The article would appear to lack the properties of a scientific instrument as it produces no scientific data or information and would seem a convenience in laboratory mechanics, cost related.

The applicant's justification for duty waiver is deficient for the following reasons:

1. The foreign article is by its nature excluded from consideration as a scientific instrument. Pursuant to 15 CFR 301.2(f):

> The term "instruments" shall not include: (1) Materials or supplies used in the operation of instruments such as paper, cards, tapes, inks, recording materials, expendable laboratory materials, apparatus that loses identity or is consumed by usage or other material or supplies. (2) Ordinary equipment for use in building construction or maintenance; or * * * support equipment such as copying machines, glass working apparatus and film processors.

In describing the foreign apparatus, the applicant states that "The transportation vessels are plastic transparent *disposable* pipet tips" (response to Item 7.a(5), emphasis added). The foreign article thus serves no specific, direct scientific function; it serves only to deliver and resupply expendable laboratory materials that would be, if not cleaned and recycled in some manner, consumed by usage. Its role is analogous to that of glass working apparatus which is support equipment that furnishes laboratory glassware, such as flasks, tubes, and pipe on an as-needed basis.

Pursuant to 15 CFR 301.5(d)(1)(iii) duty-free entry is predicated upon a finding by the Director with respect to "* * * whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States." Furthermore, 15 CFR 301.5(d)(1)(i) stipulates that "The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments." As defined by 15 CFR Part 301.2(s):

> "Pertinent" specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications or features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

Because the applicant's justification is based solely on disallowed considerations such as lower costs and greater convenience in laboratory operations, and since no pertinent, scientifically relevant specifications or features are cited by the applicant, the Director is thereby precluded from making the requisite determination with respect to the "scientific equivalency" of the foreign article.

As provided, in part, by 15 CFR 301.5(e)(7):

> Information provided in a resubmission that * * * contradicts or conflicts with information provided in a prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, *but the applicant shall not introduce new purposes or other material changes in the nature of the original application.* (Emphasis supplied.)

Because of the descriptions and explanations contained in the applicant's application, we conclude that a resubmission cannot establish, without introducing impermissible new purposes, that a scientifically equivalent domestic instrument is not available. We therefore deny the application.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–31391 Filed 12–22–93; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Quota Requirements for Certain Textile Products Produced or Manufactured in Various Countries and Re-imported Following Repairs and Alterations

December 20, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and quota requirements for goods re-imported after repairs or alterations.

EFFECTIVE DATE: December 20, 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).

Effective on December 20, 1993 textile and apparel products which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption under existing visa and quota requirements are no longer subject to visa or quota requirements upon re-entry into the United States under Harmonized Tariff Schedule (HTS) numbers 9802.00.40 or 9802.00.50 after repairs or alterations.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 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. This directive also amends, but does not cancel, all visa requirements for all countries for which visa arrangements are in place with the United States.

Effective on December 20, 1993 textile and apparel products which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption upon re-entry into the United States under Harmonized Tariff Schedule (HTS) numbers 9802.00.40 or 9802.00.50 are no longer subject to visa or quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31392 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, January 12-13, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED, Secretariat, 2011 Crystal Drive, One Crystal Park, 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 C 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 opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 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: December 20, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-31346 Filed 12-22-93; 8:45 am]

BILLING CODE 5000-04-M

Defense Intelligence College Board of Visitors

AGENCY: Defense Intelligence Agency, Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provision of Subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Wednesday, 12 January 1994, 0900 to 1700; and Thursday, 13 January 1994, 0800 to 1300.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: General Charles J. Cunningham, Jr., Lieutenant General, USAF (Ret.), Commandant, DIA Defense Intelligence College, Washington, DC 20340-5485 (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Dated: December 20, 1993.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 93-31347 Filed 12-22-93; 8:45 am]

BILLING CODE 5000-04-M

DOD Advisory Group on Election Devices

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Election Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 19 January 1994.

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: December 20, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31344 Filed 12–22–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, January 18, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, VA 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 B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details 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: December 20, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31345 Filed 12–22–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, January 20, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, 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 AGED 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. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 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: December 20, 1993.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31348 Filed 12–22–93; 8:45 am]

BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–6]

Maintaining Access to Nuclear Weapons Expertise in the Defense Nuclear Facilities Complex

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a dealing with maintaining access to nuclear weapons expertise in the defense nuclear facilities complex. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before January 24, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Morgan, at the address above or telephone (202) 208–6400.

Dated: December 20, 1993.

John T. Conway,

Chairman.

Dated: December 10, 1993.

The ongoing reduction in size of the stockpile of nuclear weapons and the related changes in the defense nuclear complex have a number of safety-related consequences. The Board has addressed several of its sets of recommendations to such problem areas, including 92–5, which concerned discipline of operations in a changing defense nuclear facilities complex, and 93–2, which stated a continued need for

capability to conduct critical experiments. We wish now to draw attention to the need to retain access to capability and capture the unique knowledge of individuals who have been engaged for many years in certain critical defense nuclear activities, in order to avoid future safety problems in these and related activities.

The first critical area requiring continued access to departing personnel is the disassembly of nuclear weapons at the Pantex site, an activity that will continue for a number of years. The second is the testing of nuclear explosives at the Nevada Test Site, an activity presently subject to a moratorium. However, the President, in establishing that moratorium, said that he has retained the possibility of later resumption of tests if that is needed, and that he expects the Department of Energy to maintain a capability to resume testing. In reaction to the recent Chinese underground test he has instructed the Department of Energy to take steps necessary to prepare for resumption, pending a decision as to whether further tests at the Nevada Test Site should be conducted.

A substantial amount of documentation exists on the design and safety aspects of nuclear weapons that will have to be dismantled at Pantex. This information is essential for the dismantlement program and is used in that program. Even so, the Board has pointed out that it is also important, for safety reasons, to involve individuals from the design laboratories of Los Alamos, Livermore, and Sandia in review of detailed dismantlement procedures and specialized procedures responding to problems encountered in the course of dismantlement. This practice has been initiated, and it has already been seen to be vital to safety assurance in the dismantlement program.

The design individuals from the laboratories most needed in connection with dismantlement of a specific weapon are those who had been active in the original design of that weapon. They are believed to possess information not recorded in documentation, such as reasons for specific design features, and personal knowledge of any problems that have arisen during design, fabrication, and stockpile life. Many of the remaining individuals with this background are being lost from the system, because of the University of California's recent retirement incentive, planned layoffs by contractors, and DOE downsizing and retirements. Some recent moves to prevent or discourage use of retired individuals as consultants compound the problem; they erect barriers that could prevent access to the needed expertise.

Similar problems also arise in connection with maintaining capability for testing of nuclear explosives at the Nevada Test Site. On the assumption that the testing moratorium will continue, we foresee an impairment of capability to ensure the safety of tests if national priorities call for resumption of testing at some future time. This impairment will occur both through reduction in competence that naturally follows when a highly skilled operation is not conducted over a long period of time, and through loss of skilled and experienced personnel. The loss of skilled personnel will be especially troubling because there has traditionally been a high degree of dependence on administrative controls for safety in testing of nuclear explosive devices at the Nevada Test Site. Proper exercise of these administrative controls requires considerable background in past methods of test emplacement and test conduct, and extensive institutional memory.

The Board recognizes the Department's efforts to develop a "stockpile stewardship" program focused to ensure the continued safety and reliability of fielded weapons, to ensure maintenance of laboratory development capability, and to ensure a limited production capability. Our areas of concern complement these necessary activities, but are focused instead on ensuring that capability is maintained to conduct testing operations safely if they must be done, and that all future dismantlement activities can be completed safely. Although it may be relatively straightforward to maintain these capabilities in the near term, ensuring their availability 5 to 20 years in the future may be very difficult.

In accordance with the above concerns, the Board makes the following recommendations:

(1) That a formal process be started to identify the skills and knowledge needed to develop or verify safe dismantlement or modification procedures specific to all remaining types of U.S. nuclear weapons (retired, inactive, reserve, and enduring stockpile systems). Included among the skills and knowledge should be the ability to conduct relevant safety analyses.

(2) That a similar formal process be started to identify the skills and knowledge needed to safely conduct nuclear testing operations at the Nevada Test Site, including the processes of assembly/disassembly, on-site transportation, insertion/emplacement, arming and firing, timing and control, and post-shot operations. Included among the skills and knowledge should be the ability to conduct relevant safety analyses.

(3) That a practice be instituted of reviewing the personnel losses at the nuclear weapons laboratories and the Nevada Test Site, as well as the losses of key personnel from DOE's own staff engaged in nuclear defense activities, to ascertain which of the skills and knowledge are projected to be lost through departure of personnel.

(4) That DOE and its defense nuclear contractors negotiate the continued availability (through retention, hiring, consulting, etc.) of those personnel scheduled to depart whose skills and knowledge have been determined to be important in accordance with the above.

(5) That programs be initiated to obtain from these expert personnel (and to record) the as yet undocumented anecdotal technical information that would be of value in augmenting the technical knowledge and expertise of successor personnel. This should be done either prior to departure of the retiring personnel or shortly thereafter.

(6) That procedures for safe disassembly of weapons systems be developed while the personnel with system-specific expertise on the original development of the weapons are still available. Likewise, analyses of the possibility of hazard from degradation of remaining nuclear weapons with time should be expedited, while these individuals are available. In addition, the current participation of design laboratory experts in the safety aspects of disassembly of weapons at the Pantex Site should be strengthened.

(7) That a program be developed and instituted for maintaining expertise in operations key to safety of nuclear testing at the Nevada Test Site, to ensure that if testing is resumed at any future time, it can be performed with requisite safety. Possible components are those activities and experiments that would be permitted within limitations of treaties being discussed, for example: Hydronuclear tests, backdrilling for isotopic analysis of residues from old shots, and exercises including steps in preparation for tests, up to actual emplacement.

(8) Given the loss of experienced personnel, that a determination be made as to whether traditional dependence on administrative controls to ensure nuclear explosive safety at the Nevada Test Site would be adequate and appropriate if nuclear testing should be resumed at a later time. It may be found necessary to develop an approach for ensuring nuclear explosive safety in the testing program that is less dependent

on the performance of highly experienced personnel, such as through the use of engineered safeguards similar to those used in fielded weapons as part of the arming and firing, and timing and control systems.

John T. Conway,

Chairman.

December 10, 1993.

The Honorable Hazel R. O'Leary, Secretary of Energy, Washington, DC 20585

Dear Secretary O'Leary: On December 10, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93-6 which is enclosed for your consideration. Recommendation 93-6 deals with Maintaining Access to Nuclear Weapons Expertise in the Defense Nuclear Facilities Complex.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 93-31351 Filed 12-22-93; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

The State Vocational Rehabilitation Services Program, Supported Employment Programs, Independent Living Programs, and Other Programs Administered by the Rehabilitation Services Administration

AGENCY: Education.

ACTION: Notice of request for public comment.

SUMMARY: The Secretary provides notice that the Department intends to undertake a comprehensive review of the current system for collecting and reporting client data under the Rehabilitation Act of 1973, as amended (the Act), 29 U.S.C. 701 *et seq.*, particularly data on clients of The State Vocational Rehabilitation Services Program under Title I-B and The State Supported Employment Services Program under Title VI-C of the Act. This review is undertaken to comply with a requirement in section 140 of the Act.

The Secretary is publishing this notice to solicit public comment, particularly comment from State vocational rehabilitation agencies, State rehabilitation advisory councils, State independent living advisory councils, providers of vocational rehabilitation, supported employment, and independent living services, professionals in the field of vocational rehabilitation, individuals receiving services under the Act and organizations representing these individuals, the National Council on Disability, other Federal agencies, non-Federal researchers, and other analysts using the data, regarding the range of purposes that the data serve at the Federal, State, and local levels and the kind, quantity, and quality of data that are currently collected.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: All comments concerning this notice should be addressed to William L. Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC. 20202-2899.

FOR FURTHER INFORMATION CONTACT: Hubert Davis, U.S. Department of Education, 400 Maryland Avenue, SW., room 3018, Switzer Building, Washington, DC. 20202-2899. Telephone: (202) 205-8299. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5896.

SUPPLEMENTARY INFORMATION:

Statutory Provisions and Legislative History

The Act contains eight titles authorizing a number of programs to provide services to individuals with disabilities, especially individuals with severe disabilities, so they may maximize their employment, economic self-sufficiency, independence, and inclusion and integration into society. The Rehabilitation Services Administration (RSA) administers programs authorized by Titles I, III, V, VI, VII, and VIII of the Act.

Numerous provisions in the Act and the Education Department General Administrative Regulations (EDGAR) require State vocational rehabilitation (VR) agencies and other grantees to report on activities conducted and services provided under the programs authorized and funded under the Act. Section 13 of the Act, in particular, requires the collection of detailed information on each vocational rehabilitation client.

Section 136 of the Rehabilitation Act Amendments of 1992 (the 1992 Amendments), Public Law 102-569, enacted October 29, 1992, requires the Commissioner of RSA to undertake a comprehensive review of the current system for collecting and reporting client data under the Act, particularly data on clients of the programs under Title I of the Act. The Rehabilitation Act Amendments of 1993, enacted August 11, 1993, codified section 136 of the 1992 Amendments as section 140 of the Act. Approximately 90 percent of the client data collected under the Act are collected under the VR services program under Title I of the Act. This is by far the largest program under the Act, and it also has the largest number of mandatory reporting requirements. The Secretary, therefore, is particularly interested in receiving comments about client data collection for the VR services program. These data have the greatest potential for use in planning, program management, and assessing program results, because the relative richness of the data makes extensive comparison and analysis possible. The Secretary is interested in receiving comments about the extent to which users of these data consider them appropriate and useful in the overall administration of the program and in supporting judgments about the costs, benefits, and accountability of the program at the Federal, State, and local levels. The Secretary is interested in receiving comments describing the extent to which these data, when collected, are analyzed and used as a basis for decisionmaking by the interested parties described previously. The Secretary also is particularly interested in receiving similar comments on the closely related supported employment formula grant program under Title VI of the Act. This program has been growing rapidly, but client data collection and analysis are in the early stages of development, and there is not yet a clear understanding of the data elements that may be associated with the best measures of program performance. The Secretary, however, will consider comments about data collection, data analysis, and the use of the client data for any program under the Act administered by RSA, including discretionary grant programs reporting data under the requirements of EDGAR.

In conducting the review, the Commissioner is required to examine the kind, quantity, and quality of the client data that are currently reported, taking into consideration the range of purposes that the data serve at the Federal, State, and local levels.

Section 140 of the Act also requires that, if the information can be obtained, the Commissioner examine the feasibility of collecting and reporting the following:

(a) Other program participation by clients during the three years prior to application for VR services;

(b) The number of jobs held, hours worked, and earnings received in the three years prior to application to a program under the Act;

(c) The types of major and secondary disabilities of clients;

(d) The dates of the onset of disabilities of clients;

(e) The severity of the disabilities of clients;

(f) The sources of referral of clients to programs under the Act;

(g) The hours worked by clients;

(h) The size and industry code of the place of employment of clients at the time of entry into such a program and at the termination of services under the program;

(i) The number of services provided under the programs and the cost of each service;

(j) The types of public support received by the clients;

(k) The primary sources of economic support and amounts of public assistance received by the clients before and after receiving VR services;

(l) Whether the clients are covered by health insurance from any source and whether health insurance is available through the employment of the client;

(m) The supported employment status of the client; and

(n) The reasons for terminating the VR services.

The Secretary notes that some of these data elements are currently required to be collected under the Act; others, such as prior work history under item (b) in the previous listing, are not.

The Secretary is interested in determining whether and how the information obtained through these data elements may be used to improve the efficiency, effectiveness, and accountability of the programs, taking into consideration the burden of collecting and reporting the client data. The Secretary is particularly interested in receiving comments about the desirability of establishing, through rulemaking, definitions of data elements considered for reporting that might improve data reliability and validity. The Secretary also is interested in receiving comments about the potential value of the data elements for measuring the quality of rehabilitation outcomes. The Secretary is interested in comments about collecting data on the severity of disability. (Although the term "severe" or a form of that term (e.g., severity) is used throughout this notice, the Department published a notice of proposed rulemaking in the **Federal Register** on October 27, 1993 (58 FR 57938), proposing to change the term "severe" in all its forms to "significant" in referring to an individual's disability if this change would not alter the meaning of the reference.) Under section 101(a)(5)(A) the Act, those individuals with the most severe disabilities must be identified if an order of selection for services is in use, because the order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe disabilities in accordance with criteria established by the State. Also, under section 101(a)(35) of the Act, States must describe in the State plan for vocational rehabilitation services how the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used by the State facilitates serving individuals with the most severe disabilities, among others. The Secretary is interested in comments concerning the identification and collection of data needed to support the administration and monitoring of these provisions of the Act.

Based on the review, the Commissioner will recommend improvements in the data collection and reporting system not later than 18 months after the date of enactment of the 1992 Amendments, publish the recommendations in the **Federal Register**, and prepare and submit a report containing the recommendations to the appropriate committees of Congress, as required by section 140 of the Act.

SUMMARY OF CURRENT REPORTING OF CLIENT DATA

Program	Database	Report title
Vocational Rehabilitation Services	• RSA-911	Case Service Report.
	• RSA-113	Quarterly Cumulative Caseload Summary.
	• RSA-62	Annual Report on State VR Agency Post-Employment Services and Annual Reviews.
	• RSA-722	Resolution of Applicant/Client Appeals.
	• RSA-2	Annual Vocational Rehabilitation Program/Cost Report.
Client Assistance	• RSA-227	Annual Client Assistance Program Report.
Supported Employment (Formula)	• RSA-636	Annual Supported Employment Caseload Report.
Independent Living—Part B	• RSA-7A	Annual Report on State Agency Services for Independent Living, title VII Part B Services.
Projects With Industry	• RSA-PWI Indicators	Reporting form for Projects With Industry (PWI) Indicators.
Independent Living-C, Independent Living-D	None	Reporting as required for RSA grantee continuations under EDGAR.
Supported Employment (Discretionary)	None	Reporting as required for RSA grantee continuations under EDGAR
Training	None	.....Do.
Special Demonstrations	None	.....Do.
Recreation	None	.....Do.
Migrants	None	.....Do.
Grants to Indian Tribes	None	.....Do.
Special projects for Persons with Severe Disabilities	None	.....Do.

All presently approved RSA data collections are based on Rehabilitation Act provisions prior to the 1992 Amendments. New data collection packages will be developed concurrently with the development of new program regulations, as needed. For purposes of background, this notice provides the following summary information on the content of some of the larger client data collections:

(a) RSA-911 *Case Service Report.* This system of data includes information about the personal and program-related characteristics of individuals with disabilities whose cases are closed out each year by State

VR agencies as being rehabilitated, not rehabilitated, or not accepted for services. The RSA-911 is based on section 13 of the Act.

The report contains data elements grouped in six general categories of information. The data elements, including derivable information, are as follows, by category:

(1) Client Demographics

- Date of Birth.
- Age at Application (App.).
- Age at Closure.
- Sex.
- Race.
- Hispanic Origin.
- Highest Grade Completed.
- Marital Status.
- Veterans Status.

(2) Types of Disabilities

- Major Disabling Condition.
- Secondary Disabling Condition.
- Severity of Disability.
- Causes of Disabilities.

(3) Economic Status at Application

- Work Status at Application.
- Earnings at Application.
- Hours Worked at Application.
- Hourly Wage Rate at App.
- Attainment of Federal Minimum Wage at Application.
- Medical Insurance at Application.
- Migratory Agricultural Worker.
- Working Full or Part-time at Application.
- Type of Public Support.
- Monthly Public Assistance ($) at App.
- Type of Institution (if applicable).
- Medical Insurance on Job at Application.
- Primary Source of Support at Application.

(4) Interaction with the Rehabilitation Process

- Type of Facility or Agency Furnishing Services.
- Previous Closure Status.
- Projects With Industry.
- Supported Employment Status.
- Date of Closure.
- Services Provided.
- Cost of Purchased Services.
- Source of Referral.
- Months Spent in VR Process.

(5) Rehabilitation Outcomes

- Type of Closure.
- Occupation at Closure.
- Weekly Earnings at Closure.
- Hourly Wage Rate at Closure.
- Monthly Public Assistance ($) at Closure Outcome.
- Medical Insurance Available on Job at Closure.
- Work Status at Closure.
- Attainment of Federal Minimum Wage Rate at Closure.
- Hours Worked at Closure.
- Primary Source of Support at Closure.
- Working Full or Part-Time.
- Supported Employment.
- Medical Insurance Coverage at Closure.
- Reason for Closure.

(6) Identifying Information

- Agency Code.
- Multiple Closure Code.
- Social Security Number.

(b) RSA-113 *Quarterly Cumulative Caseload Summary.* This report contains quarterly reports from State VR agencies containing aggregate data on the number of applicants for the VR services program, the number accepted and not accepted for VR services, the number of persons in extended evaluation (as provided for in section 102(a) (4) (B) of the Act), the number of persons in the active client caseload (those "served"), the number successfully rehabilitated, and those whose cases were closed as not rehabilitated.

(c) RSA-62 *Annual Report on State VR Agency Post-Employment Services and Annual Reviews.* This report contains aggregate annual data on the number of rehabilitated persons receiving post-employment services (services provided to persons with disabilities after they have been employed 60 days and their cases have been closed as rehabilitated), by severity of disability; the number of ineligibility determination reviews conducted by State VR agencies and the number resulting in acceptance for services; and the number of reviews of individuals originally placed into sheltered workshops and the number who could later be placed into competitive and self-employment.

(d) RSA-722 *Resolution of Applicant Client Appeals.* This report contains aggregate data on the number of appeals to the impartial hearing officer and to the State Director; the types of complaints and the issues involved; the number of decisions by the State Director reversing in whole or in part the decision of the impartial hearing officer; and the number of decisions affirming the position of the individual with a disability assisted through the client assistance program.

(e) RSA-2 *Annual Vocational Rehabilitation Program/Cost Report.* This report contains aggregate cost data on the distribution of total vocational rehabilitation expenditures; expenditures by category (administration, counseling and guidance, services purchased for individuals, community rehabilitation program establishment, construction, other); amounts spent on purchasing services for individuals, by type of vendor; amounts spent on purchasing services for individuals, by type of service; amounts spent on purchasing training services for individuals, by type of training; distribution of State VR agency staff, by type of agency; number of clients receiving services paid for by State VR agencies by type of service; and clients receiving training services paid for by State VR agencies, by type of training.

(f) RSA-636 *Annual Supported Employment Caseload Report.* This report provides annual aggregate data on the number of persons in supported employment (as defined in section 7(18) of the Act) served under Title VI-C, the number rehabilitated that are employed in competitive employment, the number rehabilitated and employed although not in competitive employment, and the number not rehabilitated.

Invitation to Comment

The Secretary is interested in receiving public comment on the current system for collecting and reporting client data under the Rehabilitation Act, including the purposes for which the data are used; the methods of reporting, by aggregate or by individual client; the burden attached to various methods of reporting; the kind, quantity, and quality of data in current reports and ways in which the quality of data can be improved; and ways in which the form of the current reports can be improved. The Secretary is particularly interested in receiving comment describing how client data are being used or could be used in conjunction with other data sets, such as State and Federal financial data, data from statewide studies, program evaluations, and needs assessments, and data from other government agencies and private nonprofit organizations to improve the planning and administration of the public rehabilitation program. The Secretary is interested in receiving comments concerning collecting data on the severity of disability, as described in the SUPPLEMENTARY INFORMATION section of this notice.

Comments are also requested on the data elements identified in section 140 of the Act, which are required to be examined for feasibility of collecting and reporting. The data elements in paragraphs (c), (e), (f), (g), (j), (k) (l), (m), and (n) of section 136 are presently collected in current reports. Comments

are requested on the feasibility of collecting the remaining data elements that are not in current reports, how they would best be reported, the purposes for which the data are or would be used, and the burden that would be imposed by collecting and reporting the data.

Copies of the RSA client data collection packages currently approved by the Office of Management and Budget and all comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3018, 330 C Street SW., Washington DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays. Copies of the RSA data collection packages and comments will be sent to persons outside the Washington, DC area upon request by calling (202) 205-9361 or by writing to the address listed previously in this section.

(Authority: 29 U.S.C. 726)

Dated: December 17, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93-31297 Filed 12-22-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Richland Operations Office; Issuance of Grant to State of Oregon Department of Energy

AGENCY: Richland Operations Office, Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Richland Operations Office, announces that pursuant to paragraph A of 10 CFR 600.7(b)(2)(i), it intends to issue a noncompetitive grant award to the State of Oregon Department of Energy. The award is planned for a five (5) year project cycle, consisting of five (5) separately funded one (1) year budget periods. The initial budget is estimated at $400,000.

FOR FURTHER INFORMATION CONTACT: Melanie P. Fletcher, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, Telephone: (509) 376-4828.

SUPPLEMENTARY INFORMATION:

Grant Award Number: DE-FG06-94RL12803.

Scope of Project: The proposed financial assistance award is a grant to the State of Oregon Department of Energy to fund Hanford Technical Review and Public Information activities related to the Five Year Plan. These activities will include technical peer review, review of transport plans and procedures, review of federal public information plans, execution of an Oregon public involvement plan, and Oregon emergency preparedness for potential incidents at Hanford.

The State of Oregon is currently under a contractual arrangement with the Department of Energy Richland Operations Office for review activities related to the Hanford Site. It has been determined that a financial assistance instrument is a more appropriate mechanism for funding these types of activities. As the State of Oregon Department of Energy is already performing review activities related to the Hanford Site, competition is not appropriate and would have an adverse effect on the continuity of this activity.

Dated: December 3, 1993.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 93-31363 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by January 24, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-423
3. 1902-0024
4. Cost and Quality of Fuels for Electric Plants
5. Extension
6. Monthly
7. Mandatory
8. State or local governments, Businesses or other for-profit, Federal agencies or employees, and Non-profit institutions
9. 750 respondents
10. 12 responses
11. 2 hours per response
12. 18,000 hours
13. This form is used to gather information on the cost and quality of fuels delivered to electric power plants. The responses are used to evaluate individual utility costs and fuel buying practices in rate cases, and in the required public reviews to insure efficient use of resources. The data are also used to certify small power production facilities and cogeneration plants under the Commission's QF program.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–585
3. 1902–0138
4. Reporting of Electric Energy Shortages and Contingency Plans
5. Extension
6. On occasion (when shortage is anticipated)
7. Mandatory
8. Businesses or other for-profit
9. 6 respondents
10. 1 response per respondent
11. 76 hours per response
12. 456 hours
13. FERC–585 will be used to formulate options and recommendations for Commission consideration and action should shortages affecting reporting public utilities occur, and to determine if statute provisions for equitable customer treatment are satisfied.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, December 15, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–31374 Filed 12–22–93; 8:45 am]

BILLING CODE 6450–01–P

Crude Oil and Refined Petroleum Product; Proposed Revision to Information

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of proposed revision to the crude oil and refined petroleum product information currently published in the Petroleum Marketing Monthly, DOE/EIA–0380, and Petroleum Marketing Annual, DOE/EIA–0487, by the Energy Information Administration and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) is conducting a consultation to provide the public, industry, State agencies, and other Federal agencies with an opportunity to comment on proposed revisions to the crude oil and refined petroleum product information published by the EIA. This consultation will help to ensure that the public and interested organizations are aware of proposed changes in the information published and have an opportunity to comment. The EIA is proposing to modify the publications Petroleum Marketing Monthly, DOE/EIA–0380, and Petroleum Marketing Annual, DOE/EIA–0487 by adding new product categories, expanding sales categories, and eliminating the publication of leaded gasoline and some seller type categories beginning with the January 1994 issue of the Petroleum Marketing Monthly.

DATES: Written comments should be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible. Persons interested in reviewing the new table designs for the January 1994 issue of the Petroleum Marketing Monthly should contact Ms. Claudia Hernandez at (202) 586–6559 for copies.

ADDRESSES: Send comments to Dr. John S. Cook, Director, Petroleum Marketing Division, Mail Stop 2H–058 EI–43, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. (202) 586–5214, fax (202) 586–4913.

FOR FURTHER INFORMATION: Requests for additional information should be directed to Dr. John S. Cook at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Petroleum Marketing Program Surveys collect information on costs, sales, prices, and distribution of crude oil and petroleum products. The data are published in the Petroleum Marketing Monthly, DOE/EIA–0380, and Petroleum Marketing Annual, DOE/EIA–0487, as well as in other EIA reports and publications.

II. Current Actions

EIA modified the petroleum marketing data collection forms to measure changes in petroleum markets due to the Clean Air Act Amendments of 1990, to provide more relevant crude oil and propane price data, to increase reporting accuracy, and to reduce ambiguity in the instructions. The changes are summarized below:

1. Form EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report" and Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

- Oxygenated and reformulated gasoline were added to the product slate.
- The wholesale gasoline sales column was expanded to include "Dealer Tank Wagon," "Rack," and "Bulk" sales.
- The No. 2 diesel category was split into "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- Propane sales type categories were added to include residential, commercial/institutional, industrial, company-operated outlets, petrochemical, other retail, and wholesale sales.
- The sales category "leaded regular motor gasoline" was discontinued.

2. Form EIA–782C, "Monthly Report of Petroleum Products Sold into States for Consumption."

- Oxygenated and reformulated gasoline were added to the product slate.
- No. 2 diesel category was split into "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- The sales category "leaded regular motor gasoline" was discontinued.

3. Form EIA–182, "Domestic Crude Oil First Purchase Report"

- First purchases of domestic crude oil by crude stream was added.

As a result of these changes to the survey forms, the EIA is proposing changes to the Petroleum Marketing Monthly, DOE/EIA–0380, and Petroleum Marketing Annual, DOE/EIA–0487, publications. The EIA is also taking this opportunity to re-examine the uses of these petroleum marketing data.

Comments are requested on the following proposed changes to the monthly publication Petroleum Marketing Monthly, DOE/EIA–0380, and annual publication Petroleum Marketing Annual, DOE/EIA–0487:

A. Elimination of leaded gasoline information.

B. Elimination of tables and data series which show sales by seller type,

i.e., major refiners, other refiners, and resellers.

C. The following new data series will be added to the publication tables:

1. Prices of domestic purchases of crude oil by selected crude streams within State.

2. Gasoline price and refiner volume data for conventional, oxygenated, and reformulated gasoline.

3. Wholesale prices and volumes of gasoline separated by dealer tank wagon, rack, and bulk sales.

4. Diesel fuel sales separated into low and high sulfur categories.

5. Expanded propane sales categories to include residential, commercial/institutional, industrial, company-operated outlets, petrochemical, other retail, and wholesale sales.

A data continuity analysis will be conducted that will consider the deletion of leaded gasoline, the addition of a supplemental propane sample to the EIA-782B survey, and the breakout by types of gasoline and detailed wholesale categories. The analysis will include backcasting to account for changes in the data series.

III. Request for Comments

Users of EIA's petroleum marketing information and other interested parties should comment on the proposals outlined above. The following general guidelines are provided to assist in the preparation of responses. Please be specific in your comments with regard to the proposed modifications.

A. Do you use the data proposed for elimination from the publications? (Be specific as to which data you use.)

B. For what purpose(s) do you use the data? Be specific.

C. What effect would there be on you if the data were no longer published?

D. Are there alternate sources of data? If so: (1) How do you use them; (2) what are their deficiencies; (3) what are their strengths; and (4) what effect, if any, will the use of the alternative data have on you?

E. Will the data in the proposed new tables meet your uses for petroleum marketing information?

F. Do you have alternative proposals for collecting or for publishing information to aid in the analysis of petroleum marketing issues other than the information proposed in the new tables?

Comments submitted in response to this notice will be considered a matter of public record and will be used by EIA to determine whether to continue publishing the data indicated for deletion.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980, as amended, Public Law 96-511, which amended Chapter 35 of title 44 United States Code (See 44 U. S. C. 3506(a) and (c)(1).

Issued in Washington, DC, December 16, 1993.

Jay E. Hakes,

Administrator, Energy Information Administration.

[FR Doc. 93-31375 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-P

Office of Energy Efficiency and Renewable Energy

[Case No. F-060]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver from the Furnace Test Procedure to Amana Refrigeration, Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-060) granting a Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Amana its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GBI line of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Amana has been granted a Waiver for its GBI line of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic

hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Amana filed a "Petition for Waiver," dated July 9, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on September 29, 1993, Amana's petition and solicited comments, data and information respecting the petition. 58 FR 50906. Amana also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on September 17, 1993. 58 FR 50906, September 29, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with the Federal Trade Commission (FTC) concerning the Amana Petition. The FTC did not have any objections to the issuance of the waiver to Amana.

Assertions and Determinations

Amana's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Amana requests the allowance to test using a 30-second blower time delay when testing its GBI line of induced draft furnaces. Amana states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.8 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Amana indicates that it is unable to take advantage of any of these exceptions for its GBI line of induced draft furnaces.

Since the blower controls incorporated on the Amana furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Amana GBI line of induced draft furnaces. Accordingly, with regard to testing the GBI line of induced draft furnaces, today's Decision and Order exempts Amana from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Amana Refrigeration, Inc. (Case No. F-060) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, subpart B, Amana Refrigeration, Inc., shall be permitted to test its GBI line of induced draft furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Amana Refrigeration, Inc. shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GBI line of induced draft furnaces manufactured by Amana Refrigeration, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 17, 1993, this Waiver supersedes the Interim Waiver granted the Amana Refrigeration, Inc. on September 17, 1993. 58 FR 50906, September 29, 1993 (Case No. F-060).

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-31376 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-P

[Case No. F-061]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Carrier Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-061) granting a Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Carrier its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel,

Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Carrier has been granted a Waiver for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Carrier filed a "Petition for Waiver," dated August 3, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department published in the Federal Register on September 29, 1993, Carrier's petition and solicited comments, data and information respecting the petition. 58 FR 50908. Carrier also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on September 17, 1993. 58 FR 50908, September 29, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Carrier Petition. The FTC did not have any objections to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Carrier requests the allowance to test using a 45-second blower time delay when testing its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces. Carrier states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Carrier indicates that it is unable to take advantage of any of these exceptions for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces.

Since the blower controls incorporated on the Carrier furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Carrier 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces. Accordingly, with regard to testing the 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces, today's Decision and Order exempts Carrier from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Carrier Corporation (Case No. F-061) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, subpart B, Carrier Corporation, shall be permitted to test its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is

designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Carrier Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the 58TUA/330AAV and 58TMA/AAV lines of induced draft furnaces manufactured by Carrier Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 15, 1993, this Waiver supersedes the Interim Waiver granted the Carrier Corporation on September 17, 1993. 58 FR 50908, September 29, 1993 (Case No. F-061).

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-31373 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-P

[Case No. F-062]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Carrier Corporation

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-061) granting a Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Carrier its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its 58MXA/350MAV, 58MCA/MAV, and 490AAV lines of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Carrier has been granted a Waiver for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Carrier filed a "Petition for Waiver," dated August 3, 1993, in accordance with section 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on September 29, 1993, Carrier's petition and solicited comments, data and information respecting the petition. 58 FR 50910. Carrier also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on September 17, 1993. 58 FR 50910, September 29, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the

Carrier Petition. The FTC did not have any objections to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Carrier requests the allowance to test using a 60-second blower time delay when testing its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces. Carrier states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Carrier indicates that it is unable to take advantage of any of these exceptions for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces.

Since the blower controls incorporated on the Carrier furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Carrier 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces. Accordingly, with regard to testing the 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces, today's Decision and Order exempts Carrier from the existing provisions regarding blower controls and allows testing with the 60-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Carrier Corporation (Case No. F-062) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Carrier Corporation, shall be permitted to test its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Carrier Corporation shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces manufactured by Carrier Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 23, 1993, this Waiver supersedes the Interim Waiver granted the Carrier Corporation on September 17, 1993. 58 FR 50910, September 29, 1993 (Case No. F-062).

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-31372 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-P

[Case No. F-059]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to The Ducane Co. Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-059) granting a Waiver to The Ducane Company Inc. (Ducane) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Ducane Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its UHC, ULB, and UH series of oil furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Ducane has been granted a Waiver for its UHC, ULB, and UH series of oil furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

DECISION AND ORDER

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department of Energy amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Ducane filed a "Petition for Waiver," dated July 8, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department of Energy published in the **Federal Register** on September 1, 1993, Ducane's petition and solicited comments, data and information respecting the petition. 58 FR 46170. Ducane also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on August 25, 1993. 58 FR 46170, September 1, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Ducane Petition. The FTC did not have any objections to the issuance of the waiver to Ducane.

Assertions and Determinations

Ducane's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Ducane requests the allowance to test using a 30-second blower time delay when testing its UHC, ULB, and UH series of oil furnaces. Ducane states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.7 to 0.9 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5 minute delay. Ducane indicates that it is unable to take advantage of any of these exceptions for its UHC, ULB, and UH series of oil furnaces.

Since the blower controls incorporated on the Ducane furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Ducane UHC, ULB, and UH series of oil furnaces. Accordingly, with regard to testing the UHC, ULB, and UH series of oil furnaces, today's Decision and Order exempts Ducane from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, *ordered that:* (1) The "Petition for Waiver" filed by The Ducane Company Inc. (Case No. F–059) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, The Ducane Company Inc., shall be permitted to test its UHC, ULB, and UH series of oil furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, The Ducane Company Inc. shall comply in all respects with the test procedures

specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the UHC, ULB, and UH series of oil furnaces manufactured by The Ducane Company Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 17, 1993, this Waiver supersedes the Interim Waiver granted the The Ducane Company Inc. on August 25, 1993. 58 FR 46170, September 1, 1993 (Case No. F-059).

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-31379 Filed 12-22-93; 8:45 am]

BILLING CODE 6450-01-P

[Case No. F-058]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Lennox Industries Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-058) granting a Waiver to Lennox Industries Inc. (Lennox) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Lennox its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its G23 and G26 series of furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Lennox has been granted a Waiver for its G23 and G26 series of furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

DECISION AND ORDER

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department of Energy amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Lennox filed a "Petition for Waiver," dated June 16, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department of Energy published in the **Federal Register** on September 1, 1993, Lennox's petition and solicited comments, data and information respecting the petition. 58 FR 46172. Lennox also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on August 25, 1993. 58 FR 46172, September 1, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department of Energy consulted with The Federal Trade Commission (FTC) concerning the Lennox Petition. The FTC did not have any objections to the issuance of the waiver to Lennox.

Assertions and Determinations

Lennox's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Lennox requests the allowance to test using a 45-second blower time delay when testing its G23 and G26 series of furnaces. Lennox states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.7 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Lennox indicates that it is unable to take advantage of any of these exceptions for its G23 and G26 series of furnaces.

Since the blower controls incorporated on the Lennox furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Lennox G23 and G26 series furnaces. Accordingly, with regard to testing the G23 and G26 series furnaces, today's Decision and Order exempts Lennox from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, *ordered that:*

(1) The "Petition for Waiver" filed by Lennox Industries Inc. (Case No. F–058) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Lennox Industries Inc., shall be permitted to test its G23 and G26 series of furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Lennox Industries Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the G23 and G26 series of furnaces manufactured by Lennox Industries Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 17, 1993, this Waiver supersedes the Interim Waiver granted the Lennox Industries Inc. on August 25, 1993. 58 FR 46172, September 1, 1993 (Case No. F–058).

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–31378 Filed 12–22–93; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–064]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Lennox Industries Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–064) granting a Waiver to Lennox Industries Inc. (Lennox) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Lennox Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GCS24–650/813 combination gas-electric equipment.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Lennox has been granted a Waiver for its GCS24–650/813 combination gas-electric equipment, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

DECISION AND ORDER

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the

basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Lennox filed a "Petition for Waiver," dated August 23, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on November 24, 1993, Lennox's petition and solicited comments, data and information respecting the petition. 58 FR 62107. Lennox also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on November 17, 1993. 58 FR 62107, November 24, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Lennox Petition. The FTC did not have any objections to the issuance of the waiver to Lennox.

Assertions and Determinations

Lennox's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Lennox requests the allowance to test using a 40-second blower time delay when testing its GCS24–650/813 combination gas-electric equipment. Lennox states that since the 40-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.7 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Lennox indicates that it is unable to take advantage of any of these exceptions for its GCS24–650/813 combination gas-electric equipment.

Since the blower controls incorporated on the Lennox combination gas-electric equipment are designed to impose a 40-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 40-second blower time delay when testing the Lennox GCS24–650/813 combination gas-electric equipment. Accordingly, with regard to testing the GCS24–650/813 combination gas-electric equipment, today's Decision and Order exempts Lennox from the existing provisions regarding blower controls and allows testing with the 40-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Lennox Industries Inc. (Case No. F–064) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Lennox Industries Inc., shall be permitted to test its GCS24–650/813 combination gas-electric equipment on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t –), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t –), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Lennox Industries Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GCS24–650/813 combination gas-electric equipment manufactured by Lennox Industries Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 15, 1993, this Waiver supersedes the Interim Waiver granted the Lennox Industries Inc. on November 17, 1993. 58 FR 62107, November 24, 1993 (Case No. F–064).

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–31377 Filed 12–22–93; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–063]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Trane Co.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–063) granting a Waiver to Trane Company (Trane) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Trane its Petition for Waiver regarding blower time delay in calculation of

Annual Fuel Utilization Efficiency (AFUE) for its TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Trane has been granted a Waiver for its TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

DECISION AND ORDER

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Trane filed a "Petition for Waiver," dated August 27, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on October 29, 1993, Trane's petition and solicited comments, data and information respecting the petition. 58 FR 58163. Trane also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on October 1, 1993. 58 FR 58163, October 29, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Trane Petition. The FTC did not have any objections to the issuance of the waiver to Trane.

Assertions and Determinations

Trane's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Trane requests the allowance to test using a 45-second blower time delay when testing its TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces. Trane states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Trane indicates that it is unable to take advantage of any of these exceptions for its TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces.

Since the blower controls incorporated on the Trane furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Trane TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces. Accordingly, with regard to testing the TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces, today's Decision and Order exempts Trane from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, *ordered that:*

(1) The "Petition for Waiver" filed by Trane Company (Case No. F–063) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Trane Company, shall be permitted to test its TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with

the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Trane Company shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the TUC–C/AUC–A, TDC–C/ADC–C, TUX–C/AUX–C, TDX–C/ADX–C, TUE–A, FUA–A, and FCA–A central furnaces manufactured by Trane Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective December 17, 1993, this Waiver supersedes the Interim Waiver granted the Trane Company on October 1, 1993. 58 FR 58163, October 29, 1993 (Case No. F–063).

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–31380 Filed 12–22–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Arkla Energy Resources Co.; Proposed Changes in FERC Gas Tariff

[Docket No. TM94–2–31–000 RP94–83–000]

December 17, 1993.

Take notice that on December 16, 1993, Arkla Energy Resources Company (AER), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to establish GRI surcharge, with a proposed effective date of January 1, 1994:

3rd Sub First Revised Sheet No. 4
3rd Sub First Revised Sheet No. 4.1
Original Sheet No. 4.3
First Revised Sheet No. 55
First Revised Sheet Nos. 229–244.

AER states that copies of this filing were served upon AER's jurisdictional customers and upon all interested state commissions. AER seeks a waiver of the 30 day notice requirements of § 154.22 of the Commission's regulations, 18 CFR 154.22 and of ordering paragraph (c) of Opinion No. 384, issued October 5, 1993 in Docket No. RP93–140–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 28, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–31314 Filed 12–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–31–001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 17, 1993.

Take notice that on December 14, 1993, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 358
Original Sheet No. 358A

CNG states that it also includes in its filing the information requested by the Commission in its November 29, 1993, order and Schedule A–1 for the month of September 1993.

CNG states that the purpose of the filing is to comply with the Commission's November 29, 1993, order in this proceeding. CNG states, however, that it proposes compromise tariff language in lieu of including a "perpetual refund obligation" as required by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 27, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–31318 Filed 12–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–82–000]

Florida Gas Transmission Co. Proposed Changes in FERC Gas Tariff

December 17, 1993.

Take notice that on December 16, 1993, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of February 1, 1994:

First Revised Sheet No. 136
First Revised Sheet No. 137
First Revised Sheet No. 138

FGT states that the proposed changes are necessary to bring FGT's creditworthiness provisions in line with the post-Order No. 636 natural gas capacity market and will provide FGT,

its lenders, and its customers greater protection against shipper default. FGT asserts that the proposed changes will not impact the service levels provided to creditworthy shippers, and will also enhance FGT's ability to obtain credit at favorable terms.

FGT states that copies of the filing were mailed to all customers serviced under the Rate Schedules affected by this filing and the 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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or portests should be filed on or before December 28, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31315 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-4-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 17, 1993.

Take notice that on December 14, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below, containing changes in rates for effectiveness of the dates indicated:

Proposed Effective Dates

Substitute 23rd Revised Sheet No. 21: January 1, 1993
Substitute 24th Revised Sheet No. 21: February 1, 1993
Substitute 25th Revised Sheet No. 21: April 1, 1993
Substitute 26th Revised Sheet No. 21: May 1, 1993
Substitute Revised 26th Revised Sheet No. 21: June 10, 1993
Substitute 28th Revised Sheet No. 21: July 1, 1993
Substitute 29th Revised Sheet No. 21: August 3, 1993
Substitute 30th Revised Sheet No. 21: September 10, 1993
Substitute 31st Revised Sheet No. 21: October 1, 1993

According to Granite State, the revised tariff sheets submitted herewith correct a Transportation Cost Adjustment surcharge added to its jurisdictional sales rates for the period January 1, 1993 through October 31, 1993.

Granite State further states that the Transportation Cost Adjustment was a tracking provision in its FERC Gas Tariff, Second Revised Volume No. 2, designed to reimburse Granite State for the transportation costs it incurred on upstream pipelines for the delivery of firm gas supplies to its system. It is further stated that an error has been discovered in the calculation of the surcharge for the period from January 1, 1993 through October 31, 1993, during which Granite State provided bundled sales services to its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc., prior to commencing restructured operations on November 1, 1993.

According to Granite State, the Commodity component in the Transportation Cost Adjustment was understated by $0.0044 per Dth for the entire period, resulting in an undercollection of $187,888 and the Demand component was understated by $3.368 per Dth for the months of September and October, resulting in an undercollection of $687,341. It is further stated that the revised tariff sheets listed above state the corrected Transportation Cost Adjustment and the resulting jurisdictional sales rates for the periods involved.

According to Granite State, copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 27, 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31313 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-99-000]

Iowa Southern Utilities Co.; Filing

December 16, 1993.

Take notice that Iowa Southern Utilities Company (ISU) on December 6, 1993, tendered for filing Amendments to the Interconnection Contract, dated August 14, 1989, between ISU and the United States Department of Energy, Western Area Power Administration (WAPA). The Amendments impose additional pricing restrictions on ISU in the rates charged for energy services.

A copy of the filing was served upon Iowa State Utilities Board and WAPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 30, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31320 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-81-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 17, 1993.

Take notice that on December 13, 1993, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets. Northern Border requests that the tariff sheets be made effective February 1, 1994.

First Revised Sheet Number 108
First Revised Sheet Number 136
First Revised Sheet Number 137
First Revised Sheet Number 205
First Revised Sheet Number 246

First Revised Sheet Number 247
First Revised Sheet Number 248
First Revised Sheet Number 266
First Revised Sheet Number 287
First Revised Sheet Number 289
First Revised Sheet Number 290
First Revised Sheet Number 291
First Revised Sheet Number 292
First Revised Sheet Number 293
First Revised Sheet Number 296
First Revised Sheet Number 297
First Revised Sheet Number 298
First Revised Sheet Number 402
First Revised Sheet Number 423
First Revised Sheet Number 424
First Revised Sheet Number 425
First Revised Sheet Number 443
First Revised Sheet Number 449
First Revised Sheet Number 450
First Revised Sheet Number 455
First Revised Sheet Number 456
First Revised Sheet Number 457
First Revised Sheet Number 501
Original Sheet Number 502

Northern Border states that the purpose of this filing is (i) to revise Article 7—Term of the U.S. Shippers Service Agreement; and (ii) to reflect housekeeping and other minor changes. Northern Border states that Article 7—Term of the proforma U.S. Shippers Service Agreement (Service Agreement) has been revised to (i) clarify that the Service Agreement provides for "evergreening" and (ii) provides for a notice period, to be negotiated between the parties, that the Shipper must satisfy before the Shipper can terminate its Service Agreement.

Northern Border states none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 27, 1993. Protests will be considered 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31316 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-39-001]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 17, 1993.

Take notice that on December 15, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 22
First Revised Sheet No. 24
Substitute Second Revised Sheet No. 30
Substitute Third Revised Sheet No. 30
Substitute First Revised Sheet No. 396
Substitute First Revised Sheet No. 397
Substitute First Revised Sheet No. 398

Tennessee states that the purpose of this filing is to comply with the Commission's November 30, 1993 "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions" in Docket No. RP94-39-000 and to make conforming changes to its tariff. In this filing, Tennessee has provided additional information regarding settlement and pricing differential costs, has made minor tariff language changes, and has revised its IT rates.

Tennessee states that copies of this filing were served on all parties to this proceeding, customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 27, 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31317 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-39-015]

Wyoming Interstate Co., Ltd.; Compliance Filing

December 17, 1993.

Take notice that on December 8, 1993, Wyoming Interstate Company, Ltd. (WIC) made a filing to comply with the Commission's order in this proceeding issued on November 3, 1993.

WIC states that it proposes to implement the flowback of excess deferred income taxes (DIT) on a customer-by-customer basis using past throughput volumes by crediting each customer's reservation charge the full amount of that customer's DIT contribution.

In the filing WIC sets forth the amount of credit due each customer, and the reservation charge credit that each will receive. WIC states that it does not intend to reflect the credit until the Commission issues its final order in WIC's cost and revenue proceeding in Docket No. RP85-39-009. In the alternative WIC proposes to flowback the DIT beginning January 1994, subject to recalculation when the Commission issues the final order in Docket No. RP85-39-009.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31319 Filed 12-22-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4706-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 29, 1993 through December 3, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D-AFS-K65157-CA Rating EC2, Paper Reforestation and Resource

Recovery Project, Implementation, Stanislaus National Forest, Mi-Wok Ranger District, Tuolumne County, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to air quality, water quality and vegetation as well as the need for additional information in the final EIS on other alternatives to the project, cumulative impacts, mitigation for air and water quality impacts, and monitoring plans.

ERP No. D-AFS-L65210-ID Rating EO2, West Fork Papoose Timber Sale, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID.

Summary: EPA expressed environmental objections due to project impacts on air quality water quality and wetland. EPA requested that these issues be addressed in the final EIS.

ERP No. D-FAA-G51026-TX Rating EC, New Austin Airport at Bergstrom Air Force Base (AFB) 1993 Master Plan, Approval, Funding, Property Acquisition and Construction, City of Austin, Travis County, TX.

Summary: EPA expressed environmental concerns on alternative sites, wetland loss, potential degradation of air quality and pollution prevention. EPA requested that the identified additional information on alternatives and mitigation on other concerns be fully incorporated in the final EIS.

ERP No. D-FHW-F40237-WI Rating EC2, US 151/WI 41 Waupun to Fond du Lac Project, Construction, Funding and Possible COE Section 404 Permit, Fond du Lac County, WI.

Summary: EPA requested additional information regarding the wetlands mitigation site be included in the final EIS.

FINAL EISs

ERP No. F-BOP-K80031-HI Honolulu, HI Federal Detention Center (FDC), Construction and Operation, City of Honolulu, Island of Oahu, HI.

Summary: EPA expressed environmental concerns regarding potential site contamination, air impacts due to solid waste incineration and water quality impacts due to storm water result. EPA requested that these concerns be discussed in the Record of Decision.

Dated: December 20, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-31382 Filed 12-22-93; 8:45 am]

BILLING CODE: 6560-50-U

[ER-FRL-4706-7]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Weekly receipt of Environmental Impact Statements filed December 13, 1993 through December 17, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930443, Draft EIS, AFS, ID, Hungry-Mill Timber Sales, Harvesting Timber and Road Construction, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID, Due: February 12, 1994, Contact: Sue Paradiso (208) 983-1963.

EIS No. 930444, Draft EIS, AFS, Red-Cockaded Woodpecker (RCW) (Picoides borealis) Repopulation, Habitat Management Areas, Implementation, National Forests of the Southern Region, Due: March 25, 1994, Contact: Joseph M. Dabney (404) 347-5097.

EIS No. 930445, Draft EIS, AFS, MO, Salem and Potosi Ranger Districts Off-Highway Recreational Vehicle Opportunities, Designation/Nondesignation, Mark Twain National Forest, Implementation, Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO, Due: February 23, 1994, Contact: Darsan Wang (314) 364-4621.

EIS No. 930446, Draft EIS, EPA, TX, LA, Territorial Seas off Texas and Louisiana Oil and Gas Extraction Activities, Outer Continental Shelf (OCS), New Source NPDES Permit, Gulf of Mexico, TX and LA, Due: February 14, 1994, Contact: Norm Thomas (214) 655-2260.

EIS No. 930447, Draft SUPPLEMENT, BLM, CA, Rail-Cycle-Bolo Station Class III Nonhazardous Waste Landfill Project, Construction and Operation, Updated Information, Federal Land Exchange and Right-of-Way Grants, San Bernardino County, CA, Due: February 21, 1994, Contact: Douglas Romoli (909) 697-5237.

EIS No. 930448, Final EIS, AFS, CO, White River National Forest Land and Resources Management Plan, Oil and Gas Leasing Development, Implementation, Several Counties, CO, Due: January 24, 1994, Contact: Mike Spencer (303) 945-2521.

EIS No. 930449, Final EIS, FTA, MA, South Boston Piers/Fort Point Channel Transit Project, Boylston Station to the World Trade Center, Funding, MA, Due: January 24, 1994, Contact: Donald J. Emerson (202) 366-0096.

EIS No. 930450, Draft EIS, FTA, MN, Central Corridor Transportation Improvements, Twin Cities Metropolitan Area, Funding, several Counties, MN, Due: February 18, 1994, Contact: Paul Fish (312) 353-2865.

EIS No. 930451, Final EIS, FRC, LA, MS, LA, MS, West-East Cross Interstate Natural Gas Pipeline Project, Construction and Operation, Section 10 and 404 Permits, NPDES Permit and Right-of-Way Grant, several Parishes, LA and several Counties, MS, Due: February 12, 1994, Contact: Ms. Laura Turner (202) 208-0916.

EIS No. 930452, Final EIS, NOA, WA, Olympic Coast National Marine Sanctuary, Management Plan, Site Designation, NPDES Permit and COE Permit, Olympic Peninsula, WA, Due: January 24, 1994, Contact: Ms. Debra Malek (301) 713-3141.

EIS No. 930453, Draft EIS, DOE, ME, Bangor Hydro-Electric Second 345-kV Transmission Tie Line Interconnection to New Brunswick, Construction and Operation, Presidential Permit, COE Section 10 and 404 Permits, ME, Due: February 7, 1994, Contact: Carol Borgstrom (202) 586-4600.

EIS No. 930454, Final EIS, DOE, AK, Healy 50 Megawatt-Electric Coal Fired Power Plant Construction and Operation, Clean Coal Technologies Demonstration, Funding, NPDES and Section 404 Permits, Borough of Denali, AK, Due: January 24, 1994, Contact: Earl W. Evans (412) 892-5709.

EIS No. 930455, Final EIS, AFS, ID, Mid-Skull/Upper Bear Timber Sales, Timber Harvest, Road Construction and Reconstruction, Clearwater National Forest, North Fork Ranger District, Skull Creek, Clearwater County, ID, Due: January 24, 1994, Contact: Jennefer L. Sundberg (208) 476-3775.

EIS No. 930456, Final EIS, AFS, AZ, Grand Canyon Airport to Maswik Transportation Area, Grand Canyon Village Passenger Rail Service Construction and Operation, Approval and Special Use Permit, Coconino County, AZ., Due: January 24, 1994, Contact: William M. Lannaw (602) 635-2681.

Dated: December 20, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-31383 Filed 12-22-93; 8:45 am]

BILLING CODE 6560-50-U

[OPPTS-00145; FRL-4751-5]

Biotechnology Science Advisory Committee, FIFRA Scientific Advisory Panel; Subcommittee on Plant Pesticides; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day joint meeting of the Biotechnology Science Advisory Committee (BSAC) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel on the proposed rule for plant pesticides to review a set of scientific questions concerning a proposed policy which describes how EPA intends to regulate pesticidal substances produced by plants (plant-pesticides) under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). The meeting will be open to the public.

DATES: The meeting will be held on Friday, January 21, 1994, starting at 8:30 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1123, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Bruce Jaeger, Designated Federal Official for the (FIFRA) Scientific Advisory Panel (7509C), Office of Pesticide Programs, Rm. 819B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 305-5369.

Copies of documents relating to this review process, may be obtained by contacting by mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5805.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Federal Advisory Committee Act which requires that timely notice of each meeting of a Federal Advisory Committee be published in the **Federal Register**. This notice announces such a meeting. Attendance by the public will be limited to available space. The Subpanel will consider a set of scientific issues being evaluated by the Agency for: (1) A draft proposed policy statement that generally describes how EPA intends to regulate plant-pesticides under FIFRA and FFDCA; (2) a draft proposal under FIFRA describing the changes in 40 CFR that define the scope of regulation for plant-pesticides under FIFRA; (3) a draft proposed exemption from the requirement of a tolerance for coat proteins from plant viruses when produced in plants; (4) a draft proposed exemption from the requirement of a tolerance for nucleic acids produced in plants as part of a plant-pesticide; and (5) a draft proposed exemption from the requirement of a tolerance for categories of plant-pesticides that will not result in significantly different dietary exposures.

Dated: December 17, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-31467 Filed 12-22-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180911; FRL 4750-2]

Receipt of Application for Emergency Exemption to use Benomyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the "Applicant") for the use of the pesticide benomyl (CAS 17804-35-2) to control Ramularia leaf spot on up to 700 acres of artichokes in California. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 7, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180911," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308-8327.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate Fungicide (EPA Reg. No. 352-354) from E. I. du Pont de Nemours Co., to control Ramularia leaf spot, caused by *Ramularia sp.*, on up to 700 acres of artichokes in California. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Ramularia leaf spot is a new disease problem of artichokes in California which became a serious pest in 1987 and 1988. Ramularia attacks artichoke leaves, causing scattered necrotic spots to appear. As the disease progresses the leaves and even the entire plant may appear to be "burned". The resulting reduction in the plant's photosynthetic ability causes poor plant growth and bud production. In severely affected fields, yields may be reduced by as much as 50 percent. According to the Applicant, there are no pesticides currently registered for the control of Ramularia leaf spot of artichoke that will adequately control the disease. Without an effective control, the Applicant claims that growers will incur a significant economic loss during the 1994 growing season.

Up to 4 ground or aerial applications of benomyl will be applied at 7 to 14 day intervals at a maximum rate of 0.5 pounds of active ingredient per acre. Ground applications will be made in sufficient water to obtain full coverage of foliage. Aerial applications will be made in a minimum of 20 gallons of water per acre. A maximum of 1,400

pounds of active ingredient may be needed to treat a maximum of 700 acres of artichokes, located in Santa Barbara and Ventura counties. Applications will be made between January 1, 1994 and December 31, 1994.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review [40 CFR 166.24 (a)(5)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Environmental Protection Agency.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 14, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-30975 Filed 12-22-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-190092A; FRL-4751-9]

State Pesticide Residue Removal Compliance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Interim Determination of Adequacy of Certain State Programs.

SUMMARY: Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f)(1). The Agency has not yet promulgated regulations under section 19(f)(1) and will not do so by December 24, 1993. To avoid having the provisions of section 19(f)(2) adversely impact the States and EPA, the Agency published a policy in the Federal Register on August 18, 1993, which set forth a process whereby the Agency will make an interim determination of adequacy for those States with primary enforcement responsibility and/or certification programs. This determination is based on an initial commitment by a State to conduct a number of activities which will position the State to have an adequate program in place by the time compliance with the regulations promulgated under section 19(f)(1) is required.

This notice is to announce that the State of New York has met the criteria of the August 18, 1993 policy by submitting a commitment to conduct the activities set forth in the policy and therefore have been determined by EPA to have an adequate State pesticide residue removal compliance program and to be taking the necessary steps to carry out enforcement of the new requirements within 2 years of promulgation of the final rule.

ADDRESSES: Any person wishing to review the State submissions may do so, in person, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the following address: Public Docket, Room 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (7204W), 401 M St., SW., Washington DC 20460, telephone (703) 308-8383, facsimile (703) 308-8218.

SUPPLEMENTARY INFORMATION: The following State has submitted a commitment to conduct the activities outlined in the August 18, 1993 Policy Statement on Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs:

New York

This State has met two criteria: (1) There is a current program for ensuring compliance with existing residue removal requirements, and (2) it has committed to the activities set out in the August 18, 1993 Policy Statement to be in a position to have a compliance program in place to enforce the section 19(f)(1) regulations. Based on the commitment submitted, I have determined that the State will be taking steps necessary to have an adequate program for ensuring compliance with the regulations under section 19(f)(1) upon the compliance date of those regulations. This determination of adequacy is an interim measure to fulfill EPA's responsibility under section 19(f)(2) and to avoid the State losing its primary enforcement and certification authority after December 24, 1993. This determination of adequacy is temporary and will expire 2 years after promulgation of a final rule issued under section 19(f)(1). Thereafter, the State must have a program to ensure compliance with the section 19(f) regulations.

Dated: December 20, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-31466 Filed 12-22-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; NOSAC/NYK Joint Service (East/West) Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011441.

Title: NOSAC/NYK Joint Service (East/West) Agreement.

Parties: NOSAC ANS Nippon Yusen Kabushiki Kaisha.

Synopsis: The proposed Agreement authorizes the parties to establish a joint service in the trade between U.S. ports and points (including Alaska and the Hawaiian Islands) on the one hand, and ports and points on the Mediterranean

Sea, Black Sea, Gulf of Aden, Arabian Gulf and Gulf of Oman (Aquaba-Karachi range).

Agreement No.: 232–011442.

Title: Space Charter and Cooperative Working Agreement Between NOSAC and the NOSAC/NYK (East/West) Joint Service.

Parties: NOSAC/NYK (East/West) Joint Service NOSAC ANS.

Synopsis: The proposed Agreement authorizes the parties to charter space aboard each other's vessels, discuss, and agree upon vessel capacity, space requirements, equipment interchange, and rationalize sailings in the trade between U.S. ports and points (including Alaska and the Hawaiian Islands) and ports and points on the Mediterranean Sea, Black Sea, Red Sea, Gulf of Aden, Arabian Gulf, and Gulf of Omen (Aquaba-Karachi range).

Agreement No.: 232–011443.

Title: Space Charter and Cooperative Working Agreement Between NYK and the NOSAC/NYK (East/West) Joint Service.

Parties: Nippon Yusen Kabushiki Kaisha NOSAC/NYK (East/West) Joint Service.

Synopsis: The proposed Agreement authorizes the parties to charter space aboard each other's vessels, discuss, and agree upon vessel capacity, space requirements, equipment interchange, and rationalize sailings in the trade between U.S. ports and points (including Alaska and the Hawaiian Islands) and ports and points on the Mediterranean Sea, Black Sea, Red Sea, Gulf of Aden, Arabian Gulf, and Gulf of Omen (Aquaba-Karachi range).

By Order of the Federal Maritime Commission.

Dated: December 20, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–31354 Filed 12–22–93; 6:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–77]

Quarterly Public Health Assessments Completed and Public Health Assessments to be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period July-September 1993. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a public health assessment in response to a request from the public (petitioned site). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment. Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during April-June 1993, as published in the **Federal Register** on September 24, 1993, (58 FR 50006). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)), and appeared in the **Federal Register** on February 13, 1990, (55 FR 51136).

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between July 1, 1993, and September 30, 1993, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

California
- Advanced Micro Devices Inc. (Buildings 901 & 902) Sunnyvale—(PB94–103124)

Florida
- Helena Chemical Company—Tampa—(PB94–102340)
- Stauffer Chemical Company/Tarpon Springs—Tarpon Springs (PB93–223097)

Michigan
- Metal Working Shop—Lake Ann—(PB94–103827)

Minnesota
- Agate Lake Scrap Yard—Fairview Township—(PB94–103371)
- Arrowhead Refinery Company—Hermantown—(PB94–103959)
- MacGillis & Gibbs Company/Bell Lumber & Pole Company—New Brighton—(PB93–222412)

New Hampshire
- Tinkham Garage—Londonderry—(PB93–214351)

Nevada
- Carson River Mercury Site—Moundhouse—(PB94–109121)

Ohio
- Skinner Landfill—West Chester—(PB93–227734)
- Zanesville Well Field—Zanesville—(PB93–216240)

Pennsylvania
- Avco Lycoming-Williamsport Division—Williamsport (PB94–103363)
- Bally Groundwater Contamination—Bally—(PB94–104247)
- Cryo-Chem Inc.—Worman Township—Boyertown (PB93–232437)
- McAdoo Associates—McAdoo—(PB94–104254)
- Strasburg Landfill—Newlin Township—(PB94–103157)

Rhode Island
- Newport Naval Education/Training Center—Middletown (PB93–227684)

South Carolina
- Geiger (C & M Oil) Site—Rantowles—(PB93–223113)
- Golden Strip Septic Tank—Simpsonville—(PB94–103520)
- Koppers Company/Charleston—Charleston—(PB93–216828)
- Koppers Company Inc./Florence Plant—Florence (PB93–216810)
- Medley Farms—Gaffney—(PB94–103132)

South Dakota
- Ellsworth Air Force Base—Ellsworth AFB—(PB94–109451)

Tennessee

Milan Army Ammunition Plant—Milan—(PB94-109055)
Virginia
C & R Battery Company Inc.—Richmond—(PB94-103181)
Washington
* Commencement Bay-Nearshore/Tideflats—Tacoma (PB93-223063)
Fort Lewis Logistics Center—Fort Lewis—(PB93-221562)
Greenacres Landfill—Spokane—(PB93-223105)
Hamilton Island Landfill (USACOE)—North Bonneville—(PB93-232452)
* Naval Air Station Whidbey Island (Ault Field and Seaplane Base)—Oak Harbor—(PB94-103942)

Petitioned Site—(Non NPL)

California
Space Ordnance Systems Mint Canyon—Canyon Country (PB93-210201)

2. Petitions for Public Health Assessments Accepted:

Between July 1, 1993, and September 30, 1993, ATSDR determined that there was a reasonable basis to conduct public health assessments for the sites listed below in response to requests from the public. As of September 30, 1993, ATSDR initiated public health assessments at these sites.

Arkansas
Great Lakes Chemical Corporation—El Dorado
Hawaii
Pearl City Junction—Pearl City

Dated: December 17, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93-31331 Filed 12-22-93; 8:45 am]

BILLING CODE 4160-70-P

* NPL site for which a Petition has been received.

Food and Drug Administration

[Docket No. 92N-0463]

Susan M. Long; Denial of Hearing and Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a hearing for and is issuing a final order under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)) permanently debarring Ms. Susan M. Long, #27911-037, FPC Danbury, P.O. Box 1910, Danbury, CT 06813, from providing services in any capacity to a person who has an approved or pending drug product application. FDA bases this order on a finding that Ms. Long was convicted of a felony under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: December 23, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

Ms. Long, a former Director of Regulatory Affairs for Bolar Pharmaceutical Co., Inc. (Bolar), pled guilty and was sentenced on July 15, 1992, for one count of the making of a false statement in a matter within the jurisdiction of a Federal agency, a Federal felony offense under 18 U.S.C. 1001, and for one count of the obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505. The basis for these convictions was the finding that Ms. Long made or caused to be made fraudulent statements to FDA concerning bioequivalence studies and encapsulation records of some of Bolar's generic drug products.

In a certified letter received by Ms. Long on June 7, 1993, FDA offered Ms. Long an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring her from providing services in any capacity to a person who has an approved or pending drug product application. FDA based the proposal to debar Ms. Long on its finding that she was convicted of a felony under Federal law for conduct relating to the development and approval of Bolar's drug products and relating to the regulation of Bolar's drug products.

The certified letter also informed Ms. Long that her request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact requiring a hearing. The letter also notified Ms. Long that if it conclusively appeared from the face of the information and factual analyses in her request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against her, making findings and conclusions, and denying her request for a hearing.

In a letter dated June 16, 1993, Ms. Long responded to the certified letter by requesting an extension to request a hearing. On June 30, 1993, Ms. Long withdrew that request via telephone conversation. Then, in a letter dated July 1, 1993, Ms. Long requested a hearing.

II. Denial of Hearing

In her request for a hearing, Ms. Long failed to present any arguments or information to show why she should not be debarred. Therefore, FDA finds that Ms. Long has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, pursuant to 21 CFR 12.28, the agency denies Ms. Long's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Ms. Susan M. Long has been convicted of a felony under Federal law for conduct relating to (1) the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Ms. Susan M. Long is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*insert date of publication in the* **Federal Register**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Long in any capacity, during her period of debarment, will be subject to civil money penalties. During her period of debarment, if Ms. Long provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with the assistance of Ms. Long during her period of debarment.

Any application by Ms. Long for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N-0463 and sent to

the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-31337 Filed 12-22-93; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[HSQ-211-N]

Approval of the Commission on Office Laboratory Accreditation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the Commission on Office Laboratory Accreditation (COLA) as an accrediting organization for clinical laboratories under the CLIA program. We have found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it meet the conditions required by Federal law and regulations. Consequently, laboratories that voluntarily become accredited by COLA in lieu of receiving direct Federal oversight and continue to meet COLA requirements would meet the CLIA condition level requirements for laboratories and therefore are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period December 23, 1993 through November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Coppola, (410) 597-5906.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100-578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS and Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. New section 353 requires HHS to establish certification requirements for any laboratory that performs tests on human specimens and certify through issuance of a certificate that those laboratories meet the certificate requirements established by HHS.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, amended the Social Security Act (the Act) to require that laboratories participating in the Medicare program meet the certificate requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs or both. Laboratories that are accredited by an accreditation organization approved under section 353 of the PHSA will automatically be eligible for Medicare and Medicaid participation as long as they meet applicable State licensure requirements.

On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002-7243) that implemented the amendments to section 353 of the PHSA. The technical and scientific portions of these rules were drafted with input from The Centers for Disease Control and Prevention (CDC) of the Public Health Service (PHS). Specifically, we established regulations at 42 CFR part 493 that:

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates (in a subsequent rule published January 19, 1993, 58 FR 5215, we added "certificate for physician-performed microscopy procedures") and to fund activities to determine compliance with our performance requirements;
- Specify the performance requirements that apply to laboratories subject to CLIA (some of which were amended by the January 19, 1993 rule) and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver; and
- Set forth the rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, we issued additional final rules (57 FR 33992), under authority found in section 353(e)(2) of the PHSA, that establish that we may approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements of part 493 of our regulations. Therefore, a laboratory accredited by an approved organization that meets and continues to meet all of the accreditation organization's requirements would meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations listed in subpart E of part 493 specify the requirements an accreditation organization must meet in order to be approved. We may approve an accreditation organization under § 493.501(d) of our regulations for a period not to exceed six years.

In general, the accreditation organization must:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HHS;
- Apply standards and criteria that are equal to or more stringent than those condition level requirements established by HHS when taken as a whole;
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HHS, within 30 days, with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked;
- Notify HHS at least 30 days prior to changing its standards; and
- If HHS withdraws its approval, notify its accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if it meets the standards of an approved accreditation body and authorizes the accreditation body to submit to HHS records and other information HHS may require.

Along with requiring the promulgation of criteria for approving an accreditation body and for withdrawing such approval, CLIA requires HHS to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that HHS determines appropriate. Under section 353(o) of the PHSA, the Secretary may, by agreement, use the services or facilities of any other Federal, State or local public agency, or any private, nonprofit organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for

the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of COLA as an Accrediting Organization

In this notice, we approve COLA as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements. HCFA, with the assistance of CDC, has examined the COLA application and all subsequent submissions against the requirements under subpart E of part 493 that an accreditation organization must meet in order to be granted approved status under CLIA. We have determined that COLA has complied with the applicable CLIA requirements as of December 23, 1993, and grant COLA approval as an accreditation organization under this subpart through November 1, 1997 for the following specialty/subspecialty areas:

- ABO Grouping and D(Rho) Typing.
- Bacteriology.
- Endocrinology.
- General Immunology.
- Hematology.
- Mycobacteriology.
- Mycology.
- Parasitology.
- Routine Chemistry.
- Syphilis Serology.
- Toxicology.
- Unexpected Antibody Detection.
- Urinalysis.
- Virology.

As a result of this determination, any laboratory that is accredited by COLA during this time period for an approved specialty/subspecialty meets the CLIA requirements for laboratories found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal or State or local public agency or nonprofit private organization which acts in conformance to an agreement with the Secretary.

III. Evaluation of COLA

The following describes the process we used to find that COLA, as a private, nonprofit organization, provides reasonable assurance that those laboratories it accredits will meet the applicable requirements of the Federal law and regulations.

A. Requirements for Approving an Accreditation Organization Under CLIA

To determine whether we should grant approved status to COLA as a private, nonprofit organization for accrediting laboratories under CLIA for the specific specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of COLA's requirements for its laboratories to those of CLIA and evaluated whether COLA's standards are at least as stringent as the requirements of 42 CFR part 493 when taken as a whole. In summary, we evaluated whether COLA:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to or more stringent than the CLIA condition level requirements (for the requested specialties/subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and
- Meets the requirements of § 493.506, which specifies the Federal review and approval requirements of private, nonprofit accreditation organizations.

As specified in the regulations at § 493.506, our review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of:

- Whether the organization's requirements for its accredited laboratories are equal to or more stringent than the condition level requirements of the CLIA regulations;
- The organization's inspection process to determine:
  - —The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors;
  - —The comparability of the organization's full inspection and complaint inspection requirements to those of HCFA, including but not limited to inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories;
  - —The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements;
  - —The ability of the organization to provide HCFA with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process;
  - —The ability of the organization to provide HCFA with electronic data, related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in HHS approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action;
  - —The ability of the organization to provide HCFA with electronic data for all its accredited laboratories and the areas of specialty and subspecialty testing;
  - —The adequacy of numbers of staff and other resources; and
  - —The organization's ability to provide adequate funding for performing the required inspections.
- The organization's agreement with HCFA that requires it to:
  - —Notify HCFA of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;
  - —Notify HCFA within 10 days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;
  - —Notify HCFA of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days;
  - —Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of recognition of the organization's deeming authority;
  - —Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;
  - —Provide HCFA, the State survey agency or other HCFA agent with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;
  - —Provide HCFA with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and
  - —Make available, on a reasonable basis, any laboratory's PT results upon the request by any person, with such explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an accreditation organization must:

- Authorize the organization to release to HCFA all records and

information required by HCFA as required at § 493.501;

- Permit inspections as required by the CLIA regulations at 42 CFR Part 493, Subpart Q;
- Obtain a certificate of accreditation as required by § 493.632; and
- Pay the applicable fees as required by §§ 493.638 and 493.645.

B. Evaluation of the COLA Request for Approval as an Accreditation Organization under CLIA

COLA has formally applied to HCFA for approval as an accreditation organization under CLIA. We have evaluated the COLA application to determine equivalency with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules. We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of 42 CFR part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

COLA has submitted a list of the specialties and subspecialties that it would accredit, a comparison of individual accreditation and condition level requirements, a description of its inspection process, PT monitoring process, and its data management and analysis system, a listing of the size, composition, education and experience of its inspection teams, its investigative and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process. We have determined that COLA has complied with the general requirements under § 493.501, the applicable parts of § 493.506, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

COLA's requirements for PT are more stringent than those of CLIA. All of COLA's accredited laboratories are required to participate in an HHS approved PT program for all tests that are not waived. CLIA, however, requires laboratories that perform any of the tests listed in subpart I to participate in an HHS-approved PT program for those tests only, rather than all of the tests they may perform. COLA also encourages its accredited laboratories to participate in PT for tests that are waived under CLIA. Currently, CLIA allows a phase-in for certain PT requirements under § 493.803 (Condition: Successful Participation), and we will impose no sanctions under this condition for the first year. We have determined that COLA currently imposes, and will continue to impose, action upon its accredited laboratories that are unsuccessful in PT performance.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

COLA has revised its requirements to equal the CLIA requirements at §§ 493.1101 through 493.1111 on an overall basis. We have determined that COLA's requirements are more stringent in that they require the laboratory to obtain written authorization within 30 days for verbal orders on all referral testing. Also, the test requisition or its equivalent must include the date and time a specimen is collected, and the name of the individual who performed the testing must appear on the test report as well as the testing record.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of COLA have been evaluated against the applicable phased-in requirements of the CLIA regulations. We have determined that COLA's requirements, when taken as a whole, are equal to or more stringent than the CLIA requirements. The specific areas of QC that are more stringent are:

- Safety requirements for moderate and high complexity testing;
- Requirements that laboratories that perform moderate or high complexity testing must meet COLA's QC requirements for all waived testing that they perform;
- Calibration/recalibration requirements for moderate complexity testing;
- A requirement that the laboratory director sign, review, and approve the procedure manual annually; and
- The use of a negative control for ABO antisera is required.

COLA recognizes the categorization of tests for QC purposes.

Subpart M—Personnel for Moderate and High Complexity Testing

COLA states, as general policy under its personnel standards, that the laboratory director and the laboratory personnel must meet all Federal and State educational and experience requirements necessary to perform their assigned tasks. It has adopted the Federal personnel requirements for education, training, and experience, and recognizes the various positions and the responsibilities of each of the positions cited in the CLIA regulations.

All COLA accredited laboratories are currently required to meet these CLIA standards. We have, therefore, found the COLA personnel requirements to be equal to the CLIA personnel requirements.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that COLA's requirements are equal to the CLIA requirements of this subpart. COLA has edited, re-written, and amplified its checklist requirements on quality assurance to equate to the CLIA regulation requirements. It also makes educational materials available to its accredited laboratories, which provide further information on quality assurance in the office laboratory.

Subpart Q—Inspections

COLA has made revisions to its inspection process, which is announced and performed on-site on a biennial basis, to equate to the applicable CLIA requirements at §§ 493.1777. Therefore, we have determined that COLA's requirements are equal to the requirements of this subpart.

Subpart R—Enforcement Procedures for Laboratories

COLA meets the requirements of subpart R to the extent it applies to accreditation organizations. COLA policy stipulates the action it takes when laboratories it accredits do not comply with its essential standards. When appropriate, COLA will deny accreditation to a laboratory and report the denial to HCFA within 30 days. COLA also provides an appeals process for laboratories that have had accreditation denied.

Some specific actions COLA takes in response to non-compliance or violation of essential standards include:

- When an accredited laboratory has been identified as having intentionally referred a PT specimen to another laboratory for analysis prior to the PT program end-date for receipt of results, the COLA laboratory will be denied accreditation and be ineligible for COLA accreditation for one year. This action is similar to the HCFA action of denial of certification for one year.
- When a COLA laboratory is unsuccessful in Federally required PT

participation for an analyte, subspecialty, and/or specialty, the laboratory must cease testing and initiate corrective actions. It must either successfully participate in two consecutive PT events or provide documentation of corrective actions and evidence of acceptable external testing validation. This action is more stringent than the actions that HCFA may take under this subsection.

• When COLA identifies a laboratory that is utilizing personnel who do not meet COLA's personnel standards, the laboratory must either cease testing the analyte(s) for which the laboratory's personnel are not trained until appropriately trained personnel are hired or the laboratory must cease testing the analyte(s) altogether. Failure to do so will result in a denial of accreditation recommendation to the COLA Accreditation Committee. This action is more stringent than the actions that HCFA may take under this subsection.

• When COLA determines that a serious risk of harm (immediate jeopardy) situation exists in a COLA-accredited laboratory, the laboratory must cease testing and immediately correct the problem that poses the risk. If the problem pervades the entire laboratory testing system, testing must cease altogether until the problem is corrected. Failure to do so will result in a denial of accreditation recommendation to the COLA Accreditation Committee. This action is similar to HCFA action for immediate jeopardy.

We have determined that COLA's laboratory enforcement and appeal policies are essentially equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of COLA accredited laboratories, as specified in § 493.507, may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (called complaint inspections). The outcome of those validation inspections, performed by HCFA, the State survey agency, or an HCFA agent, will be HCFA's principal means for verifying that the laboratories accredited by COLA remain in compliance with CLIA requirements. This Federal monitoring is an on-going process.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that the approval of an accreditation organization, such as that of COLA, may be removed by HCFA for cause, prior to the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described at § 493.509(a), HCFA will conduct a review of an accreditation organization's program. A review is also conducted when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systemic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If it is determined that COLA has failed to adopt requirements that are equal to or more stringent than the CLIA requirements, or systemic problems exist in its inspection process, a probationary period, not to exceed one year, may be given to allow COLA to adopt comparable requirements. Based on an evaluation of any of the items stipulated at § 493.511(d), a determination will be made as to whether or not COLA retains its approved status as an accreditation organization under CLIA. If approved status is denied, an accreditation organization such as COLA may resubmit its application when it has revised its program to address the rationale for the denial, demonstrated that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. If, however, an accrediting organization requests reconsideration of an adverse determination in accordance with subpart D of part 488 of our regulations, it may not submit a new application until a final reconsideration determination is issued.

Should circumstances result in COLA having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: November 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93-31349 Filed 12-22-93; 8:45 am]

BILLING CODE 4120-03-P

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 December 17, 1993.

(Call PHS Reports Clearance Officer on (202) 690-7100 for copies of requests).

1. Multi-Center Cohort Study to Assess the Risk and Consequences of Hepatitis C Virus Transmission from Mother to Infant—New—The purpose of the proposed study is to determine the incidence of vertical hepatitis C virus (HCV) transmission, to assess risk factors for vertical HCV transmission, to assess the clinical course of disease among infants with HCV infection, and to assess diagnostic methods for detecting HCV infection in infants. Respondents for the study will be anti-HCV positive mothers. Respondents: Individuals or households; Number of Respondents: 486; Number of Responses Per Respondent: 1; Average Burden Per Response: .57 hour; Estimated Annual Burden: 277 hours.

2. IHS Community Health Representative (CHR) Activity Reporting Sample—0910-0010—(Reinstatement) The Indian Health Service CHR Program obtains data on: service category, health area, setting, patient's age and sex, referral from, referral to, and minutes providing services or in travel. This data is used for program planning, allocation of resources, and evaluation purposes. Respondents: State or local governments; Number of Respondents: 1,550; Number of Responses Per Respondent: 4; Average Burden Per Response: 1.5 hours; Estimated Annual Burden: 9,300 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: December 20, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-31350 Filed 12-22-93; 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-63]

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. Air Force:* Bob Menke, Air Force Real Estate Agency (Area/MI), Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332-5113; (202) 767-6235; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208-0619; *Dept. of Energy:* Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586-1191; (These are not toll-free numbers).

Dated: December 17, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/23/93

Suitable/Available Properties

Buildings (by State)

Arizona

Facility 80002
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340052
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80003
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340053
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80004
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340054
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80005
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340055
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80006
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340056
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80007
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force

Property Number: 189340057
Status: Unutilized
Comment: 1352 sq. ft, wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80008
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340058
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80009
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340059
Status: Unutilized
Comment: 1096 sq. ft, wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80010
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340060
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80011
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340061
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80012
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340062
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706-
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Land (by State)

Ohio

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Excess
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2-GR-OH-433B

Texas

Part of Tract E-434
FM Hwy 720 (Lewisville Lake)
Little Elm Co: Denton TX 75068-
Landholding Agency: GSA
Property Number: 319310005
Status: Excess
Comment: 0.375 acre, frontage on paved highway
GSA Number: 7-D-TX-510-L

Suitable/Unavailable Properties

Land (by State)

New Mexico

Land, LPN Service Bldg.
1015 Indian School Road
Albuquerque Co: Bernalillo NM 87102-
Landholding Agency: GSA
Property Number: 579220001
Status: Excess
Comment: 0.2732 acres, underground lawn sprinkler, most recent use—maintenance yard, secured w/chain link fence.
GSA Number: 7-F-NM-0509D

Oklahoma

Parcel No. 58/GSA No. 7
Lake Texoma
Section 34 and Section 3 Co: Marshall OK
Location: About 2 miles northeast of Cumberland
Landholding Agency: GSA
Property Number: 319010460
Status: Surplus
Comment: 28.66 acres, most recent use—recreation
GSA Number: 7-D-OK-507-H

Unsuitable Properties

Buildings (by State)

Nevada

Transformer Repair Bldg.
Basic Substation, US93-95
Henderson Co: Clark NV 89015-
Landholding Agency: Energy
Property Number: 419340001
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Basic Sub Oil House
Basic Substation, US93-95
Henderson Co: Clark NV 89015-
Landholding Agency: Energy
Property Number: 419340002
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

[FR Doc. 93-31321 Filed 12-22-93; 8:45 a.m.]

Billing Code 4210-29-F

[Docket No. N-93-3558; FR3428-N-10]

Task Force on Occupancy Standards in Public and Assisted Housing; Meeting

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of open meetings.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Public Law 102-550), and the Federal Advisory Committee Act (FACA). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The **Federal Register** on August 31, 1993 at 58 FR 45905 announced the publication of the Task Force's preliminary report for public comment. Public comments on the Report were accepted until December 1, 1993. In addition, the Task Force conducted public hearings in Boston, San Antonio and Seattle.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-0288, ext. 265. TDD: (202) 708-0113 (These are not toll-free numbers.) If a sign language interpreter is needed for either meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: *Time and Place:* The Task Force will meet from Tuesday, January 11 through Friday, January 14 from 9 a.m. to 7 p.m. each day except Friday, January 14 when the meeting will end at 5 p.m. The meeting will take place at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA. The final meeting of the Task Force is scheduled from Monday, February 14 through Thursday, February 17 from 9 a.m. to 7 p.m. each day except Thursday, February 17 when the meeting will end at 5 p.m. The February meeting will take place at the Capitol Holiday Inn, 550 C Street, SW., Washington, DC. These are open meetings.

Agenda: At its January meeting the Task Force will discuss the public comments received and decide what changes to make in its preliminary report published on August 27, 1993. The February meeting will involve consideration and approval of the final report to the Congress and the Secretary of Housing and Urban Development.

Public participation: These are open meetings. Although the comment period on the preliminary report has passed, any general comments on the Task Force's mandate or activities may be submitted in writing to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005-2765.

Dated: December 9, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93-31381 Filed 12-22-93; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-068-94-5101-10-B038; CAMC 20175]

Availability of Final Environmental Impact Report/Environmental Impact Statement for the Fort Cady Minerals Corporation Borate Solution Mining Project

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, a final Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) has been prepared for the proposed Fort Cady borate solution mining project located in the California Desert Conservation Area, San Bernardino County, California. This EIR/EIS has been prepared jointly by the Bureau of Land Management and the County of San Bernardino. The EIR/EIS describes and analyzes the impacts of a proposed boric acid mine and processing facility on approximately 341 acres of public lands located in San Bernardino county in south-central California near Pisgah Crater, approximately 17 miles east of Newberry Springs and 2.5 miles south of I-40.

Decisions generated from this EIR/EIS will be consistent with the California Desert Conservation Plan, as amended.

DATES: Written comments must be submitted on or before January 31, 1994.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attn: Edy Seehafer.

Copies will be available at local public libraries located in Victorville and Barstow, and San Bernardino County public libraries in San Bernardino, the Victorville area, the 29 Palms/Yucca Valley Area, and Needles. In addition, copies will be available from the County of San Bernardino, Planning Department, 385 N. Arrowhead Avenue, San Bernardino, CA 92415 or the Bureau of Land Management (BLM), Barstow Resource Area Office at the address above.

Public reading copies will be available for review at the San Bernardino County Government Center at the address above, at 15505 Civic Drive in Victorville, at the Newberry Springs Community Center, 30887 Newberry Road, Newberry Springs, at the Baker Community Services District Office, libraries in Victorville, Barstow, and San Bernardino County, and the following BLM locations:

Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311-3221.
Office of Public Affairs, Main Interior Building, rm. 5600, 1849 C Street, NW., Washington, DC 20240.
Public Affairs Office, California State Office, rm. E-2857, Federal Office Bldg., 2800 Cottage Way, Sacramento, CA 95825.
California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Edy Seehafer, Bureau of Land Management, Barstow Resource Area, phone (619) 256-3591 or Ray Johnson, County of San Bernardino Planning Dept., phone (714) 387-4099.

Dated: December 13, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93-31290 Filed 12-22-93; 8:45 am]

BILLING CODE 4310-40-M

[MT-060-02-4210-05; MTM-79161]

Realty Action: Plan Amendment and Direct Sale; City of Shelby, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM) is providing notice of a plan amendment of the West HiLine Resource Management Plan. The purpose of the amendment is to allow the sale of 19.81 acres of public land directly to the City of Shelby, Montana under criteria 2 and 3 of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713). The BLM is also providing notice of the proposed sale of the same public land in Toole County involving the surface estate to the City of Shelby.

SUMMARY: The City of Shelby will use the purchased land to expand the city golf course from 9 holes to an 18 hole course. The BLM advised state and local officials about the proposed sale. The estimated fair market value is $990. Sale of the public land will occur in March 1994.

The following described public land is suitable for sale under criteria 2 and 3 of section 203 of FLPMA of 1976 (43 U.S.C. 1713):

Principal Meridian Montana

T. 31 N., R. 2 W.,
Sec. 19, lots 9 and 17.
Containing 19.81 acres.

DATES COMMENTS AND PROTESTS: The effective date of this plan amendment decision and proposed sale notice is the publication date of this notice in the **Federal Register.**

Any person who participated in the West HiLine Resource Management Plan amendment process having an interest or adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment as stated in 43 CFR 1610.5-2. The protest shall be in writing and filed within 30 days of the effective date of this notice. Send protests to the: Director (760), Bureau of Land Management, 1849 "C" Street NW., Washington, DC 20240.

The protest must contain:

1. The name, mailing address, telephone number and interest of the person filing the protest.
2. A statement of the issue or issues being protest.
3. A statement of the part of parts of the plan or amendment being protested.
4. A copy of all documents addressing the issue or issues submitted during the planning process by the protesting party or an indication of the discussion date of the issue(s) for the record.
5. A concise statement explaining why the State Director's decision may be wrong.

Comments on the proposed sale may occur for 45 days from the date of this notice. Send comments to: Bureau of Land Management, Great Falls Resource Area Office, 812 14th Street North, Great Falls, Montana 59401.

The State Director will weigh adverse comments on the proposed sale and

may vacate or change this notice concerning the proposed sale. Without any objections this notice will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the plan amendment, proposed sale and environmental assessment are available from Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401, 406-727-0503.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from appropriation under the public land laws, including the mining laws but not from sale under section 203 of the FLPMA of 1976. The segregation will end upon issuance of the conveyance document or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance of public land is subject to:

1. A reservation of a right-of-way for ditches and canals under 43 U.S.C. 945.
2. A reservation of all federal minerals.

Dated: December 19, 1993.

B. Gene Miller,

Associate District Manager.

[FR Doc. 93-31300 Filed 12-22-93; 8:45 am]

BILLING CODE 4310-DN-M

[UT-050-04-4210-05; U-60666]

Realty Action; Richfield District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Direct Sale of Public Lands in Juab, County, Utah.

SUMMARY: The following described public lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value $2,800. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian, Utah

T. 12 S., R. 18 W.,

Sec. 12, E½NW¼SW¼, NE¼SW¼SW¼, NE¼SE¼SW¼SW¼, SW¼,SW¼NW¼SE¼.

Contains 35 acres in Juab County.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered for direct sale to George A. Douglass of Callao, Utah. It has been determined that the subject parcel is not prospectively valuable for oil and gas; that there are no other known mineral values covered under the mineral leasing laws; that fifteen acres of the land is encumbered by a ten-year oil and gas lease (UTU-68512). All minerals in the lands shall be reserved to the United States, with the right to prospect for, mine and remove the same in accordance with Public Law 94-579, Federal Land Policy and Management Act of 1976 section 208 (43 U.S.C. 1718) and such regulations as the Secretary of the Interior may prescribe.

The patent, when issued, will be subject to the following reservations to the United States and will be subject to any existing right-of-way.

1. A right-of-way reservation to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 stat. 391; 43 U.S.C. 945 (1970))

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the same in accordance with Public Law 94-579, Federal Land Policy and Management Act of 1976 section 208 (43 U.S.C. 1718) and such regulations as the Secretary of the Interior may prescribe.

3. The patent will be subject to the following valid existing rights of record: Federal oil and gas lease UTU-68512, issued to Hunt Oil Company of Dallas, Texas, on December 6, 1991.

Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the House Range Resource Area, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, House Range Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: December 14, 1993.

Jerry W. Goodman,

District Manager.

[FR Doc. 93-31301 Filed 12-22-93; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-940-04-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on January 18, 1994.

New Mexico Principal Meridian, New Mexico

T. 32 S., R. 21 W., Accepted November 29, 1993, for Group 910 NM.

T. 17 N., R. 9 E., Accepted December 2, 1993, for Group 826 NM.

Indian Meridian, Oklahoma

T. 29 N., R. 24 E., Accepted December 2, 1993, for Group 69 OK.

Supplementals

T. 11 S., R. 9 W., Accepted November 24, 1993.

T. 11 S., R. 8 W., Accepted November 24, 1993.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: December 10, 1993.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 93-31302 Filed 12-22-93; 8:45 am]

BILLING CODE 4310-FB-M

[WY-980-4340-04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 54 N., R. 70 W., accepted December 10, 1993.

T. 55 N., R. 70 W., accepted December 10, 1993.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and/or appeal(s). A plat will not be officially filed until after disposition of protest(s) and/or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 10, 1993.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 93-31303 Filed 12-22-93; 8:45 am]

BILLING CODE 4310-22-M

[AZ-930-4210-06; AR-09391 and AR-09391-C]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comment, 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, Public Land Order 3147 of July 30, 1963, as modified, and Public Land Order 4657 dated May 12, 1969, as modified, which withdrew National Forest System lands in the Kaibab National Forest for use of the Forest Service for roadside zones, recreation areas and a ranger station.

The Forest Service proposes to continue the withdrawals for these purposes for 20 years, and does not anticipate any significant changes in land use. The land will remain closed to operation of the mining laws only.

DATES: Comments on this notice should be received by March 23, 1994.

ADDRESSES: Comments should be addressed to the Arizona State Director, Bureau of Land Management (BLM), P.O. Box 16565, Phoenix, Arizona, 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16565, Phoenix, Arizona 85011, 602-650-0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Public Land Order 3147 of July 30, 1963 (AR-09391) and Public Land Order 4657 of May 12, 1969 (AR-09391-C) as modified, withdrawing the lands from the mining laws for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land within the Kaibab National Forest in the State of Arizona. Public Land Order 4427 dated May 29, 1968, revoked a portion of Public Land Order 3147. Public Land Order 4686 of September 15, 1969, made a correction to the acreage of Public Land Order 4657.

Gila and Salt River Meridian

U.S. Highway 66 Roadside Zone (AR-09391)

A strip of land 300 feet on each side of centerline of U.S. Highway 66 (I-40) as it passes through the following legal subdivisions:

T. 21 N., R. 1 E.,
Sec. 1, Lot 1, S½NE¼, SE¼NW¼, NW¼SE¼, NE¼SW¼, and W½SW¼;
Sec. 2, S½S½ and NE¼SE¼;
Sec. 3, S½S½;
Sec. 4, S½SE¼, N½NW¼SE¼SW¼ and E½SE¼SW¼;
Sec. 5, S½S½;
Sec. 6, Lot 7, S½SE¼ and SE¼SW¼;
Sec. 7, Lot 1 and NE¼NW¼;
Sec. 8, N½N½;
Sec. 9, NE¼NW¼ and NW¼NE¼;
Sec. 10, N½N½;
Sec. 11, NW¼NW¼.

T. 21 N., R. 2 E.,
Sec. 6, Lots 8 and 9.

T. 22 N., R. 2 E.,
Sec. 25, S½NW¼ and N½SW¼;
Sec. 26, S½NW¼, N½SE¼ and NW¼SW¼;
Sec. 27, S½NE¼, SE¼SE¼NW¼, NE¼SE¼ and NW¼SW¼;
Sec. 31, SE¼NE¼, NW¼SE¼, S½SE¼SW¼, and SE¼SW¼SW¼;
Sec. 32, E½NW¼.

T. 22 N., R. 3 E.,
Sec. 26, E½NW¼NW¼;
Sec. 27, W½NW¼ and W½NE¼NW¼;
Sec. 28, S½NE¼ and NE¼NE¼;
Sec. 29, S½NE¼ and N½SE¼;
Sec. 30, Lot 2, SE¼NE¼, E½SW¼NE¼, NE¼SE¼ and E½NW¼SE¼.

T. 22 N., R. 4 E.,
Sec. 25, S½NW¼, N½SW¼, Lots 3, 4, and W½SE¼;
Sec. 26, Lots 7 and 8.

T. 22 N., R. 5 E.,
Sec. 30, Lot 1, SE¼SW¼ and S½SE¼;
Sec. 31, all portions Lot 1, N½NE¼, NE¼NW¼ north of AT&SF Railway;
Sec. 32, SE¼NE¼, and all portions SW¼NE¼ and W½NW¼ north of AT&SF Railway;
Sec. 33, W½SW¼NW¼ and S½NE¼;
Sec. 34, W½W½NW¼SE¼ and that portion of NE¼SW¼ north of AT&SF Railway.

T. 21 N., R. 5 E.,
Sec. 1, Lots 3 and 4, and that portion of S½NW¼, and SE¼, north of AT&SF Railway.

T. 21 N., R. 1 W.,
Sec. 7, Lot 2, SE¼NW¼, SW¼NE¼, NE¼SW¼ and N½SE¼;
Sec. 8, N½S½;
Sec. 9, S½N½ and N½SW¼;
Sec. 10, S½N½;
Sec. 11, S½N½ and N½SE¼;
Sec. 12, NE¼NE¼, W½NE¼, E½NW¼, SW¼NW¼ and NW¼SW¼.

T. 21 N., R. 2 W.,
Sec. 12, NW¼NE¼ and NW¼.

The area described contains approximately 860 acres.

Bill Williams Mountain Road Roadside Zone (AR-09391)

A strip of land 300 feet on each side of centerline as it passes through the following legal subdivisions:

T. 21 N., R. 2 E.,
Sec. 16, W½SW¼ and SE¼SW¼;
Sec. 17, S½, S½NW¼ and SW¼NE¼;
Sec. 20, E½NE¼;
Sec. 21, N½;
Sec. 22, NW¼.

The areas described contains 404 acres.

Bill Williams Winter Sports and Recreation Area (AR–09391)

T. 21 N., R. 2 E.,
Sec. 3, SE¼SW¼;
Sec. 8, NE¼, N½SE¼;
Sec. 9, N½, N½S½;
Sec. 10, NE¼NW¼.

The areas described contain 800 acres.

Moqui Ranger Station (AR–09391)

T. 30 N., R. 4 E.,
Sec. 13, SE¼SW¼NE¼NE¼, SW¼SE¼NE¼NE¼, NE¼NW¼SE¼NE¼, NW¼NE¼SE¼NE¼.

The areas described contain 10 acres.

White Horse Lake Recreation Area (AR–09391)

T. 20 N., R. 4 E.,
Sec. 17, SW¼NW¼, NW¼SW¼;
Sec. 18, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼.

The areas described contain 560.23 acres.

U.S. Highway 66 Roadside Zone (AR–09391–C)

A strip of land 300 feet on each side of the centerline of U.S. Highway 66 (I–40) as it passes through the following legal subdivisions:

T. 22 N., R. 2 E.,
Sec. 32 NW¼NW¼ and N½SW¼NW¼.
T. 22 N., R. 3 E.,
Sec. 22, SE¼SE¼SE¼;
Sec. 25, S½SW¼NE¼, N½SE¼NW¼, NE¼NW¼SE¼ and E½NE¼SE¼.
T. 22 N., R. 4 E.,
Sec. 26, Lot 9;
Sec. 29, S½SW¼;
Sec. 30, Lot 3, SE¼SE¼, NE¼SW¼SE¼ and NE¼SE¼;
Sec. 32, N½NE¼ and N¼NE¼NW¼;
Sec. 33, Lots 1 and 2;
Sec. 34, N½NW¼.
T. 2 N., R. 5 E.,
Sec. 33, SE¼NW¼NE¼ and E½SW¼NW¼NE¼.
T. 21 N., R. 1 W.,
Sec. 7, Lot 3;
Sec. 10, N½SW¼.

The area described contains approximately 301.80 acres.

The areas described in this publication aggregate 2,936.03 acres. The purpose of these withdrawals is to protect Forest Service roadside zones, recreation areas and ranger station from prospecting and possible disturbances caused by mining.

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 final determination will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93–31299 Filed 12–22–93; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Established 1993 Aggregate Production Quotas for Schedule I Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of established 1993 aggregate production quotas.

SUMMARY: This notice establishes 1993 aggregate production quotas for three controlled substances in Schedule I of the Controlled Substances Act (CSA).

DATES: This order is effective December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On September 13, 1993, a notice of the proposed 1993 aggregate production quotas for certain Schedule I controlled substances was published in the **Federal Register** (58 FR 47918). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before October 13, 1993. No comments or objections were received.

This notice is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby establishes the 1993 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	Established 1993 aggregate production quota (grams)
Aminorex	2
4-Methoxyamphetamine	10
3-Methylfentanyl	10

Dated: December 16, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93–31325 Filed 12–22–93; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1630–93; AG Order No. 1820–93]

RIN 1115–AC83

Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Sudanese Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice provides for the registration and fingerprinting of certain nonimmigrants bearing Irqai or Sudanese travel documents who apply for admission to the United States. This notice is published in response to increased concern for national security resulting from terrorist attacks and uncovered plots directed by nationals of Iraq and Sudan. This procedure is necessary to assist in protecting national security.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Andrea P. Sickler, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone number: (202) 514–3275.

SUPPLEMENTARY INFORMATION: On January 16, 1991, a final regulation was published in the **Federal Register** at 56 FR 1566 requiring the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents. The requirement was promulgated in response to the United States condemnation of Iraq's invasion of Kuwait, United States sanctions against Iraq, and the theft of thousands of Kuwaiti passports during the occupation of Kuwait by Iraq, all of which heightened the potential for domestic anti-United States terrorist activities.

As set forth in the interim rule (INS No. 1606–93) published elsewhere in this issue of the **Federal Register**, the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents has been removed and a new paragraph (f) has been added in 8 CFR 264.1 This new paragraph provides that the Attorney General may require, by public notice in the **Federal Register**, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, as pursuant to section 263(a)(5) of the Immigration and Nationality Act.

Notice of Requirement for Registration and Fingerprinting of Certain Iraqi and Sundanese Nonimmigrants

Recent terrorist activities perpetrated on United States soil and the discovery of terrorist plots make it necessary for the United States to register and fingerprint certain nonimmigrants from Iraq and the Sudan upon their application for admission to the United States. Therefore, all nonimmigrants bearing Iraqi or Sudanese travel documents who apply for admission to the United States, except those applying for admission under section 101(a)(15)(A) or 101(a)(15)(G) of the Immigration and Nationality Act, shall be registered on Form I–94 (Arrival/Departure Record), photographed, and fingerprinted on Form FD–258 (Fingerprint Chart) by the Immigration and Naturalization Service at the Port-of-Entry where the aliens apply for admission to the United States.

Dated: December 15, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–31279 Filed 12–22–93; 8:45 am]

BILLING CODE 4410:10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal State Unemployment Compensation Program; State Employment Services Program; Acquisition, Use, and Disposition of Real Property by States

AGENCY: Employment and Training Administration, Labor.

ACTION: Final General Administration letter.

SUMMARY: This notice sets forth the final Department of Labor (DOL or the Department) General Administration Letter (GAL) No. 5–94 containing policy guidance and interpretation of its requirements for administering real property acquired by States with Federal grant funds awarded for the administration of State Employment Security Agency (SESA) programs. This GAL is published after a review of comments on a proposed GAL on this subject, published in the **Federal Register** on November 17, 1992.

EFFECTIVE DATE: The General Administration Letter, published below, becomes effective on January 24, 1994.

FOR FURTHER INFORMATION CONTACT: Erica Cantor, Financial Management Specialist, Division of Fiscal Policy, Office of the Comptroller, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–5317, Washington, DC 20210. Telephone number (202) 219–5762 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

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I. Purpose of the General Administration Letter

The purpose of the following GAL is to provide binding guidance and direction to States on real property acquisition, use, and disposition requirements when using UI and ES granted funds to acquire or improve real property. In the GAL, the Department presents its interpretation of the cost principles in OMB Circular No. A–87 and the Department's adoption of OMB Circular No. A–102 through the codification of those requirements at 29 CFR part 97.

II. Background of the General Administration Letter

On November 17, 1992, the Department of Labor published a proposed GAL (57 FR 54257) for public comments on this topic. The Department received comments from State Employment Security Agencies, DOL Regional Offices, and other offices within DOL.

In its proposed GAL, the Department clarified the Federal requirements to account for and control DOL equity in real property financed or improved with Federal grant funds. Specifically, these are funds provided to States to administer the UI and ES programs, under Title III of the Social Security Act and the Wagner-Peyser Act, respectively. (UI and ES are collectively known as the employment security program.)

Typically, States purchase or construct real property used to administer these programs with funds provided by other than Federal grant sources. The States charge the appropriate UI or ES grant, over a period of time, to amortize or repay the original funding source. The amortization or repayment of the original acquisition costs, in this manner, creates a Federal equity in the properties.

One source of original financing are funds transferred to the States' accounts in the Unemployment Trust Fund

pursuant to section 903 of the Social Security Act (Reed Act). Acquisition of real property using these funds must be authorized by a State appropriation that meets specified conditions found at section 903(c)(2) of the Social Security Act.

Using various amortization arrangements, States, as grantees for the UI and ES programs, acquired real property costing hundreds of millions of dollars. There is Federal equity in most of these properties due to the use of Federal grant funds to amortize their acquisition costs. OMB Circular No. A-87 (46 FR 9548-9554, Jan. 28, 1981) and DOL's regulation at 29 CFR 97.31 establish the basis for creating Federal equity and require a grantee to compensate the grantor agency for the agency's equity share when real property is no longer needed for its originally authorized purpose.

A review in 1989, by DOL's Office of Inspector General (OIG), of DOL's equity in SESA real property (Audit Report No. 04-90-002-03-325) revealed weaknesses in several States' real property management and in DOL's oversight of real property with Federal equity. The OIG also found that the guidance and direction furnished SESAs on real property was confusing and at times inconsistent with OMB guidelines. To remedy this, the Employment and Training Administration (ETA) took a number of actions, including issuing the following General Administration Letter (GAL) to provide guidance and direction to SESAs concerning real property acquisition, use, and disposition requirements.

III. General Comment Summary

DOL received 36 comments from 13 respondents clustered around 17 issues. Respondents included State agencies, DOL Regional Offices and DOL's OIG. The Department considered all comments in finalizing this GAL. An analysis, by issue, and a description of changes or language clarification to the GAL follow in the next section.

IV. Analysis of Comments and Resulting Changes to the General Administration Letter

A. General Authority to Create Federal Equity in Real Property Acquired With UI and ES Grant Funds

Federal equity is created to the extent Federal grant funds are used to acquire or improve real property (See Section 6 of the GAL). The requirements for real property acquisition procedures, when using grant funds, are at 29 CFR 97.36(a). Acquisitions are also subject to the allowable costs requirements of OMB Circular No. A-87, Attachment B, Para. C.3. DOL's requirements for the use and disposition of real property acquired, amortized or improved with grant funds are at 29 CFR 97.31.

Comment: One respondent stated that properties acquired under the Employment Security Manual which does not authorize DOL to obtain an equity in real property are not affected by this GAL.

Response: The Employment Security Manual and other DOL instructions that were applicable to the administration of SESA programs prior to 1983 established guidelines on the acquisition and use of real property but did not address disposition. Specific case histories reflected a clear Federal interest in such properties and assurances that once acquired, subsequent charges for space rental costs for program administration were not to occur. It is DOL's position that the Federal equity in such property under OMB Circular A-87 and 29 CFR 97.31 are consistent with past treatment of this subject.

DOL acquires equity when Federal grant funds are used to acquire or improve real property. OMB Circular A-87, Attachment B, Para. C.3 establishes a grantor agency's right to be reimbursed the proportional share of its contribution in the acquisition of real property when it is no longer needed for the originally authorized purpose. DOL regulations at 29 CFR 97.31(c) provide disposition instructions as a mechanism to properly dispose of the property and distribute the equities. The Department receives equity when UI or ES grant funds are used to acquire or improve real property. Accordingly, no change is made in the GAL based upon this comment.

B. Accrual of Federal Equity When Using Rental Rate or Equivalent Systems

There are some conditions under which charging costs related to real property under rental rate or equivalent systems may not create Federal equity (See Section 7.b.(3) of the GAL).

Comment: One respondent stated that Federal equity must be recognized when Federal grant funds are charged for principal and interest costs. The respondent added that the GAL, as drafted, would result in an inability to recognize equity in properties acquired with Federal funds through installment purchases. The respondent also indicated that the GAL, as drafted, will increase the cost of real property and UI and ES office space.

Response: It has been DOL's policy to treat charges under rental rate or equivalent systems, as described in OMB Circular A-87, Attachment B, Para. C.2.a, in the same way it treats rental charges under commercial leases under which no Federal equity accrues. Under Section 7.b.(3) of the GAL, there may be certain conditions under which Federal equity is not created as the grant is charged. Specifically, no equity would accrue when a grant is charged for depreciation/use allowance and not for debt amortization. DOL accrues equity in real property to the extent that amortization of acquisition costs, including principal and interest, are charged as part of a rental rate or equivalent system and agrees with the respondent's comment. DOL must manage Federal grant funds consistent with the cost principles contained in OMB Circular No. A-87 and its own regulations found at 29 CFR part 97. Amortization of acquisition costs, however, accomplished, constitutes acquisition. Thus, Federal equity accrues to the extent that UI and ES grant funds are used for the amortization of acquisition costs through a rental rate or equivalent system. Therefore, Sections 7.b. (3) and (6) of the GAL were modified to more clearly specify when DOL accrues as a result of rental rate or equivalent systems.

C. Retroactive Authority

Real property involving UI or ES granted funds must be treated in accordance with 29 CFR part 97. Grantees should examine their use of such property and ensure that their management is consistent with the requirements at 97.31 (See Section 8.b. of the GAL).

Comments: Four respondents disagreed with the GAL's position on this issue. They stated that this would result in excessive burden and hardship on grantees. One respondent added that it would be infeasible, if not impossible to enforce. Another stated that compliance with 29 CFR part 97 could require movement of staff to bring equity and occupancy into balance.

Response: DOL does not seek to cause excessive burden or hardship on its grantees. However, the only significant difference in the way SESA real property is treated in the regulations at 41 CFR 29-70.215, effective in 1979, and 29 CFR part 97, which was promulgated in 1988, relates to non-employment security use of real property acquired with employment security grant funds. Additionally, prior to 1979, Part 4 of the ES Manual also required treatment for real property involving Federal grant funds similar to the provisions of 41 CFR 29-70.215.

Provisions making 29 CFR part 97 applicable to real property acquired before October 1, 1988 were inserted in the UI Program and Budget Plans (PBP) for 1990, 1991 and 1992 (ETA Handbook 336, 6th, 7th and 8th editions) and the ES Reimbursable Grant Agreement. Additionally, in 1988, OMB directed Federal agencies to administer its Federal grants according to the 'common rule' codified for the Department of Labor at 29 CFR part 97, including the regulation that provides for the supersession of previous regulations (29 CFR 97.5). Therefore, 29 CFR part 97 is applicable to real property acquired with ES or UI grant funds under the Department's regulations at 41 CFR 29–70.215–2 (b) and (c) (44 FR 42920–42955, July 20, 1979), superseded by 29 CFR part 97 as of October 1, 1988. DOL has been advising grantees for more than two years that real property must be managed according to the regulations at 29 CFR 97.31. There may be instances where individual circumstances will require consideration and determination on a case by case basis. DOL will be as reasonable and as equitable as possible when applying this provision. The OMB Circulars and DOL regulations are not new and should not provide any surprises. The Department does not believe a change to the GAL is appropriate. Accordingly, no change has been made in the GAL as a result of these comments.

D. Capital Improvements

A grantee must request approval from its grantor agency to use UI or ES granted funds for capital improvements to real property (See Section 7.b.(8) of the GAL). Allowable charges to the grant for space costs, including capital improvements, are limited to the total cost of space limitation expressed in OMB Circular No. A–87, Attachment B, Para. C.2.

Comments: Seven respondents submitted comments on this provision. The comments clustered around three issues. The first was a request for uniform guidelines to determine what constitutes a capital improvement. The second was a suggestion by two respondents that renovations relating to health, safety, Americans with Disabilities Act compliance, etc. be excluded from the limitation under OMB Circular No. A–87. The third, also related to the total cost of space limitations, was a request that renovation costs be included in the total cost of space over the life of the improvement rather than in the year expended.

Response: In response to the first issue, the State should use its own definition of capital improvements in treating expenditures and in determining whether prior approval is required providing it is consistent with 29 CFR 97.20. Regarding the second issue, OMB Circular No. A–87 does not make provision for exceptions to the total cost of space limitation and the Department finds no basis for excluding certain expenditures when applying the total cost of space limitation since the purpose of the improvement does not alter the accounting treatment a capital improvement receives. Therefore, the GAL includes all expenditures related to space costs in considering space cost limitations. Regarding the third issue, DOL believes it is appropriate and consistent with appropriation law to match the appropriation year to the expenditure for the same period of time. Therefore, DOL's interpretation of OMB Circular No. A–87 total cost of space limitation provision restricts the total allowable cost of space to comparable space and facilities in a privately-owned building in the same locality on an annual basis. If necessary, the Department will look again at its position and interpretations in response to future revisions to OMB Circulars. For now, DOL requirements remain as presented in the draft GAL. However, language at Section 7.b.(1) in the GAL was clarified to reflect the Department's requirement more clearly.

E. Appraisals

According to Section 9.c.(4) of the GAL, if a method other than sale is to be used to dispose of real property, DOL may require the use of appropriate procedures to establish its current fair market value.

Accordingly, DOL disposition instructions may require that the grantee obtain one or more independent appraisals of the property, regardless of the disposition option requested by the State or chosen by DOL. DOL may also require independent appraisal of the fair market value resulting from a contribution of property and may require that the grantee obtain DOL approval of the appraiser selected and/or the contract for the appraisal. DOL may also obtain its own appraisal of the property at its expense. Appraisal costs incurred by the grantee in connection with a disposition of property under 29 CFR 97.31(c) may be charged to the appropriate UI or ES grant as an allowable cost or may be paid from the proceeds generated by the disposition.

DOL reserves the right to require the grantee to obtain one or more independent appraisals to determine the fair market value at the time of and as a result of any capital improvement that materially increases the value or useful life of the property (whether paid by grant funds or otherwise) and that significantly alters the existing Federal (UI or ES) share. A significant alteration of the Federal share, for purposes of this GAL, is defined as any capital improvement where the cost of the improvement would either reduce the Federal share by at least 10% or estimated to affect the current Federal equity by $100,000 or more (See section 7.b.(8) in the GAL).

Comment: One respondent stated that 29 CFR part 97 requires appraisals only in connection with determining fair market value at the time of disposition or for determining the value of grantee or third party contributions. The respondent added that there is no basis in Federal regulation for requiring appraisals as a result of capital improvements. The respondent also added that the GAL should specifically state under what circumstances appraisals would be used to revise equity shares and that the GAL does not state that the cost of appraisals is chargeable against UI and ES programs.

Response: To use fair market value as the basis for establishing equity share and to adequately protect Federal equity in real property involving Federal grant funds, DOL and the grantee must be able to establish a value for an asset at the time additional capital contribution is made. DOL believes independent appraisals are an appropriate mechanism to establish fair market value at the time of additional financial contribution and in situations where property is being disposed of in a less than arm's length transaction. DOL, therefore, may require that the fair market value of property be determined, by independent appraisal, at the time of and as a result of an improvement or less than arm's length transaction to enable it to apply 29 CFR 97.31 and to recognize resulting changes in its Federal share. DOL establishes thresholds and circumstances in the GAL, at section 7.b.(8), under which it may exercise this right. Primarily, these would be less than arm's length transactions. Independent appraisals are an allowable cost with prior grantor approval under OMB Circular No. A–87, Attachment B, Para. C.7. Language in section 9.c.(4) of the GAL states that the cost of appraisals, with grantor approval, may be deducted from the proceeds of a disposition or charged to the grant as a current expense. No change has been made in the GAL as a result of this comment.

F. Land Versus Improvements/ Contributed Land

DOL applies the definition of real property at 29 CFR 97.3 to the properties discussed in the GAL and treats land and improvements as one asset. If real property includes a building constructed on contributed land, the fair market value of the land at the time of contribution will be considered a contribution toward the total cost of the real property, for purposes of determining the respective shares. This will be the treatment unless there is clear written evidence of agreement between DOL and a grantee that either the land or structure is not intended to be included in any settlement of equities when the property ceases to be used for applicable grant purposes. (See section 9.a. of the GAL.)

Comment: Four respondents commented on these issues. One respondent stated that it is unfair to include land, especially land contributed by States, when the property is disposed and equities are settled. The respondent "fails to see why DOL should benefit from the increased value of the land when DOL did not participate in the contribution." The respondent added that regulations should be changed to allow States the opportunity to appraise contributed land separately prior to disposition. Three respondents were primarily concerned that, in many cases, it would be virtually impossible to determine the fair market value of the land at the time of contribution. Two respondents expressed concern over the ability to sell a building on contributed land that is not for sale. Another respondent agreed with the GAL in valuing land at the time it was contributed but did not believe that it should be included in any settlement of equities.

Response: "Real property" is defined in 29 CFR 97.3 as "land, including land improvements, structures, and appurtenances thereto * * *" In the GAL, DOL applies this definition to SESA real property. The definition treats land and improvements as one asset, so at the time of disposition when determining respective equities, DOL also treats that as one asset. Therefore, unless properties are formally accepted as separate assets at the time of acquisition, through clear written evidence, DOL applies the definition at 29 CFR 97.3. If necessary, a retroactive appraisal may be performed to determine the fair market value of the land at the time of contribution. DOL believes its position, with regard to real property, conforms with the Circulars. If UI and/or ES grant funds are used to amortize the cost of constructing a building on contributed land, the fair market value of the land at the time of contribution will be counted as a contribution toward the property's total cost (land and building) when determining the respective equities in the property. No changes are made in the GAL as a result of these comments.

G. Unemployment Compensation (UI) vs. Employment Security (ES) Funding

The amount of UI and ES grant funds used in any fiscal year for the acquisition or cost amortization of real property shall be proportionate to the use of the property by the UI and ES programs, respectively. (See Sections 7.b.(2) and 8.a. of the GAL.)

Changes in the proportion of UI and/ or ES use must be reflected in the allocation of space charges. Where individuals work on more than one program, the related space charges shall be proportionally allocated to the benefitting programs.

Comments: Three respondents noted that both UI and ES programs are employment security programs and funding should not be differentiated. One respondent added that the source of funds under Title III and Wagner-Peyser is common to both UI and ES and should not be differentiated as to use after investment in real property.

Response: UI and ES programs are authorized and funded through different statutes and appropriations. They are separate grant programs and must be accounted for separately. Each program's benefit must be matched to each program's costs. The pro rata contribution to the acquisition cost of the property must be attributed to each grant. In addition, UI funding is based on the amount needed, by each State, for the proper and efficient administration of its UI program. If the State uses some of these UI funds for ES space, then the UI program is being short-changed, i.e. it's not getting enough funds for the proper and efficient administration of the program. Under the old 41 CFR 29–70.215–2(b) and (c), a State could use property paid for under one Federal grant for purposes of another Federal grant, if the property was no longer needed for the first grant. This option is not available under 29 CFR part 97. A grantee must account for each grant's program separately and may not commingle UI and ES grant resources. No change in DOL's position is made in the GAL as a result of these comments. However, a paragraph is added to Section 8.a. to clarify that, at the time of replacement, a State must declare how equity attributable to AS&T funds is to be apportioned between the two programs.

H. Reduction in Occupancy

Reed Act funds and UI and ES granted funds may be used for office space to the extent that the space is used for authorized program purposes (See Section 7.b.(2) of the GAL). Therefore, if a significant and permanent reduction occurs in UI utilization of space acquired with UI funds, the State must dispose of the excess space or replace it with property whose size is appropriate to the program's needs or take other appropriate corrective actions to bring DOL equity, attributable to UI grants, and UI occupancy into balance (See Section 9.c. of the GAL). The same is true for significant and permanent reductions in ES use of space acquired with ES funds.

A SESA must request disposition instructions when the UI funded program's share of the cost of real property significantly and permanently exceeds that program's share of the property's utilization (See Section 8.a of the GAL). Equity shares attributable to Reed Act or AS&T funds may be used for either UI or ES program purposes. Therefore, a State is not required to request disposition instructions if the reduction in UI (or ES) use is offset by a corresponding increase in ES (or UI) use and the shift in use involves space which was either acquired with Reed Act funds that have not been amortized with UI or ES funds or acquired before 1983 with AS&T funds.

Comments: Five respondents submitted comments in connection with this issue. One respondent does not want separate accounting for UI and ES space utilization because it would increase accounting operations. Three respondents stated that "significant and permanent reduction" is a term open to interpretation. There was a general belief, expressed by these respondents, that the ES and UI programs serve the same purpose and are funded by the employer community and therefore should not be considered different programs for the purpose of calculating space utilization. One respondent expressed concern that it would be forced to dispose and add space from year to year. Three respondents specifically stated that shifting ES and UI utilization should be allowed. One respondent requested a rent option be available to the SESA even when it appears that utilization will be significantly and permanently reduced.

Response: Again, DOL does not seek to cause excessive burden or hardship on its grantees. UI and ES programs are authorized and funded through different

statutes and appropriations. A significant and permanent reduction in UI or ES utilization of space constitutes a reduction in the need for the property for the originally authorized purpose and is subject to 29 CFR 97.31(c) disposition requirements to the extent of the reduction. A reduction in any one program's occupancy may constitute a disposition. Therefore, the space may be subject of 29 CFR 97.31(c) disposition instructions. However, DOL looks to long term adjustments or modifications, not stop gap measures and will continue to work with SESAs to develop long terms plans. Accordingly, no change is made in the GAL as a result of these comments.

I. Non-employment Security Use

Under 41 CFR 29–70.215–2(b) and the first paragraph of 41 CFR 29–70.215–2(c), effective in 1979, and superseded by 29 CFR part 97 in 1988, DOL could permit property with ES and/or UI equities to be used for non-employment security purposes without compensation. This option is not available under 29 CFR part 97 and is reflected in the GAL at Section 8.b. Therefore, all real property acquired with UI and/or ES grant funds, including property acquired before the effective date of 29 CFR part 97, must be used and disposed of in accordance with 29 CFR 97.31(b) and (c).

Comments: Five respondents submitted comments on this provision. The overriding concern among them was the effect of this provision on agreements SESAs entered into with other agencies to provide compensation-free space under 41 CFR part 29–70. Respondents recommended that either the SESAs be allowed to continue to provide compensation free space or that rent be charged to those agencies and taken in as program income. One respondent further stated that this ability is consistent with the concept of integrated programs and services.

Response: Real property acquired or amortized with UI or ES grant funds must be managed consistent with 29 CFR part 97 which does not provide for non-program use. Therefore, SESAs may not use real property for any purpose not originally authorized, on a long term basis, without compensation. Federal grants may pay actual costs, such as operation and maintenance costs and repairs, for property already acquired with Federal funds if used for the purpose for which the grant was made. Accordingly, no change is made in the GAL as a result of these comments.

J. Administration, Staff & Technical (AS&T) Identity

The equity attributed to AS&T funds granted prior to 1983 may be used interchangeably as UI and ES utilization changes. However, at the time of replacement, a grantee must identify Federal equity attributed to those combined funds as either UI or ES and thereafter account for it as such. (See sections 8.a and 9.d.(2)(b)).

Comment: One respondent commented on this provision. The respondent stated that since SESA's had bottom line authority prior to 1983, funding was interchanged with the result that it is now virtually impossible to split out funding sources especially in cases where financial records no longer exist. Since the loss of combined grant identity results in more restrictive rules regarding space utilization, both grants should be considered employment security programs and funding for real property use should not be separated.

Response: The GAL, as drafted, agrees with this commentor. Utilization between the UI and ES programs may be freely interchanged to the extent that AS&T funds were used to acquire the property (See sections 8.a and 9.d.(2)(b) in the GAL). If the proceeds from a disposition of such property are used to obtain replacement property, the GAL requires that the State determine how equity resulting from combined AS&T funds should be apportioned between the two programs and then shall, consistent with DOL disposition instructions, transfer the adjusted UI and ES equity shares in the vacated property to the replacement property. Accordingly, no change is made to the GAL.

K. Use of Proceeds From Disposition of Real Property Attributable to Reed Act

There is no DOL equity in real property when States do not use UI or ES grant funds to amortize real property originally acquired with Reed Act or other non-Federal funds. It may be sold or otherwise disposed of without obtaining DOL approval or DOL disposition instructions. SESAs must still meet all Reed Act requirements including the immediate deposit into the State's account in the Unemployment Trust Fund of cash proceeds attributable to Reed Act equity from the sale or disposition of property. Treatment of Reed Act equity is subject to the restrictions discussed in section 9.e.(1) of the GAL.

Comments: Three respondents commented on this provision. Two respondents stated that as long as the replacement property is consistent with the intent of the original purpose, the transfer of all Reed Act equity should be allowed on trade-ins.

Response: DOL agrees with the respondents to the extent that the replacement transaction is consistent with the original appropriation. Section 903(c)(2) of the Social Security Act (Reed Act) permits a State's Reed Act fund to be used for Employment Security administrative expenditures pursuant to a specific appropriation of the State's legislature. States may transfer Reed Act equity from vacated property to replacement property without a new State appropriation if the replacement property conforms in all respects to the original Reed Act appropriation. If there is to be no replacement made, or the replacement is inconsistent with the original appropriation, then all proceeds must be immediately deposited into the UTF. No changes are necessary to the GAL because the GAL, at Section 9.d.(1), states that proceeds from a disposition of Reed Act property may be used towards the purchase of replacement property as long as the replacement conforms, in all respects, to the original authorizing appropriation.

L. Deposit of Proceeds

The total UI and ES shares (DOL equity) of the cash proceeds from the sale or other disposition of real property must be remitted to DOL or used to acquire replacement real property (See 29 CFR 97.31(c)). A check payable to the United States in the amount of the DOL portion of the cash proceeds must be sent to the Regional Office upon disposition. (See section 9.e.(2) of the GAL).

Comments: Two respondents stated that proceeds from the disposition of SESA real property should be deposited into the Employment Security Administration Account for administration of employment security programs.

Response: This issue remains under review. Until it is fully resolved, proceeds will continue to be deposited into the General Treasury as miscellaneous receipts. Accordingly, no change is made in the GAL based upon this comment.

M. Retention of Proceeds

The proceeds from the disposition of real property must be immediately sent to the grantee's Regional Office or used to acquire replacement property. However, DOL permits retention of the proceeds in an interest-bearing escrow or other interest-bearing restricted account until the end of the Federal

fiscal year in which disposition of the subject property occurred to allow the State to complete actions necessary to secure replacement property (See sections 9.d.(2)(a) and (e)). Such interest-bearing accounts must yield interest equal to or greater than the rate required by the U.S. Treasury regulations implementing the Cash Management Improvement Act (CMIA). Interest earned on the proceeds must be used in the acquisition of the replacement property and included as DOL equity.

Comment: One respondent commented on this issue. The respondent suggested that it should be routine practice to allow for a disposition-acquisition plan that provides the period of time that will be necessary to retain proceeds. The plan should preclude the necessity to ask for extensions as transactions occur. The respondent proposed that ETA allow reinvestment of proceeds to be deposited in a State building fund.

Response: DOL permits retention of proceeds until the end of the Federal fiscal year in which disposition of the property occurred to allow the State to complete actions necessary to secure replacement property. The GAL, at section 9.d.(2)(a), provides for a disposition-acquisition plan through which a SESA may secure the time necessary to replace its facility. A SESA may not always be able to use these proceeds immediately. However, it may not retain indefinitely proceeds pending their use to replace the disposed property. As a rule, DOL limits the retention period to the Federal fiscal year in which disposition occurs unless its disposition instructions include approval of a grantee-proposed real property replacement plan with a longer retention period. It has been DOL's practice to work with its grantees in developing disposition-acquisition plans. Again, the Department's emphasis is on long term planning, not stop gap measures. Accordingly, no change is made in the GAL as a result of this comment.

N. Complexity

Comment: One respondent stated that the GAL is unnecessarily complex.

Response: DOL does not intend to make administration of SESA real property any more complex than necessary and clarified and simplified the GAL wherever possible to respond to public comments. It is required as part of a corrective action plan to bring under control this complicated area. To do so properly requires specific and sometimes detailed guidance. Changes to the GAL are noted in sections A–M of this preamble.

O. Restrictive and narrow

Comments: Two respondents stated that the GAL, as drafted, is restrictive and narrow and will make it difficult for SESAs to acquire, retain or replace real property. More flexibility is needed to enable SESAs to exercise good business judgment.

Response: The GAL reflects OMB Circular No. A–87 and DOL administrative regulations at 29 CFR part 97 that govern the acquisition, use, and disposition of real property acquired or amortized with SESA grant funds. Most of the requirements in the circulars and regulations have been in effect for many years and present very little that is new. DOL does not believe its position is more restrictive nor is it DOL's intent to interfere with sound business judgment. Rather, the Department is responding to requests to better communicate much needed guidance on this subject.

P. Wait for Transition of Administration

Comment: One respondent requested that ETA not issue the GAL in final until the transfer of administration is complete.

Response: Final guidance has been too long in coming. State grantees and Regional staff are in need of this guidance and the Department is proceeding as planned.

V. General Administration Letter

The final GAL contains other technical corrections to the proposed GAL that do not alter its substance.

The final GAL is printed below.

Signed at Washington, DC, on December 15, 1993.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

Directive: General Administration Letter No. 5–94

To: All State Employment Security Agencies
From: Barbara Ann Farmer, Administrator for Regional Management
Subject: Acquisition, Use, and Disposition of SESA Real Property

1. *Purpose.* To provide policy guidance, interpretations of existing regulations and other requirements applicable to the acquisition, use, and disposition of real property acquired or amortized with funds provided under section 903 of the Social Security Act (Reed Act), title III of the Social Security Act, or the Wagner-Peyser Act.

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Appendix
Example 1—Allocation of equity in sale proceeds.
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Example 4—Calculation of Federal share in the original acquisition cost plus improvements of real property currently in program use.

3. *References.* Sections 302(a) and 903(c)(2) (Reed Act) of the Social Security Act, 42 U.S.C. 502(a) and 1103(c)(2); 29 U.S.C. 49 *et seq;* section 303(a)(4), 42 U.S.C. 503(a)(4); section 3304(a)(3), 26 U.S.C. 3304(a)(3); 20 CFR part 652; 29 CFR part 97; 41 CFR part 29–70; sections 3301–3040, Part IV, ES Manual; OMB Circular No. A–87 (46 FR 9548–9554, Jan. 28, 1981); Unemployment Insurance (UI) Program and Budget Plan (PBP) for FYs 1989, 1990, 1991, and 1992; UIPL 12–91 (56 FR 29719–29723) and FM 108–86.

4. *Definitions.*

a. *UI and ES Grant Funds.* Grant funds provided to States under title III of the Social Security Act for administration of State unemployment insurance (UI) programs and the Wagner-Peyser Act for administration of State employment service (ES) programs.

Note: The ES Manual refers to UI and ES grant funds as granted funds. The UI and ES programs are collectively known as the employment security program.

b. *Administrative, Staff, and Technical (AS&T) funds.* Funds provided in a single award prior to 1983 under the authority of both acts for the use of both the UI and ES programs which cannot be specifically identified with either program, without disproportionate effort, are hereinafter referred to as AS&T funds.

c. *Contributions/Participation.* Contributions to or participation in the acquisition cost of real property by a grant, Reed Act funds, or other source is the amount provided by each source to acquire or make capital improvements to real property. Each such contribution or participation is deemed to be a share (see 29 CFR 97.3 for definition) and is expressed as a percentage of the acquisition cost of the property and its improvements.

d. *Adjusted Contributions.* Contributions as defined in Section 4.c. above plus (or minus) amounts provided by (or paid to) other sources of funds, by amortization or otherwise, to pay off or replace such contributions (see Section 7.b.(5)).

e. *Equity or Share.* The terms equity, DOL equity, Reed Act equity, share, DOL share and Reed Act share are used with the following meanings throughout this General Administration Letter (GAL):

(i) Equity means the net value of an interest in property (value after all obligations are paid off);

(ii) Share means the contribution to the acquisition cost attributed to each source of funds, expressed as a percentage;

(iii) DOL equity means the right of the U.S. Department of Labor (DOL), as the grantor agency, to a share of the fair market value of State-owned real property when it ceases to be used for UI and/or ES purposes. The value of DOL's equity interest is based on the adjusted contributions of UI and ES grant funds, including AS&T funds, to the acquisition cost of the property and any capital improvements that materially increase the value or useful life of real property (see Section 7.b.(5)). This definition is consistent with the meaning of equity in OMB Circular No. A–87 and is the basis for the Federal compensation formula in 29 CFR 97.31(c). In certain situations involving capital improvements, the DOL equity and share may be adjusted based on the fair market value of the property at the time the capital improvement is made (see Section 7.b.(8)); and

(iv) Reed Act equity means the equity attributable to the State's unemployment fund's share of the fair market value of real property when it is no longer to be used for employment security purposes. Such equity is based on the adjusted contributions of Reed Act funds (see Section 7.b.(5)) to the acquisition cost of the property and any capital improvements.

f. *Proceeds.* The net dollar value received or due from the disposition of real property, as provided in 29 CFR 97.3(c) (1) and (2). Since 29 CFR 97.31(c) uses proceeds to refer to both cash and non-cash proceeds, proceeds, for purposes of this GAL, means the net dollar value of all cash and non-cash proceeds. Cash proceeds, for purposes of this GAL, means the net proceeds expressed in dollars, as provided in 29 CFR 97.31(c)(2).

5. *Background.* In 1986, the Employment and Training Administration (ETA) issued FM 108–86 to provide guidance to ETA Regional Offices on the acquisition, use, and disposition of State Employment Security Agency (SESA) real property, with emphasis on the use and amortization of Reed Act funds.[1] The Regional Offices were asked to furnish information copies of the FM to the SESAs. FM 108–86 did not establish new requirements; but rather, restated existing requirements contained in statutes, the ES Manual, 41 CFR part 29–70 and OMB Circular A–87, as well as agency policies that evolved over time.

At the time the FM was issued, ETA prior approval was required for the use of UI grant funds to acquire real property, but not for the use of Wagner-Peyser (ES) funds for this purpose. Prior approval authority with regard to ES funds was delegated to the States in 20 CFR 652.8 (48 FR 50665, Nov. 2, 1983). ETA delegated its prior approval authority for the use of UI grant funds to acquire equipment and other capital expenditures to the State Administrators in the FY 1989 Program and Budget Plan (PBP) (ET Handbook 336, 5th Edition, Par. VI.C.2.d.). The same delegation appeared in the FY 1990 PBP (ET Handbook 336, 6th Edition, Par. VI.C.2.d.). The delegation in the FY 1991 and FY 1992 PBPs (ET Handbook 336, 7th and 8th Editions, Par. VI.C.2.d.) covers only equipment acquisitions.

In 1988, DOL and 23 other Federal agencies adopted the "common rule" (53 FR 8034–8103) containing uniform administrative requirements for State, local, and Indian tribal government grantees. For DOL grant programs, the "common rule" is codified at 29 CFR part 97. These regulations superseded 41 CFR part 29–70. SESAs agreed to apply 29 CFR part 97 to real property acquired prior to the effective date of part 97 through assurances in the FY 1989 ES Reimbursable Grant agreement and the FY 1990 and FY 1991 UI PBPs. The adoption of 29 CFR part 97 and the PBP changes rendered FM 108–86 and previous delegations of prior approval obsolete.

In 1989, DOL's Office of Inspector General (OIG) reviewed DOL equity in SESA real property. OIG found instances of inadequate State property records and instances where States had reduced or terminated employment security use of real property without compensating DOL for its equity where the property had been acquired or amortized with UI and/or ES grant funds, or the State's unemployment fund for the Reed Act equity where the property had an unamortized balance of Reed Act funds.

This GAL updates previous ETA policies and guidance on the subject of real property acquired by States using UI and ES grant funds. Since the use of Reed Act funds to acquire real property is an integral part of the subject, Reed Act requirements are also dealt with at length. An appendix at the end of the GAL provides four illustrations showing how to calculate DOL, Reed Act, and other equity in real property being disposed of or replaced by other property, or where there is a significant reduction in UI (or ES) use.

6. *Applicable Requirements.* The acquisition, use, disposition, and amortization of real property acquired with UI and/or ES grant funds are subject to:

(i) DOL regulations at 29 CFR part 97, which contain administrative requirements applicable to grants to State governments;

(ii) OMB Circular No. A–87, which contains uniform Federal allowable cost standards applicable to grants to State governments; and

(iii) This GAL, which contains interpretations of these requirements.

The preceding requirements provide that if real property is acquired or amortized with UI and/or ES grant funds, the State must comply with the real property and procurement regulations at 29 CFR 97.31 and 97.36, respectively.

The acquisition, use, and amortization of real property acquired with Reed Act funds are subject to section 903(c)(2) of the Social Security Act and sections 3001–3040, Part IV, ES Manual and not subject to 29 CFR part 97. Dispositions of real property acquired with Reed Act funds shall be conducted in accordance with this GAL.

Where both Reed Act funds have been used to acquire real property and UI and/or ES grant funds have been used to acquire or amortize real property, the appropriate set of requirements are applicable to the adjusted contributions of each fund source.

Regardless of the sources of funds used to acquire or improve real property, States are expected to exercise good business judgment in discharging their procurement and property management responsibilities. When real property is no longer suitable for employment security purposes, it should be sold, refurbished or exchanged for space of suitable size and quality.

7. *Acquisition of SESA Real Property.*

a. *Reed Act Funds.*

(1) *General.* Reed Act funds are funds transferred to the accounts of the States in

[1] See Section 7.a.(1) for additional information on the use of Reed Act funds.

the Unemployment Trust Fund (UTF) pursuant to section 903 of the Social Security Act. Under section 903(c)(2) of the Act, a State legislature may appropriate Reed Act funds for employment security administration expenses including acquiring real property for employment security purposes (See Section 3020, Pt. IV, ES Manual). When used in conjunction with the amortization arrangements described in Section 7.b.(5) below, Reed Act funds act as revolving funds that may be used to acquire SESA real property.

(2) *Appropriation.* Reed Act funds used to acquire real property must be appropriated by the State's legislature. The State appropriation act must satisfy the requirements of section 903(c)(2) of the Social Security Act, Sections 3001–3040, Part IV, ES Manual, and UIPL 12–91, which supersedes parts of the ES Manual and contains current recommended draft language for Reed Act appropriations. The designation "Reed Act funds" refers to funds transferred to the State pursuant to section 903(a) including previously amortized Reed Act funds, and amounts restored to Reed Act status, pursuant to paragraph (c)(3) of section 903. Other funds in a State's UTF account, are not available for appropriation. No DOL approval is needed for the appropriation and use of Reed Act funds. Also see Sections 9.d.(1) (replacement of Reed Act real property) and 9.e.(1).

b. *UI and ES Grant Funds.*

(1) *Total Spending Limitation.* Under the space costs provision of OMB Circular No. A–87 (Attachment B, Para. C.2.), the annual amount that may be charged to UI or ES grant funds for occupying a publicly- or privately-owned building may not exceed the annual rental cost of comparable space and facilities in a privately-owned building in the same locality. This limitation applies to any one or combination of the following:

(a) *Maintenance and operation costs.* Costs of maintenance and operations not otherwise included in rental or other charges for space and allowable under OMB Circular A–87, Attachment B, Para. C.2.b.

(b) *Rearrangements and alterations/Capital improvements.* Costs of rearrangements and alterations required specifically for UI and/or ES purposes or which materially increase the value or useful life of property;

(c) *Rental rate systems.* Costs of space newly occupied in publicly-owned buildings on or after October 1, 1980, under rental rate or equivalent systems (see paragraph (3) below);

(d) *Cash purchase.* Payments for the cash purchase of real property exclusive of interest (capital expenditure provision of OMB Circular No. A–87, Attachment B, Para. C.3.);

(e) *Reed Act amortization.* Repayments (amortization) of Reed Act funds used to acquire real property as authorized under 20 CFR 652.8(d)(7) and the PBP (1992 PBP, Para. VI.C.2.c.) (see paragraph (5) below);

(f) *Amortization of other funds.* Repayment of other non-Federal funds, exclusive of interest, used to acquire real property, such as the amortization of the principal portion of State bonds or of other funds borrowed from public or private sources;[2]

(g) *Lease-purchase.* Allowable costs under lease-purchase, lease with option to purchase, or other commercial capital lease arrangements which create a material equity in real property;[3] and

(h) *Depreciation or use allowance.* Depreciation or use allowance for space occupied in publicly-owned buildings (see paragraph (6) below).[4]

(2) *Allocation of Charges Between UI and ES.* The amount of UI and ES grant funds used in any fiscal year for the acquisition or amortization of a particular unit of real property shall be proportionate to the use of the property by each program.

Changes in the proportion of UI and/or ES use from one period to the next shall be reflected in the allocation of space charges. Where individuals work on more than one program, the related space charges shall be allocated to the benefitting programs in proportion to use. For example, personnel activity distributions, such as those produced by the FARS time distribution subsystem, may be used as the basis for allocation.

(3) *Rental Rate or Equivalent Systems.* Rental rate or equivalent systems referred to in Section C.2.a., Attachment B of OMB Circular No. A–87 are mechanisms for allocating actual, allowable occupancy costs of publicly-owned real property acquired after October 1, 1980 among the occupants. Allowable costs include operation and maintenance costs, interest, and depreciation based on the useful life of the buildings and/or other improvements.

DOL acquires no equity from the use of UI and or ES grant funds for depreciation or use allowance that are charged over the physical life of a property (usually 50 years for new commercial properties). It is DOL's position that a "rental rate or equivalent system" may include amortization of principal and interest associated with an acquisition—provided the total amount charged under the rental rate or equivalent system does not exceed the total spending limitation in OMB Circular, Attachment B, Para. C.2.

However, DOL acquires an equity in property (see Section 7.b.(6) in the GAL) to the extent that amortization of acquisition costs, including principal and interest, are charged as part of a rental rate or equivalent system.

(4) *Acquisitions by Cash Purchase.* Because of the total expenditure limitation in (1), States will normally be unable to use UI and ES grant funds for cash purchases of land and buildings.

(5) *Amortization.* States may acquire real property with Reed Act or other non-Federal funds under arrangements in which the original fund source used to purchase the property is amortized (or repaid) with UI and/or ES grant funds. A Reed Act amortization arrangement is a repayment arrangement in which a SESA, instead of paying bondholders or other creditors, makes periodic payments of UI and/or ES grant funds to the State's account in the Unemployment Trust Fund (UTF). Interest costs incurred under real property amortization arrangements are unallowable except under certain rental rate or equivalent systems (see paragraph (3) above).

UI and ES granted funds may not be used to amortize real property whose costs are charged to grant programs under an OMB Circular No. A–87 rental rate system (see paragraph (3) above).

Amortization payments shall be reflected on the State's books as adjustments to the original contributions to the cost of the property. Each payment reduces the book balance of contributions by Reed Act or other non-Federal funds and correspondingly increases contributions by UI and ES granted funds; thereby creating DOL's share of equity.

Use of UI and/or ES grant fund to amortize Reed Act or other fund sources to acquire the real property creates a Federal share or equity in the property except under certain conditions under rental rate or equivalent systems (see paragraph (3) above). Since the costs charged to each grant program creates a DOL share attributable to that program's funds, the DOL share must be accounted for separately for each program.

In the amortization of Reed Act funds with Federal grant funds, equity in real property shifts from Reed Act to UI and ES grant funds. Once a Reed Act-funded property is completely amortized, Reed Act equity in the property no longer exists; but rather, equity belonging to the Federal grantor agency has been created.

(6) *Depreciation.* Depreciation (and use allowances) should not be confused with amortization. Amortization, for purposes of this GAL, is the scheduled repayment of a debt or original fund source used in the acquisition of real property. Depreciation and use charges represent the consumption of an asset over time. Depreciation or use allowance may not be charged to UI and/or ES grant funds for real property whose cost is being or has been amortized with Federal funds. If depreciation costs of property not acquired with Federally granted funds are to be charged to UI and/or ES grant funds, the computation must reflect the expected useful life of the building(s) and the property's acquisition cost.

Charges to UI or ES grants based on scheduled amortization of debt associated with original property acquisition or subsequent capital improvements is not depreciation. Rather, such charges constitute acquisition cost, no matter how they are identified, and DOL accrues an equity in property proportionate to its share of the principal and interest serviced during the amortization period.

No DOL equity accrues from the use of UI and/or ES grant funds for depreciation costs properly charged to the respective grants.

(7) *Prior Approval Requirements.* DOL's regulation at 20 CFR 652.8(d)(2), issued in 1983, delegated all DOL prior approval authority under OMB Circular No. A–87 and 41 CFR part 29–70 for Wagner-Peyser grants to the States. A similar but narrower delegation of authority, covering equipment

[2] Except as provided in paragraph (2), interest and other financing costs are unallowable costs (Para. D.7., Attachment B, OMB Circular A–87).

[3] See footnote 2.

[4] Allowable depreciation and use allowance costs are described at length in Para. 11 of OMB Circular A–87, Attachment B.

and other capital expenditures, was made to the States for UI activities in the FY 1989 and FY 1990 UI Program and Budget Plan (PBP).

Both the 1989 and 1990 UI PBP and Wagner-Peyser regulations authorized the use of UI and ES grant funds for Reed Act amortization but did not require prior DOL approval of such expenditures. These provisions only applied to Federal actions designated as prior approvals and not to Federal actions designated as disposition instructions.

On October 1, 1988, 41 CFR part 29–70 was replaced by the 'common rule' (codified for DOL at 29 CFR part 97) for grants to governmental entities. As specified at 29 CFR 97.5, the 'common rule' superseded existing regulations and other issuances that were inconsistent with its provisions. As a result, the 1983 delegation of prior approval authority for Wagner-Peyser activities was superseded as of October 1, 1988. An acquisition of real property after September 30, 1988, currently being amortized or to be amortized with Federally granted funds which did not receive the prior approval of DOL, should be brought to the attention of the appropriate DOL Regional Office for approval of continued amortization arrangements.

Requests for DOL prior approval for the use of UI and/or ES funds for the acquisition or amortization of real property shall be accompanied by an acknowledgement that there will be DOL equity in the property to the extent that UI and/or ES funds are used for its acquisition or amortization. If the need for the property for UI and/or ES purposes ceases or is significantly and permanently reduced, the State also acknowledges that it will request DOL disposition instructions in accordance with 29 CFR 97.3(c). The acknowledgement shall be signed by a State official(s) with the authority to legally commit the State with regard to the contents of the acknowledgment.

(8) *Capital Improvements.* For any capital improvement that materially increases the value or useful life of real property (whether paid by grant funds or otherwise) and that significantly alters the existing Federal share, DOL reserves the right to require the grantee to obtain one or more independent appraisals to determine the fair market value at the time of and as a result of the capital improvement. The fair market value as determined by such appraisals may be used to establish the revised shares. A significant alteration of the Federal share, for purposes of this GAL, is defined as any capital improvement where the cost of the improvement would either reduce the Federal share by 10% or more or estimated to affect the current Federal equity by $100,000 or more.

8. *Use of SESA Real Property.*

a. *Reduction in Utilization.* Reed Act funds and UI and ES granted funds may be used for office space to the extent that it is used for authorized program purposes (See Section 7.b.(2)). Therefore, if a significant and permanent reduction occurs in UI utilization of space acquired with UI funds, the State must dispose of the excess space or replace it with property whose size is appropriate to the program's needs or take other appropriate corrective actions to bring DOL equity, attributable to UI grants, and UI occupancy into balance (See section 9.c., Disposition Instructions). The same is true for significant and permanent reductions in ES use of space acquired with ES funds.

A SESA must request disposition instructions when the UI-funded share of the cost of real property significantly and permanently exceeds the UI share of the property's utilization, regardless of whether the SESA plans to use the excess space for ES or for non-employment security activities. THe same is true for excess ES-funded space used for UI or for non-employment security purposes. Equity shares attributable to Reed Act or AS&T funds may be used for employment security purposes without regard to UI and ES distinctions. A State is not required to request disposition instructions if the reduction of UI (or ES) use is offset by a corresponding increase in ES (or UI) use and the shift in use involves space which was either acquired with Reed Act funds which have not been amortized with UI or ES funds or acquired before 1983 with AS&T funds.

If, however, the proceeds from the disposition of such property is to be used to obtain replacement property, the State must declare, at the time of replacement, how the equity attributable to AS&T funds is to be apportioned between the two programs.

b. *Comparison with 41 CFR part 29–70.* Under 41 CFR 29–70.215–2(b) and the first paragraph of 41 CFR 29–70.215–2(c), DOL could permit SESA grant-funded real property to be used for non-employment security purposes without compensation. Since this option is not available under 29 CFR part 97, all real property acquired with UI and/or ES funds, including property acquired before the effective date of 29 CFR part 97, should be used and disposed of in accordance with 97.31 (b) and (c). Clauses to this effect were inserted into the UI PBP and the ES Reimbursable Grant Agreements. SESAs should review the use of all grant-funded real property to determine what properties, if any, are not being used in accordance with 29 CFR part 97 and to request disposition instructions where appropriate.

c. *Income.* There are no limitations on the amount of rent that can be charged commercial tenants occupying excess SESA space. The State, however, must exhibit sound judgment in its decisions to rent to the commercial market. If the excess space is used by other Federally-supported programs, the costs the other Federally-supported programs may charge to their grants is limited to those allowed by the applicable cost principles. For example, if the space is used by the State in administering a grant that is subject to OMB Circular No. A–87, then Attachment B. Para. C.2.a. (Rental Cost) of that Circular is applicable. If the space is used for the JTPA program, the JTPA cost principles determined by the Governor pursuant to 20 CFR 627.435 are applicable.

Rental income must be allocated among the fund sources used to acquire the rented property in proportion with the original fund sources' adjusted participation in the property's acquisition cost. Rental income allocable to Reed Act funds must be immediately deposited in the State's UTF account. Rental income allocable to UI and/or ES grant funds shall be used as provided at 29 CFR 97.25(g)(2).

9. *Disposition of SESA Real Property.*

a. *Allocation of Proceeds.* When real property acquired or amortized with UI and/or ES granted funds ceases to be used for its respective program purposes, it must be sold, exchanged for replacement property, or otherwise disposed of as directed by DOL disposition instructions issued in accordance with 29 CFR 97.31(c). Under § 97.31(c), each grant fund source's share of the proceeds from the sale or other disposition of the property is determined on the basis of its proportional participation in the cost of the property. Comparable treatment is accorded the Reed Act share of the proceeds (See section 7.b.(5) on adjusting contributions to cost).

If the real property includes a building that was constructed pursuant to an arrangement under which the land was provided without charge to grant funds, the fair market value of the land at the time of contribution will be considered a contribution toward the total cost of the real property[5] for purposes of determining the respective shares in the property, unless there is clear written evidence of agreement between DOL and the State that the land or structure is not intended to be included in any settlement of equities at such time as the real property ceases to be used for applicable grant purposes.

b. *Equity.* DOL equity in State-owned real property is created through the use of Federal grant funds to acquire real property or under DOL-approved amortization arrangements. OMB Circular No. A–87 requires grantees (States) to reimburse the Federal government for its equity interests when capital assets acquired with Federally granted funds cease to be used for the programs for which they were acquired. In DOL programs, such reimbursement is accomplished with the disposition procedures of 29 CFR 97.31(c).

Prior to the issuance of OMB Circular No. A–87 in 1968, DOL would approve an amortization arrangement only if the State assured that the SESA could occupy that space or space of equivalent quality and quantity "rent free" when amortization was completed, paying only for operation and maintenance costs. Since the Circular did not authorize continued use of the rent-free space requirement, DOL stopped using such an assurance and now relies exclusively on 29 CFR 97.31(c) to protect its equity interests in SESA real property.

c. *Disposition Instructions.*

(1) *General.* When SESA real property is no longer needed for the originally authorized purposes and Federal grant funds have been used toward the acquisition costs of the property, the grantee must request disposition instructions from the DOL Regional Office in accordance with 29 CFR 97.31(c). This requirement includes situations where there is a significant and

[5] 29 CFR 97.3 defines real property as "land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment".

permanent reduction in UI or ES utilization of the property. The request for disposition instructions should be made as soon as it is determined that a reduction of program use is expected. If a reduction was not anticipated, the request for disposition instructions must be made within a reasonable time after the need for the property ends. The request should include factors and conditions to be reflected in the DOL disposition instructions, such as planned leasing of the property pending its sale by the State. Since the 29 CFR 97.31(c) requirement only applies to property acquired with grant funds, disposition instructions are not required for Reed Act equity in SESA real property.

(2) *Options.* In response to a request for disposition instructions, the DOL Regional Office may direct the State to:

(a) Retain title to the property and compensate DOL for its equity, in accordance with 29 CFR 97.31(c)(1);

(b) Replace the property with other property, using the proceeds from the disposition of the vacated property[6] as an offset to the cost of the replacement property, in accordance with 29 CFR 97.31(c)(1), with respective equities transferred to the replacement property;

(c) Sell the property and compensate DOL for its equity in accordance with 29 CFR 97.31(c)(2); or

(d) Transfer the property to DOL or its designee, in which case the State will be paid by DOL to compensate it for any State equity in the property in accordance with 29 CFR 97.31(c)(3).

(3) *DOL Action.* DOL, generally, will honor a State's request for any of the first three options in the previous section as long as DOL is adequately compensated for its equity. Non-compliance with the requirement to request disposition instructions when SESA real property ceases to be needed for UI or ES purposes will result in a disallowance, as provided in 29 CFR 97.43. DOL may issue a Finding and Determination, establish a debt, and/or pursue other actions as appropriate.

(4) *Appraisal and Other Instructions.* In addition to directing the grantee to use one of the 29 CFR 97.31(c) disposition options, DOL instructions may require certain other actions. As provided in 29 CFR 97.31(c)(2), if the property is to be sold, the State is required to use procedures that provide for competition to the extent practicable and which will result in the highest possible return. DOL will permit actual and reasonable selling and fix-up expenses to be deducted from the proceeds. If a method other than sale is to be used to dispose of the property, DOL will require the use of appropriate procedures to establish its current fair market value.

Accordingly, DOL disposition instructions may require the grantee to obtain one or more independent appraisals of the property, regardless of the disposition option requested by the State or chosen by DOL, and may also require independent appraisal of the fair market value of any contribution to the original acquisition cost of the property. DOL may also require the grantee to obtain DOL approval of the appraiser selected and/or the contract for appraisal. Additionally, DOL may obtain its own appraisal of the property at DOL expense. Appraisal costs incurred by the grantee in connection with a disposition of property under 29 CFR 97.31(c) may be charged to current UI or ES grants as allowable costs or may be paid from the proceeds generated by the DOL approved transaction.

d. *Replacement.*

(1) *Reed Act.* Reed Act share in SESA real property is the ratio of the adjusted contribution of Reed Act funds to the original cost of the property to be disposed. In a replacement transaction, proceeds from the disposed property may be used as an offset to the purchase price of replacement property without another appropriation of Reed Act funds for the replacement property, provided that use of such funds conforms in all respects to the original appropriation of Reed Act funds authorizing the acquisition of the disposed property and is permissible under State law. In the interpretation of State Reed Act appropriations, the State is the final arbiter of its State law. Such transactions may not result in a new obligation of Reed Act funds.

(2) *UI and ES Grant Funds.* A State may use the proceeds from the disposition of SESA real property that was acquired or amortized with UI and/or ES grant funds as an offset to the purchase price of replacement property subject to the following:

(a) *DOL disposition instructions.* The replacement must be in accordance with DOL disposition instructions.[7] The grantee's request to DOL for disposition instructions should be accompanied by a plan for the disposition of the property to be replaced and the acquisition of the replacement property. The disposition-acquisition plan should cover the principal elements of the replacement, including location, projected cost, projected use by program of the replacement property, value of the equity transferred from the disposed property (by program), and a schedule for all significant events in the move to the replacement property. The plan may be amended at the discretion of the Department of Labor.

(b) *Utilization for UI or ES program purposes.* The replacement property must serve the same program(s) as the disposed property. Therefore, only the portion of the proceeds that are attributable to UI funding may be used for UI purposes in the replacement property; the same treatment must be accorded the ES portion of the proceeds. Proceeds attributable to pre-1983 AS&T funds may be used for either UI or ES purposes provided they are identified as either UI or ES equity in the replacement property at the time of replacement and thereafter accounted for as such.

(c) *Additional UI or ES cost.* The amount of current or future UI grant funds that may be used to acquire or amortize replacement real property may not exceed the DOL equity attributable to the UI portion of the cost of the replacement real property (see section 7.b.(2)) less the UI share of the proceeds from the disposed property, subject to the total spending limitation in section 7.b.(1) above. The same treatment must be accorded costs charged to ES grant funds.

(d) *Location.* The replacement property must be in the same State as the property that has been disposed of but does not have to serve or be located in the same geographic locality if there are valid program-related reasons for the replacement action, such as an increased need for service in one area and a decreased need in another, or because the replacement will reduce the grantee's net space costs.

(e) *Retention period.* The proceeds resulting from the disposition of real property should be immediately used in the acquisition of the replacement property. However, DOL will permit retention of the proceeds in an interest-bearing escrow or other interest-bearing restricted account until the end of the Federal fiscal year in which disposition of the subject property occurred in order to allow the State to complete the actions involved in securing replacement property. Such interest-bearing accounts should yield interest equal to or greater than the rate required by 31 CFR part 205, the regulations implementing the Cash Management Improvement Act (CMIA). Interest earned on the proceeds must be used in the acquisition of the replacement property and included as DOL equity. (Note that proceeds of a Reed Act equity may not be handled in the same manner. See section 9.d.(1)).

If more time is necessary, the State should request it in the disposition-acquisition plan accompanying the request for disposition instructions along with the period of time the State expects to retain the proceeds (see section 9.d.(2)(a)). In the event that circumstances prevent the replacement to be made within the approved time frame, the State may request an extension from DOL. If the approved plan is not being implemented, then there is no replacement. (See section 9.d.(2)(a)).

(f) *Proceeds; time of disposition.* Regardless of the type of transaction, DOL's equity in the proceeds is based on the property's fair market value in accordance with 29 CFR 97.31(c). Fair market value is determined by an arm's length sale or by an independent appraisal, at the earlier of the date the property ceases to be used for UI or ES program purposes or the date cash is received for the property.

(g) *Use of proceeds after replacement.* If the property being replaced is worth more than the replacement, the excess cash proceeds received or equivalent cash shall be handled in accordance with section 9.e.(2).

(h) *Amortization acceleration.* Proceeds from the disposition of SESA real property may not be used to accelerate the amortization of Reed Act or other fund source used to acquire other real property.

(i) *Capital improvements.* Proceeds from the disposition of SESA real property must

[6] Disposition proceeds may include cash received from the sale of property or the market value of property retained by the grantee but no longer used for authorized purposes.

[7] Since the 'common rule' treats the replacement of real property acquired with grant funds as an aspect of disposition (see 29 CFR 97.31(c)(1)), replacements must be authorized by DOL disposition instructions.

be handled according to OMB Circular A-87 and 29 CFR 97.31. They must be returned to the Department of Labor or used to acquire replacement property. Therefore, such proceeds may not be used to make capital improvements to existing properties unless the improvements create additional space to be used for employment security purposes, e.g., additions to buildings.

(j) *Property records.* The State's property records for the replacement property shall reflect any DOL or Reed Act equity transferred from the prior property as contributions to the cost of, and consequently equity in, the replacement property.

e. *Deposit and Subsequent Use of Cash Proceeds.*

(1) *Reed Act Funds.* The Reed Act share of cash proceeds received from the sale or other disposition of real property must immediately be deposited in the State's account in the Unemployment Trust Fund (section 303(a)(4) of the Social Security Act and section 3304(a)(3) of the Internal Revenue Code of 1986). In addition, any portion of the Reed Act share of the proceeds from a disposition action that is not used for replacement property, as provided in section 9.d.(1), must be immediately deposited in the State's account in the Unemployment Trust Fund. As section 7.a.(2) states, however, only the adjusted contribution of Reed Act funds to the cost of the property may be credited as Reed Act funds. The remainder of the Reed Act share of the cash proceeds, if any, may not be credited as Reed Act funds and must be used solely for the payment of unemployment benefits. Failure to immediately deposit the applicable Reed Act proceeds into the Unemployment Trust Fund may be cause for the Secretary of Labor to commence conformity/compliance proceedings and to assess interest on the amount outstanding.

(2) *UI and ES Grant Funds.* The total UI and ES shares (DOL equity) of the cash proceeds from the sale or other disposition of real property must be remitted to DOL or used to acquire replacement real property. A check payable to the United States in the amount of the DOL portion of the cash proceeds should be sent to the Regional office.

f. *Disposition of Real Property With Reed Act Equity and No UI or ES Grant Funds Equity.*

(1) *General.* Some States have chosen not to use UI or ES grant funds to amortize SESA real property acquired with Reed Act or other non-Federal funds and used for UI or ES purposes. There is no DOL equity in this property and it may be sold or otherwise disposed of without obtaining DOL approval or DOL disposition instructions.

(2) *Payment of Equity.* A diversion of real property acquired with Reed Act funds (and not amortized) from employment security purposes due to reductions in UI and/or ES use or for other reasons creates a liability to the State's unemployment compensation fund. The amount of the liability created would be equal to the diverted portion's share of the sale price or fair market value of the property as of the time employment security program use ends.

Cash proceeds from the sale or other disposition of the property must be immediately deposited in the State's account in the Unemployment Trust Fund, subject to the restrictions discussed above in section 9.e.(1).

10. *Inquiries.* Address any questions on this GAL to the Regional Office.

Appendix

Example 1

Thirty years ago, $1 million of Reed Act funds and $1 million of other non-Federal funds were used to acquire real property for employment security activities in real property that cost $2 million. Seventy percent (70%) of the Reed Act funds were amortized with AS&T funds (pre-1983) and the specific program distribution (ES vs. UI) of the amortization payments cannot be identified. The real property is being sold today for $6 million. The distribution of the respective equities would be based on the following calculations:

GAL

Ref.

7.b.(5) *Cost Basis/Share of Each Fund Source in*

4.c. *Vacated Building (Based on Adjusted Contributions to Cost)*

4.d.

DOL Grants (allocable to AS&T Funds—70%×$1,000,000) ...	$700,000	35.0%
Reed Act ($1,000,000 less $700,000)	$300,000	15.0%
Other Funds ($2,000,000 less $1,000,000)	$1,000,000	50.0%
Total Cost	$2,000,000	100%

Equity in Vacated Building by Fund Source

DOL equity (share allocable to UI and ES Grant Funds—35%×$6,000,000)	$2,100,000
Reed Act equity (share allocable to Reed Act Funds—15%×$6,000,000)	$900,000
Other Funds equity (50%×$6,000,000)	$3,000,000
Total Sale Proceeds	$6,000,000

Ref. Distribution of the Reed Act Share of Sale Proceeds

Reed Act contribution to acquisition cost of building	$1,000,000

7.b.(5)

Less: Adjusted UI and ES Grants contribution to (amortization of) acquisition cost	$700,000
Adjusted Reed Act Contribution	$300,000

9.a.

Reed Act equity in sale proceeds	$900,000
Less: Adjusted Reed Act contribution (credited Reed Act funds)	$300,000

9.3.(1)

Balance of Reed Act Equity (must be used solely for unemployment benefits)	$600,000

9.d.(1) **Note:** In the example above, only the DOL equity ($2,100,000) would be available to finance a replacement building. The $900,000 of Reed Act equity

9.e.(1) must be deposited in the State's UTF account and is subject to the immediate deposit requirement. Of this amount, only the $300,000 of credited Reed Act funds may be used again for employment security administration, including real property, with the proper appropriation. The $600,000 balance produced in the last step may be used only for unemployment benefits.

Example 2

Twenty years ago, $1 million of Reed Act funds were used to acquire real property for employment security activities (100% of total cost of the property). The Reed Act funds were fully amortized with ES and UI grant funds. Fifty-five percent (55%) of the amortization was with AS&T funds (pre-1983) and the specific program distribution (ES vs. UI) of those amortization payments cannot be identified. The remaining 45% was amortized 60% UI and 40% ES. The real property is being sold today for $6 million and the proceeds will be used for replacement property. The replacement property will cost $20 million and the planned occupancy is 30% UI, 20% ES, and 50% other program(s). The distribution of the respective equities would be based on the following calculations:

Ref.

7.b.(5) *Cost Basis of Each Fund Source in*

4.c. *Vacated Property (Based on Adjusted Contributions to Cost)*

AS&T funds	$550,000	55.0%
UI funds (60% of 45%)	$270,000	27.0%
ES funds (40% of 45%)	$180,000	18.0%
Total Cost	$1,000,000	100%

Equity in Vacated Building by Fund Source

DOL equity allocable to AS&T (55%×$6,000,000)	$3,300,000
DOL equity allocable to UI (27%×$6,000,000)	$1,620,000
DOL equity allocable to ES (18%×$6,000,000)	$1,080,000
Total Sale Proceeds	$6,000,000

Ref.

8.a. *Transfer of Proceeds to Replacement Property by Fund Source*

Maximum DOL share/equity allocable to UI (30% of $20,000,000)	$6,000,000	30%
Maximum DOL share/equity allocable to ES (20% of $20,000,000)	$4,000,000	20%

In this example, both the $1,620,000 of DOL equity allocable to UI and the $1,080,000 of DOL equity allocable to ES may be transferred to the replacement property. In addition, the $3,300,000 of DOL equity allocable to AS&T may be transferred:

(1) To UI;

(2) $2,920,000 ($4,000,000 less $1,080,000) to ES and the remaining $380,000 to UI; or

(3) any other combination of UI and ES specified by the State.

After this initial transfer, the DOL equity allocable to AS&T loses its separate identity. The remaining $14 million of acquisition cost must be financed with other funds; however, four million dollars of additional cost of the replacement property may be amortized with a combination of UI and ES funds.

Example 3

Twenty years ago, $1 million of Reed Act funds were used to acquire real property for employment security activities (100% of total cost of the property). The Reed Act funds were fully amortized with ES and UI grant funds. Fifty-five percent (55%) of the amortization was with AS&T funds (pre-1983) and the specific program distribution (ES vs. UI) of those amortization payments cannot be identified. The remaining 45% was amortized 60% UI and 40% ES. A significant reduction in the need for employment security space in this property has occurred and the reduction appears permanent. The current is 30% UI, 20% ES, and 50% other program(s) and the current fair market value is $6 million.

The distribution of the respective equities would be based on the following calculations:

Ref.

7.b.(5) *Cost Basis of Each Fund Source in Property*

4.c. *(Based on Adjusted Contribution to Cost)*

AS&T funds	$550,000	55.0%
UI funds (60% of 45%)	270,000	27.0%
ES funds (40% of 45%)	180,000	18.0%
Total Cost	1,000,000	100%

9.a. *Share/Equity of Each Fund Source in Building Today—Before Utilization Adjustments*

DOL equity—AS&T funds	$3,300,000	55%
DOL equity—UI funds	1,620,000	27%
DOL equity—ES funds	1,080,000	18%
Total	6,000,000	100%

8.a. *Target Distribution of Share/Equity by Fund Source After Utilization Adjustments*

DOL equity—UI funds	$1,800,000	30%
DOL equity—ES funds	1,200,000	20%
Other funds	3,000,000	50%
Total	6,000,000	100%

In this example, the significant and permanent reduction in the need for employment security space requires a long term plan to bring SESA equity and occupancy into balance. Some alternatives include the remission of $3,000,000 to the Department of Labor as a miscellaneous receipt or the acquisition of replacement property.

Example 4

Real property was acquired in 1984 for employment security purposes for $1 million using $400,000 and $600,000 from the proceeds of the sale of real property previously used for employment security purposes. The proceeds are attributable to ES and UI grants, respectively. In 1985, an addition to the property was constructed with $120,000 of Reed Act funds. In 1988, Penalty and Interest money was used to install a $70,000 air conditioning system. Finally, major roof repairs were done in 1990 using $50,000 of Penalty and Interest money. The current distribution of each fund's share would be based on the following calculations:

Ref.

Current Share of Each Fund Source in Property

9.d.(c) ES (transferred in 1984) ($400,000 of $1,240,000)	$400,000	32.2%
9.d.(c) UI (transferred in 1984) ($600,000 of $1,240,000)	600,000	48.4%
7.a. Reed Act (1985 imp.) ($120,000 of $1,240,000)	120,000	9.7%
Penalty and Interest (($70,000 ('88) + $50,000 ('90)) of $1,240,000)	120,000	9.7%
Total cost	1,240,000	100.0%

7.b.(8) **Note:** DOL reserves the right to have the fair market value of the property established as of the time the capital improvements are made and to establish revised shares based on current fair market value.

[FR Doc. 93-31370 Filed 12-22-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Challenge Review Committee Section) to the National Council on the Arts will be held on January 6-7, 1994 from 9 a.m. to 5:30 p.m. on January 6, 1994 and from 9 a.m. to 4 p.m. on January 7, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on January 6, 1994 from 9 a.m. to 10 a.m. for opening remarks and introductions and on January 7, 1994, from 4 p.m. to 5 p.m. for general discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on January 6, 1994 and 9 a.m. to 4 p.m. on January 7, 1994, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: December 17, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 93-31298 Filed 12-22-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources; Division of Undergraduate Education

The Division of Undergraduate Education of the National Science Foundation has issued "Undergraduate Education: Science, Mathematics, Engineering, Technology" (NSF 93-164), a combined announcement of its programs for FY-1995. General and detailed descriptions of programs as well as instructions for the preparation and submission of proposals are provided for the following programs: Course and Curriculum Development (CCD), Instrumentation and Laboratory Improvement (ILI), Undergraduate

Faculty Enhancement (UFE), Collaboratives for Excellence in Teacher Preparation (CETP), and Advanced Technological Education (ATE). New features for FY–1995 include initiatives within the CCD program focusing on Systemic Changes in the Chemistry Curriculum and the Mathematical Sciences and their Application throughout the Curriculum. Also new for FY–1995 is the ATE program which serves to promote exemplary improvement at the undergraduate and secondary school levels for technicians being educated for the high performance workplace. This publication replaces NSF 92–135.

Robert F. Watson,

Director, Division of Undergraduate Education.

[FR Doc. 93–31329 Filed 12–22–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–436, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and Time: January 25–27, 1994; 8:30 a.m.–5 p.m.

Place: Rooms 330, 340, 365 and 370, Stafford Place, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 20, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–31326 Filed 12–22–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in International Programs; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Special Emphasis Panel in International Programs.

Date & Time: January 10–11, 1994; 8:30 a.m. to 5 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Janice Cassidy, Program Manager, Division of International Programs, room 935, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1701.

Agenda: To review and evaluate research proposals submitted to the Division of International Programs for the International Junior Investigator and Postdoctoral Fellowship programs as part of the selection process for awards.

Name: Special Emphasis Panel in International Programs

Date & Time: January 24–26, 1994; 8:30 a.m. to 5 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Janice Cassidy, Program Manager, Division of International Programs, room 935, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1701.

Agenda: To review and evaluate research proposals submitted to the 1994 Summer Institute in Japan program as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 20, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–31328 Filed 12–22–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Name: Special Emphasis Panel in Structural Systems and Construction Processes Program (IIA).

Date and Time: January 13 & 14, 1994, 8:30 a.m. to 5 p.m.

Place: NSF, room 330, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact: Dr. Ken P. Chong, Program Director, 703–306–1361.

Name: Special Emphasis Panel in Large Structural and Building Systems Program (IIA).

Date and Time: January 13 & 14, 1994, 8:30 a.m. to 5 p.m.

Place: NSF, room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact: Dr. John B. Scalzi, Program Director, 703–306–1361.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 20, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–31327 Filed 12–22–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication

PROPOSED TITLE: Guidance for Modification of Technical Specifications to Reflect (A) Revisions to 10 CFR part 20, "Standards For Protection Against Radiation" and 10 CFR 50.36a, "Technical specifications on effluents from nuclear power reactors", (B) Related Current Industry Initiatives, and (C) Miscellaneous Related Editorial Clarifications.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or (3) transmits information to licensees regarding approved changes to rules or regulation, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures.

The draft generic letter provides guidance, in the form of model technical specifications (TS), for preparing a license amendment request to modify TS in order to reflect changes to Title 10 of the Code of Federal Regulations (10 CFR) part 20, "Standards for Protection Against Radiation," and 10 CFR 50.36a, "Technical specifications on effluents from nuclear power reactors," that became effective on June 20, 1991 and October 1, 1992, respectively. The staff has taken this opportunity to update and improve the quality of selected TS by making editorial changes for clarification. Additionally, changes were made to the high radiation area TS to reflect current industry technology in controlling access to high radiation areas. Licensees are required to implement the revision to 10 CFR part 20 beginning January 1, 1994, but, in implementing the new 10 CFR part 20, licensees are not required to amend their existing TS. However, to take advantage of the revised reporting requirements of 10 CFR 50.36a, an amendment to the TS will be necessary. The proposed TS changes in this draft generic letter will not be finalized until public comment is received and analyzed; therefore, final model TS will not be available prior to the January 1, 1994, implementation date of the revised 10 CFR part 20. However, because the changes are voluntary, there is no conflict with the January 1, 1994, implementation date for the revised 10 CFR part 20 or for the previously effective change to 10 CFR 50.36a. Licensees may defer modifying their TS until the NRC completes the review of public comments and develops the final model TS or licensees may propose their own TS changes.

Comments relative to implementation of the rule changes and clarifications are requested. Comments are requested on the Commission's policy for continued use of appendix B to 10 CFR 20.1–20.602 as a valid reference for gaseous and liquid effluent TS until licensees elect to implement guidance proposed in this draft generic letter. Specifically, comments are requested on whether there should be a time limit on the use of appendix B to 10 CFR 20.1–20.602 and, if a time limit is set, what is an appropriate time period to allow licensees to switch to appendix B to 10 CFR 20.1001–20.2402.

The proposed generic letter is presented under the **SUPPLEMENTARY INFORMATION** section with the exception of enclosure 4. Enclosure 4 is appendix B to 10 CFR 20.1–20.602 which is available for review in the public document rooms. The proposed generic letter and supporting documentation were discussed in meeting number 249 of the Committee to Review Generic Requirements (CRGR) of September 14, 1993. The relevant information reflecting CRGR review of the proposed generic letter available in the Public Document Room under accession number 9309160194. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires February 7, 1994. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen P. Klementowicz, (301) 504–1084.

SUPPLEMENTARY INFORMATION: Draft generic letter.

To: All holders of operating licenses for nuclear power reactors

Subject: Guidance for modification of Technical Specifications to reflect (A) revisions to 10 CFR part 20, "Standards for protection against Radiation" and 10 CFR 50.36a, "Technical Specifications on Effluents from Nuclear Power Reactors", (B) related current industry initiatives, and (C) miscellaneous related editorial clarifications (generic letter 93–)

Introduction

Revised Title 10 of the Code of Federal Regulations (10 CFR) part 20, "Standards for Protection Against Radiation," and 10 CFR 50.36a, "Technical specifications on effluents from nuclear power reactors," became effective on June 20, 1991 and October 1, 1992, respectively. Licensees must implement the revised 10 CFR part 20 (by January 1, 1994). In implementing the new part 20, licensees are not required to amend their existing technical specifications (TS); but, for the sake of clarity in correlating specific TS provisions to the new part 20 requirements, the staff encourages licensees to request TS changes as indicated in the enclosed guidance. Licensees need to be aware that, in order to implement the revised reporting requirements in 10 CFR 50.36a, an amendment to the technical specifications will be necessary. This generic letter provides guidance, in the form of model TS, to assist licensees who voluntarily request license amendments for modification of existing TS (or portions of TS) in connection with their implementation of revised part 20 and/or revised 10 CFR 50.36a.

Additionally, this letter also provides guidance (model TS) for voluntary adoption by licensees, that (a) supplements the guidance provided in Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," issued in June 1993 on acceptable alternate methods for controlling access to high radiation areas, and (b) updates and improves the quality of certain other selected existing TS by making editorial changes for clarification.

Existing TS affected by this generic letter include: definitions, liquid and gaseous effluents, limitations on radioactive material stored in outside storage tanks, site identifications, administrative reporting requirements, high-radiation area requirements, and administrative controls. Appropriate guidance is provided both for licensees who have, and have not chosen to implement Generic Letter (GL) 89–01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program," and for licensees who have adopted the improved standard technical specifications (STS) as well. Although licensees are not required to do so, they are encouraged to revise their TS as presented in this generic letter. The NRC will evaluate TS amendment proposals to implement any or all of the guidance in this generic letter, or alternate TS amendment proposals that include adequate justification.

Discussion

The revision of 10 CFR part 20 and 10 CFR 50.36a has affected related information in TS and other regulations,

thereby prompting NRC issuance of this guidance for recommended conforming amendments to selected existing TS. The recent changes to 10 CFR part 20 would allow licensees to implement the rule without having to make any changes to their existing TS. However, the NRC crafted the enclosed model TS to provide licensees with acceptable language that correlates with the wording in the revised 10 CFR part 20 and 10 CFR 50.36a, GL 89–01, and the improved STS. In accordance with 10 CFR 20.1601(c), the proposed model TS for high radiation areas contain updated acceptable alternate controls to those given in 10 CFR 20.1601. Licensees may propose other alternate high radiation area controls based on their plant-specific needs.

In the case of gaseous and liquid effluent release rates, the model TS were crafted to allow licensees to maintain their same overall level of effluent control while retaining the operational flexibility that exists with current TS under the previous 10 CFR part 20. The model TS continue to require that radiation doses to members of the public from gaseous and liquid effluent releases from nuclear power plants be within the values given in Appendix I to 10 CFR part 50.

In a letter dated April 28, 1993, NUMARC requested clarification of NRC intent with regard to implementation of Appendix B to 10 CFR part 20. With regard to the basic implementation issue raised by NUMARC, NRC acknowledges in accordance with the provisions of 10 CFR 20.1008(c), that appendix B to 10 CFR 20.1–20.602 (see Enclosure 4) remains a valid reference for gaseous and liquid effluent TS. Therefore, licensees could choose to maintain their existing level of effluent control as adequate implementation of the ALARA requirement, and not submit individual requests for TS amendments to comply with 10 CFR 20.1101(b). Licensees may find this approach useful as a temporary expedient to allow more time and attention to be devoted to ensuring adequate preparations for implementation of the revised 10 CFR part 20 requirements on January 1, 1994. As a practical matter, however, because many sections of the current TS (particularly the Bases sections) contain wording that could cause confusion in relation to the revised 10 CFR part 20, the staff encourages licensees to adopt the model TS provided in this letter for implementation of the revised 10 CFR part 20 in the long term. The model TS provided in this generic letter are specifically intended to eliminate possible confusion or improper implementation of the revised 10 CFR part 20 requirements.

Summary of Recommended TS Changes

1.0 Definitions—Selected 10 CFR part 20 definitions that are contained in the TS are referenced back to 10 CFR part 20. A definition in the TS was revised to incorporate the change to 10 CFR 50.36a.

Table 4.3–8 Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements—Changes were made to update the current name of the referenced organization, and clarify that calibration or reference standards can be used for subsequent channel calibrations after the initial calibration.

3/4.11 Radioactive Effluents—The concentration values for liquid effluents that reference appendix B to 10 CFR part 20 values were increased by a factor of 10 to maintain the level of effluent control and operational flexibility that existed with the current TS under the previous 10 CFR part 20. 10 CFR part 20 section numbers and table number style were updated. The term "MPC" was replaced with "effluent concentration." Editorial changes were made to clarify that the intent of the gaseous dose rate and liquid effluent concentration limits is to maintain radioactive effluent releases as low as is reasonably achievable (ALARA).

5.0 Design Features—Editorial changes were made for clarification and to update 10 CFR part 20 section numbers.

6.0 Administrative Controls—Editorial changes were made for clarification, referenced 10 CFR part 20 section numbers were updated, reporting requirements were changed to an annual basis in accordance with the revised 10 CFR 50.36a, and a reference was added. The time period for submitting the Radioactive Effluent Release Report was increased from 60 days to May 1 (120 days). STS 6.11, which provides high radiation area (HRA) access control alternatives pursuant to 10 CFR part 20.1601(c), has been significantly revised. The changes include a capping dose rate to differentiate a HRA from a very high radiation area, additional requirements for groups entering HRAs, and clarification of the need for communication and control of workers in HRAs.

Generic Letter 89–01 based Administrative Controls TS—The concentration values for liquid effluents that reference Appendix B to 10 CFR part 20 values were increased by a factor of 10 to maintain the level of effluent control and operational flexibility that existed with the current TS under the previous 10 CFR part 20. 10 CFR part 20 section numbers and table number style were updated. The term "MPC" was replaced with "effluent concentration." Reporting requirements for submittal of the Radioactive Effluent Release Report were changed to an annual basis in accordance with the revised 10 CFR 50.36a. The time period for submitting the Radioactive Effluent Release Report was increased from 60 days to May 1 (120 days). The gaseous effluent dose rate TS has been changed to delete the reference to appendix B to 10 CFR part 20 and instead cite the explicit instantaneous dose rate values, as given in STS 3.11.2.1.

Enclosures 1 through 3 are marked copies of STS. Separate enclosures are included for licensees who have and have not implemented GL 89–01, on programmatic controls and relocation of radiological effluent TS (Enclosures 1 and 2), and for licensees who have adopted the improved STS (Enclosure 3).

Licensee action to propose TS changes under the guidance of this generic letter is voluntary. Therefore, such action is not a backfit under the provisions of 10 CFR 50.109. Therefore, the staff did not perform a backfit analysis.

Enclosures:

1. Model Standard Technical Specifications
2. Model Technical Specifications (with GL 89–01 implemented)
3. Model Improved Standard Technical Specifications
4. Appendix B to 10 CFR 20.1–20.602, "Concentrations in Air and Water Above Natural Background," (Not attached)

Enclosure 1.—Model Standard Technical Specifications

1.0 Definitions

Member(s) of the Public

1.16 Member(s) of the Public [See 10 CFR 20.1003 Definitions]

Offsite Dose Calculation Manual

1.17 The Offsite Dose Calculation Manual (ODCM) shall contain the methodology and parameters used in the calculation of offsite doses resulting from radioactive gaseous and liquid effluents, in the calculation of gaseous and liquid effluent monitoring Alarm/Trip Setpoints, and in the conduct of the Radiological Environmental Monitoring Program. The ODCM shall also contain (1) the Radioactive Effluent Controls and Radiological Environmental Monitoring Programs required by

Section 6.8.4 and (2) descriptions of the information that should be included in the Annual Radiological Environmental Operating and Radioactive Effluent Release Reports required by TS 6.9.1.3 and 6.9.1.4.

Site Boundary

1.30 The Site Boundary [See 10 CFR 20.1003 Definitions]

Unrestricted Area

1.38 An Unrestricted Area shall be any area at or beyond the Site Boundary to which access is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials, or any area within the Site Boundary used for residential quarters or for industrial, commercial, institutional, and/or recreational purposes.

Table 4.3–8
Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements
Table Notations

(3) The initial Channel Calibration shall be performed using one or more of the reference standards certified by the National Institute of Standards and Technology (NIST) or using standards that have been obtained from suppliers that participate in measurement assurance activities with NIST. These standards shall permit calibrating the system over its intended energy and measurement range. For subsequent Channel Calibration, sources that have been related to the initial calibration may be used in lieu of the reference standards associated with the initial calibration.

Table 4.3–8
Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements
Table Notations

(3) The initial Channel Calibration shall be performed using one or more of the reference standards certified by the National Institute of Standards and Technology (NIST) or using standards that have been obtained from suppliers that participate in measurement assurance activities with NIST. These standards shall permit calibrating the system over its intended energy and measurement range. For subsequent Channel Calibration, sources that have been related to the initial calibration may be used in lieu of the reference standards associated with the initial calibration.

3/4.11 Radioactive Effluents
3/4.11.1 Liquid Effluents
Concentration
Limiting Condition for Operation

3.11.1.1 The concentration of radioactive material released in liquid effluents to Unrestricted Areas (see Figure 5.1–3) shall be limited to 10 times the concentration values specified in Appendix B, Table 2, Column 2 to 10 CFR 20.1001–20.2402 for radionuclides other than dissolved or entrained noble gases. For dissolved or entrained noble gases, the concentration shall be limited to 2×10^{-4} microcurie/ml total activity.

Applicability: At all times.

Action: a. With the concentration of radioactive material released in liquid effluents to Unrestricted Areas exceeding the above limits, immediately restore the concentration to within the above limits.

3/4 Radioactive Effluents
Bases
3/4.11.1 Liquid Effluents
3/4.11.1.1 Concentration

This specification is provided to ensure that the concentration of radioactive materials released in liquid waste effluents to Unrestricted Areas will be less than 10 times the concentration values specified in Appendix B, Table 2, Column 2 to 10 CFR 20.1001–20.2402. The specification provides operational flexibility for releasing liquid effluents in concentrations to follow the Section II.A and II.C design objectives of appendix I to 10 CFR part 50. This limitation provides reasonable assurance that the levels of radioactive materials in bodies of water in Unrestricted Areas will result in exposures within (1) the Section II.A design objectives of appendix I, 10 CFR part 50, to a Member of the Public and (2) restrictions authorized by 10 CFR 20.1301(e). The concentration limit for the dissolved or entrained noble gases is based upon the assumption that Xe–135 is the controlling radionuclide and its effluent concentration in air (submersion) was converted to an equivalent concentration in water. This specification does not affect the requirement to comply with the annual limitations of 10 CFR 20.1301(a).

This specification applies to the release of radioactive materials in liquid effluents from all units at the site.

The required detection capabilities for radioactive materials in liquid waste samples are tabulated in terms of the lower limits of detection (LLDs). Detailed discussion of the LLD and other detection limits can be found in Currie, L.A., "Lower Limit of Detection: Definition and Elaboration of a Proposed Position for Radiological Effluent and Environmental Measurements," NUREG/CR–4007 (September 1984), and in the HASL Procedures Manual, *HASL–300.*

3/4.11 Radioactive Effluents
Liquid Holdup Tanks *
Limiting Condition for Operation

3.11.1.4 The quantity of radioactive material contained in each of the following unprotected outdoor tanks shall be limited to less than or equal to [10] curies, excluding tritium and dissolved or entrained noble gases:

a. _____
b. _____
c. _____
d. Outside temporary tank

Applicability: At all times.

Action: a. With the quantity of radioactive material in any of the above tanks exceeding the above limit, immediately suspend all additions of radioactive material to the tank. Within 48 hours, reduce the tank contents to within the limit, and describe the events leading to this condition in the next Radioactive Effluent Release Report, pursuant to Specification 6.9.1.7.

b. The provisions of Specification 3.0.3 and 3.0.4 are not applicable.

3/4.11 Radioactive Effluents
Bases
3/4.11.1.4 Liquid Holdup Tanks

The tanks listed in this specification include all those outdoor radwaste tanks that are not surrounded by liners, dikes, or walls capable of holding the contents of the tank and that do not have tank overflows and surrounding area drains connected to the Liquid Radwaste Treatment System.

Restricting the quantity of radioactive material contained in the specified tanks provides assurance that in the event of an uncontrolled release of the tank contents, the resulting concentrations would be less than the values given in Appendix B, Table 2, Column 2, to 10 CFR 20.1001–20.2402 at the nearest potable water supply and the nearest surface water supply in an Unrestricted Area.

3/4.11 Radioactive Effluents
3/4.11.2 Gaseous Effluents
Dose Rate
Limiting Condition for Operation

3.11.2.1. The dose rate due to radioactive materials released in gaseous effluents from the site to areas at or beyond the Site Boundary (see Figure 5.1–3) shall be limited to the following:

a. For noble gases: Less than or equal to a dose rate of 500 mrems/yr to the

* Tanks included in this specification are those outdoor tanks that are not surrounded by liners, dikes, or walls capable of holding the contents of the tank and that do not have tank overflows and surrounding area drains connected to the Liquid Radwaste Treatment System.

total body and less than or equal to a dose rate of 3000 mrems/yr to the skin, and

b. For iodine-131, iodine-133, tritium, and for all radionuclides in particulate form with half-lives greater than 8 days: Less than or equal to a dose rate of 1500 mrems/yr to any organ.

Applicability: At all times.

Action: a. With the dose rate(s) exceeding the above limits, immediately restore the release rate to within the above limit(s).

3/4.11 Radioactive Effluents
Bases
3/4.11.2 Gaseous Effluents
3/4.11.2.1 Dose Rate

This specification provides reasonable assurance that radioactive material discharged in gaseous effluents will not result in the exposure of a Member of the Public in an Unrestricted Area, either at or beyond the Site Boundary in excess of the design objectives of appendix I to 10 CFR part 50. This specification is provided to ensure that gaseous effluents from all units on the site will be appropriately controlled. It provides operational flexibility for releasing gaseous effluents to satisfy the Section II.A and II.C design objectives of appendix I to 10 CFR part 50. For Members of the Public who may at times be within the Site Boundary, the occupancy of that Member of the Public will usually be sufficiently low to compensate for the reduced atmospheric dispersion of gaseous effluents relative to that for the Site Boundary. Examples of calculators for such Members of the Public, with the appropriate occupancy factors, shall be given in the ODCM. The specified release rate limits restrict, at all times, the corresponding dose rates above background to a Member of the Public at or beyond the Site Boundary to less than or equal to 500 mrem/year to the total body or to less than or equal to 3000 mrem/year to the skin. These release rate limits also restrict, at all times, the corresponding thyroid dose rate above background to a child via the inhalation pathway to less than or equal to 1500 mrem/year. This specification does not affect the requirement to comply with the annual limitations of 10 CFR 20.1301(a).

This specification applies to the release of radioactive materials in gaseous effluents from all units at the site.

The required detection capabilities for radioactive material in gaseous waste samples are tabulated in terms of the lower limits of detection (LLD). Detailed discussion of the LLD, and other detection limits can be found in Currie, L.A., "Lower Limit of Detection: Definition and Elaboration of a Proposed Position for Radiological Effluent and Environmental Measurements," NUREG/CR-4007 (September 1984), and in the HASL Procedures Manual, *HASL-300* (revised annually).

3/4.11 Radioactive Effluents
*Gas Storage Tanks**
Limiting Condition for Operation

3.11.2.6 The quantity of radioactivity contained in each gas storage tank shall be limited to less than or equal to [2×10 5] Curies of noble gases (considered as Xe-133 equivalent).

Applicability: At all times.

Action: a. With the quantity of radioactive material in any gas decay tank exceeding the above limit, immediately suspend all additions of radioactive material to the tank. Within 48 hours, reduce the contents of the tank to within the above limits, and describe the events leading to this condition in the next Radioactive Effluent Release Report, pursuant to Specification 6.9.1.4.

3/4.11 Radioactive Effluents
Bases
*3/4.11.2.6 Gas Storage Tanks**

The tanks included in this specification are those tanks for which the quantity of radioactivity contained is not limited directly or indirectly by another technical specification. Restricting the quantity of radioactivity contained in each gas storage provides assurance that in the event of an uncontrolled release of the tank contents, the resulting whole body exposure to a Member of the Public at the nearest Site Boundary will not exceed 0.5 rem.

3/4.11 Radioactive Effluents
3/4.11.4 Total Dose
Limiting Condition for Operation

3.11.4 The annual (calendar year) dose or dose commitment to any Member of the Public due to release of radioactivity and to direct radiation from uranium fuel cycle sources shall be limited to less than or equal to 25 mrems to the total body or any organ, except the thyroid, which shall be limited to less than or equal to 75 mrems.

Applicability: At all times.

Action: a. With the calculated doses from the release of radioactive materials in liquid or gaseous effluents exceeding twice the limits of Specification 3.11.1.2a., 3.11.1.2b., 3.11.2.2a., 311.2.2b., 3.11.2.3a., or 3.11.2.3b., calculations shall be made including direct radiation contributions from the units (including outside storage tanks, etc.) to determine whether the above limits of Specification 3.11.4 have been exceeded. If such is the case, prepare and submit to the Commission within 30 days, pursuant to Specification 6.9.2, a Special Report that defines the corrective action to be taken to reduce subsequent releases to prevent recurrence of exceeding the above limits and includes the schedule for achieving conformance with the above limits. This Special Report, as defined in 10 CFR 20.2203(a)(4), shall include an analysis that estimates the radiation exposure (dose) to a Member of the Public from uranium fuel cycle sources, including all effluent pathways and direct radiation, for the calendar year that includes the release(s) covered by this report. It shall also describe levels of radiation and concentrations of radioactive material involved, and the cause of the exposure levels or concentrations. If the estimated dose(s) exceed(s) the above limits, and if the release condition resulting in violation of 40 CFR part 190 has not already been corrected, the Special Report shall include a request for a variance in accordance with the provisions of 40 CFR part 190. Submittal of the report within 30 days is considered a timely request, and a variance is granted until staff action on the request is complete.

b. The provisions of Specifications 3.0.3 and 3.0.4 are not applicable.

3/4.11 Radioactive Effluents
Bases
3/4.11.4 Total Dose

This specification is provided to meet the dose limitations of 40 CFR part 190 that have been incorporated into 10 CFR 20.1301(d). The specification requires the preparation and submittal of a Special Report whenever the calculated doses due to releases of radioactivity and to radiation from uranium fuel cycle sources exceed 25 mrems to the whole body or any organ, except the thyroid, which shall be limited to less than or equal to 75 mrems. Even if a site was to contain up to 4 reactors, it is highly unlikely that the resultant dose to a Member of the Public will exceed the dose limits of 40 CFR part 190 if the individual reactors remain within twice the dose design objectives of Appendix I, and if direct radiation doses from the units (including outside storage tanks, etc.) are kept small. The Special Report will describe a course of action that should result in the limitation of the

* Tanks included in this specification are those outdoor tanks that are not surrounded by liners, dikes, or walls capable of holding the contents of the tank and that do not have tank overflows and surrounding area drains connected to the Liquid Radwaste Treatment System.

* For PWRs only.

annual dose to a Member of the Public to within the 40 CFR part 190 limits. For the purposes of the Special Report, it may be assumed that the dose commitment to the Member of the Public from other uranium fuel cycle sources is negligible, with the exception that dose contributions from other nuclear fuel cycle facilities at the same site or within a radius of 8 km must be considered. If the dose to any Member of the Public is estimated to exceed the requirements of 40 CFR part 190, submittal of the Special Report within 30 days with a request for a variance (provided the release conditions resulting in violation of 40 CFR part 190 have not already been corrected), in accordance with the provisions of 40 CFR 190.11 and 10 CFR 20.2203(a)(4), is considered to be a timely request and fulfills the requirements of 40 CFR part 190 until NRC staff action is completed. The variance only relates to the limits of 40 CFR part 190, and does not apply in any way to other requirements for dose limitation of 10 CFR part 20, as addressed in Specifications 3.11.1.1 and 3.11.2.1. An individual is not considered a Member of the Public during any period in which he/she is engaged in carrying out any operation that is part of the nuclear fuel cycle. Demonstration of compliance with the limits of 40 CFR part 190 or with the design objectives of Appendix I to 10 CFR part 50 will be considered to demonstrate compliance with the 0.1 rem limit of 10 CFR 20.1301.

5.0 Design Features

5.1 Site

Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents

5.1.3 Information regarding radioactive gaseous and liquid effluents, which will allow identification of structures and release points as well as definition of Unrestricted Areas within the Site Boundary that are accessible to Members of the Public, shall be as shown in Figures [5.1–3 and 5.1–4].

The definition of Unrestricted Area used in implementing these Technical Specifications has been expanded over that in 10 CFR 20.1003. The Unrestricted Area boundary may coincide with the Exclusion (fenced) Area boundary, as defined in 10 CFR 100.3(a), but the Unrestricted Area does not include areas over water bodies. For calculations performed pursuant to 10 CFR 50.36a, the concept of Unrestricted Areas, established at or beyond the Site Boundary, is utilized in the Limiting Conditions for Operation* to keep levels of radioactive materials in liquid and gaseous effluents as low as is reasonably achievable.

6.0 Administrative Controls

6.9 Reporting Requirements

*Annual Reports**

6.9.1.2 Annual Reports covering the activities of the unit as described below for the previous calendar year shall be submitted prior to March 31 of each year. The initial report shall be submitted prior to March 31 of the year following initial criticality.

Reports required on an annual basis shall include:

a. A tabulation on an annual basis of the number of station, utility, and other personnel (including contractors), for whom monitoring was performed, receiving an annual deep dose equivalent greater than 100 mrem and the associated collective deep dose equivalent (reported in person-rem) according to work and job functions ** (e.g., reactor operations and surveillance, inservice inspection, routine maintenance, special maintenance [describe maintenance], waste processing, and refueling). The dose assignments to various duty functions may be estimated based on pocket dosimeter, thermoluminescence dosimeter (TLD), or film badge measurements. Small exposures totalling less than 20% of the individual total dose need not be accounted for. In the aggregate, at least 80% of the total deep dose equivalent received from external sources should be assigned to specific major functions;

6.0 Administrative Controls

6.9 Reporting Requirements

*Annual Radioactive Effluent Release Report**

6.9.1.4 A Radioactive Effluent Release Report covering the operation of the unit during the previous year shall be submitted prior to May 1 of each year. The period of the first report shall begin with the date of initial criticality.

The Radioactive Effluent Release Report shall include a summary of the quantities of radioactive liquid and gaseous effluents and solid waste released from the units as outlined in Regulatory Guide 1.21, "Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants," Revision 1, June 1974, with data summarized on a quarterly basis following the format of appendix B thereof. For solid wastes, the format for Table 3 and appendix B shall be supplemented with three additional categories: class of solid wastes (as defined by 10 CFR part 61), type of container (e.g., LSA, Type A, Type B, Large Quantity) and Solidification agent or absorbent (e.g., cement, urea formaldehyde).

The Radioactive Effluent Release Report shall include an annual summary of hourly meteorological data collected over the previous year. This annual summary may be either in the form of an hour-by-hour listing on magnetic tape of wind speed, wind direction, atmospheric stability, and precipitation (if measured), or in the form of joint frequency distributions of wind speed, wind direction, and atmospheric stability.** This same report shall include an assessment of the radiation doses due to the radioactive liquid and gaseous effluents released from the unit or station during the previous calendar year. This same report shall also include an assessment of the radiation doses from radioactive liquid and gaseous effluents to Members of the Public due to their activities inside the Site Boundary (Figure (5.1–3)) during the reporting period. All assumptions used in making these assessments, i.e., specific activity, exposure time, and location, shall be included in these reports. The meteorological conditions concurrent with the time of release of radioactive materials in gaseous effluents, as determined by sampling frequency and measurement, shall be used for determining the gaseous pathway doses. The assessment of radiation doses shall be performed in accordance with the methodology and parameters in the Offsite Dose Calculation Manual (ODCM).

The Radioactive Effluent Release Report shall also include an assessment of radiation doses to the likely most exposed Member of the Public from reactor releases and other nearby uranium fuel cycle sources, including doses from primary effluent pathways

* For licensees who have implemented Generic Letter 89–01, substitute "Controls" for "Limiting Conditions for Operation."

*A single submittal may be made for a multiple unit station. The submittal should combine those sections that are common to all units at the station.

** This tabulation supplements the requirements of 20.2206 of 10 CFR part 20.

*A single submittal may be made for a multiple unit station. The submittal should combine those sections that are common to all units at the station; however, for units with separate radwaste systems, the submittal shall specify the releases of radioactive material from each unit.

**In lieu of submission with the Radioactive Effluent Release Report, the licensee has the option of retaining this summary of required meteorological data on site in a file that shall be provided to the NRC upon request.

and direct radiation, for the previous calendar year to show conformance with 40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operation." Acceptable methods for calculating the dose contribution from liquid and gaseous effluents are given in Regulatory Guide 1.109, Rev. 1, October 1977 and NUREG–0133.

The Radioactive Effluent Release Report shall include a list and description of unplanned releases from the site to Unrestricted Areas of radioactive materials in gaseous and liquid effluents made during the reporting period.

The Radioactive Effluent Release Report shall include any changes made during the reporting period to the Process Control Program (PCP) and to the Offsite Dose Calculation Manual (ODCM), pursuant to Specifications 6.13 and 6.14, respectively, as well as any major change to Liquid, Gaseous, or Solid Radwaste Treatment Systems pursuant to Specification 6.15. It shall also include a listing of new locations for dose calculations and/or environmental monitoring identified by the Land Use Census pursuant to Specification 3.12.2.

The Radioactive Effluent Release Report shall also include the following: an explanation as to why the inoperability of liquid or gaseous effluent monitoring instrumentation was not corrected within the time specified in Specification 3.3.3.10 or 3.3.3.11, respectively; and description of the events leading to liquid holdup tanks or gas storage tanks exceeding the limits of Specification 3.11.1.4 or 3.11.2.6, respectively.

6.11 High Radiation Areas

As provided in paragraph 20.1601(c) of 10 CFR part 20, the following controls shall be applied to high radiation areas in place of the controls required by paragraph 20.1601 (a) and (b) of 10 CFR part 20:

6.11.1 High Radiation Areas with Dose Rates not Exceeding 1.0 rem/hour*:

A. Each entryway to such an area shall be barricaded and conspicuously posted as a high radiation area. Such barricades may be breached only during periods of personnel entry or exit.

B. Access to, and activities in, each such area shall be controlled by means of a Radiation Work Permit (RWP) or equivalent that includes specification of radiation dose rates in the immediate work area(s) and other appropriate radiation protection equipment and measures.

C. Individuals qualified in radiation protection procedures (e.g., health physics technicians) and personnel continuously escorted by such individuals may be exempted from the requirement for an RWP or equivalent while performing their assigned duties provided that they are following plant radiation protection procedures for entry to, exit from, and work in such areas.

D. Each individual (whether alone or in a group) entering such an area shall possess:

(i) A radiation monitoring device that continuously displays radiation dose rates in the area ("radiation monitoring and indicating device"); or

(ii) A radiation monitoring device that continuously integrates the radiation dose rates in the area and alarms when the device's dose alarm setpoint is reached ("alarming dosimeter"), with an appropriate alarm setpoint, or

(iii) A radiation monitoring device that continuously transmits dose rate and cumulative dose to a remote receiver monitored by radiation protection personnel responsible for controlling personnel radiation exposure within the area, or

(iv) A self-reading dosimeter and,

(a) Be under the surveillance, as specified in the RWP or equivalent, while in the area, of an individual at the work site, qualified in radiation protection procedures, equipped with a radiation monitoring and indicating device who is responsible for controlling personnel radiation exposure within the area, or

(b) Be under the surveillance, as specified in the RWP or equivalent, while in the area, by means of closed circuit television, of personnel qualified in radiation protection procedures, responsible for controlling personnel radiation exposure in the area.

E. Entry into such areas shall be made only after dose rates in the area have been determined and entry personnel are knowledgeable of them.

6.11.2 High Radiation Areas with Dose Rates Greater than 1.0 rem/hour, but less than 500 rads/hour**:*

A. Each entryway to such an area shall be conspicuously posted as a high radiation area and shall be provided with a locked door or gate that prevents unauthorized entry, and in addition:

(i) All such door and gate keys shall be maintained under the administrative control of the shift foreman or the health physics supervisor on duty.

(ii) Doors and gates shall remain locked except during periods of personnel entry or exit.

B. Access to, and activities in, each such area shall be controlled by means of an RWP or equivalent that includes specification of radiation dose rates in the immediate work area(s) and other appropriate radiation protection equipment and measures.

C. Individuals qualified in radiation protection procedures may be exempted from the requirement for an RWP or equivalent while performing radiation surveys in such areas provided that they are following plant radiation protection procedures for entry to, exit from, and work in such areas.

D. Each individual (whether alone or in a group) entering such an area shall possess:

(i) An alarming dosimeter with an appropriate alarm setpoint, or

(ii) A radiation monitoring device that continuously transmits dose rate and cumulative dose information to a remote receiver monitored by radiation protection personnel responsible for controlling personnel radiation exposure within the area with the means to communicate with and control every individual in the area, or

(iii) A self-reading dosimeter and,

(a) Be under the surveillance, as specified in the RWP or equivalent, of an individual qualified in radiation protection procedures, equipped with a radiation monitoring and indicating device who is responsible for controlling personnel exposure within the area, or

(b) Be under the surveillance, as specified in the RWP or equivalent, by means of closed circuit television, of personnel qualified in radiation protection procedures, responsible for controlling personnel radiation exposure in the area, and with the means to communicate with and control every individual in the area.

E. Entry into such areas shall be made only after dose rates in the area have been determined and entry personnel are knowledgeable of them.

F. Such individual areas that are within a larger area that is controlled as a high radiation area, where no enclosure exists for purpose of locking and where no enclosure can reasonably be constructed around the individual are need not be controlled by a locked door or gate, but shall be barricaded and conspicuously posted as a high radiation area, and a conspicuous, clearly visible flashing light shall be activated at the area as a warning device.

*At 30 centimeters from the radiation source or from any surface penetrated by the radiation.

**At 1 meter from the radiation source or from any surface penetrated by the radiation.

Enclosure 2.—Model Technical Specifications (With GL 89–01 implementation)

For those licensees who have implemented Generic Letter 89–01, the following model technical specifications should be used to supplement or replace existing specifications.

Offsite Dose Calculation Manual

1.17 The Offsite Dose Calculation Manual (ODCM) shall contain the methodology and parameters used in the calculation of offsite doses resulting from radioactive gaseous and liquid effluents, in the calculation of gaseous and liquid effluent monitoring Alarm/Trip Setpoints, and in the conduct of the Radiological Environmental Monitoring Program. The ODCM shall also contain (1) the Radioactive Effluent Controls and Radiological Environmental Monitoring Programs required by section 6.8.4, and (2) descriptions of the information that should be included in the Annual Radiological Environmental Operating and Radioactive Effluent Release Reports required by Specifications 6.9.1.3 and 6.9.1.4.

6.0 Administrative Controls

6.8 Procedures and Programs

6.8.4 The following programs shall be established, implemented, and maintained:

g. Radioactive Effluent Controls Program

A program shall be provided conforming with 10 CFR 50.36a for the control of radioactive effluents and for maintaining the doses to Members of the Public from radioactive effluents as low as reasonably achievable. The program (1) shall be contained in the ODCM, (2) shall be implemented by operating procedures, and (3) shall include remedial actions to be taken whenever the program limits are exceeded. The program shall include the following elements:

(1) Limitations on the operability of radioactive liquid and gaseous monitoring instrumentation including surveillance tests and setpoint determination in accordance with the methodology in the ODCM,

(2) Limitations on the concentrations of radioactive material released in liquid effluents to Unrestricted Areas conforming to 10 times the concentration values in Appendix B, Table 2, Column 2 to 10 CFR 20.1001–20.2042,

(3) Monitoring, sampling, and analysis of radioactive liquid and gaseous effluents pursuant to 10 CFR 20.1302 and with the methodology and parameters in the ODCM,

(4) Limitations on the annual and quarterly doses or dose commitment to a Member of the Public from radioactive materials in liquid effluents released from each unit to Unrestricted Areas conforming to appendix I to 10 CFR part 50,

(5) Determination of cumulative and projected dose contributions from radioactive effluents for the current calendar quarter and current calendar year in accordance with the methodology and parameters in the ODCM at least every 31 days,

(6) Limitations on the operability and use of the liquid and gaseous effluent treatment systems to ensure that the appropriate portions of these systems are used to reduce releases of radioactivity when the projected doses in a 31-day period would exceed 2 percent of the guidelines for the annual dose or dose commitment conforming to appendix I to 10 CFR part 50,

(7) Limitations on the dose rate resulting from radioactive material released in gaseous effluents from the site to areas at or beyond the Site Boundary shall be limited to the following:

a. For noble gases: Less than or equal to a dose rate of 500 mrems/yr to the total body and less than or equal to a dose rate of 3000 mrems/yr to the skin, and

b. For iodine-131, iodine-133, tritium, and for all radionuclides in particulate form with half-lives greater than 8 days: Less than or equal to a dose rate of 1500 mrems/yr to any organ.

(8) Limitations on the annual and quarterly air doses resulting from noble gases released in gaseous effluents from each unit to areas beyond the Site Boundary conforming to appendix I to 10 CFR part 50,

(9) Limitations on the annual and quarterly doses to a Member of the Public from Iodine-131, Iodine-133, tritium, and all radionuclides in particulate form with half-lives greater than 8 days in gaseous effluents released from each unit to areas beyond the Site Boundary conforming to Appendix I to 10 CFR part 50,

(10) Limitations on venting and purging of the Mark II containment through the Standby Gas Treatment System to maintain releases as low as reasonably achievable (BWRs with Mark II containments), and

(11) Limitations on the annual dose or dose commitment to any Member of the Public due to releases of radioactivity and to radiation from uranium fuel cycle sources conforming to 40 CFR part 190.

6.9 Reporting Requirements

*Radioactive Effluent Release Report***

6.9.1.4 The Radioactive Effluent Release Report covering the operation of the unit during the previous year shall be submitted prior to May 1 of each year. The report shall include a summary of the quantities of radioactive liquid and gaseous effluents and solid waste released from the unit. The material provided shall be (1) consistent with the objectives outlined in the ODCM and PCP, and (2) in conformance with 10 CFR 50.36a and section IV.B.1 of Appendix I to 10 CFR part 50.

6.14 Offsite Dose Calculation Manual (ODCM)

Changes to the ODCM:

a. Shall be documented and records of reviews performed shall be retained as required by Specification 6.10.3.o. This documentation shall contain:

(1) Sufficient information to support the change together with the appropriate analyses or evaluations justifying the change(s), and

(2) A determination that the change will maintain the level of radioactive effluent control required pursuant to 10 CFR 20.1302, 40 CFR part 190, 10 CFR 50.36a, and appendix I to 10 CFR part 50 and not adversely impact the accuracy or reliability of effluent, dose, or setpoint calculations.

b. Shall become effective after review and acceptance by the [URG] and the approval of the Plant Manger,

c. Shall be submitted to the Commission in the form of a complete, legible copy of the entire ODCM as a part of or concurrent with the Radioactive Effluent Release Report for the period of the report in which any change to the ODCM was made. Each change shall be identified by markings in the margin of the affected pages, clearly indicating the area of the page that was changed, and shall indicate the date (e.g., month/year) the change was implemented.

Enclosure 3.—Model Improved Standard Technical Specifications (affected sections only)

5.7.2 *Programs and Manuals*

5.7.2.3 Offsite Dose Calculation Manual (ODCM)

a. The ODCM shall contain the methodology and parameters used in the calculation of offsite doses resulting

**A single submittal may be made for a multi-unit station. The submittal should combine those sections that are common to all units at the station; however, for units with separate radwaste systems, the submittal shall specify the release of radioactive material from each unit.

from radioactive gaseous and liquid effluents, in the calculation of gaseous and liquid effluent monitoring alarm and trip setpoints, and in the conduct of the Radiological Environmental Monitoring Program; and

b. The ODCM shall also contain the Radioactive Effluent Controls and Radiological Environmental Monitoring programs required by Specification 5.7.2, and descriptions of the information that should be included in the Annual Radiological Environmental Operating and Radioactive Effluent Release Reports required by Specification (5.9.1.3) and Specification (5.9.1.4).

Licensee-initiated changes to the ODCM:

a. Shall be documented and records of reviews performed shall be retained by Specification 5.10.3(n/o). This documentation shall contain:

1. Sufficient information to support the change(s) together with the appropriate analyses or evaluations justifying the change(s), and

2. A determination that the change(s) maintain the levels of radioactive effluent control required pursuant to 10 CFR 20.1302, 40 CFR part 190, 10 CFR 50.36a, and 10 CFR part 50, Appendix I, and do not adversely impact the accuracy or reliability of effluent, dose, or setpoint calculations;

b. Shall become effective after review and acceptance by the [review method of Specification 5.5.1) and the approval of the (Plant Superintendent); and

c. Shall be submitted to the NRC in the form of a complete, legible copy of the entire ODCM as a part of or concurrent with the Radioactive Effluent Release Report for the period of the report in which any change in the ODCM was made. Each change shall be identified by markings in the margin of the affected pages, clearly indicating the area of the page that was changed, and shall indicate the date (i.e., month and year) the change was implemented.

5.7.2.7 Radioactive Effluent Controls Program

This program conforms to 10 CFR 50.36a for the control of radioactive effluents and for maintaining the doses to members of the public from radioactive effluents as low as reasonably achievable. The program shall be contained in the ODCM, shall be implemented by procedures, and shall include remedial actions to be taken whenever the program limits are exceeded. The program shall include the following elements:

a. Limitations on the functional capability of radioactive liquid and gaseous monitoring instrumentation including surveillance tests and setpoint determination in accordance with the methodology in the ODCM;

b. Limitations on the concentrations of radioactive material released in liquid effluents to Unrestricted Areas, conforming to 10 times the concentration values in Appendix B, Table 2, Column 2 to 10 CFR 20.1001–20.2401;

c. Monitoring, sampling, and analysis of radioactive liquid and gaseous effluents pursuant to 10 CFR 20.1302 and with the methodology and parameters in the ODCM;

d. Limitations on the annual and quarterly doses or dose commitment to a member of the public from radioactive materials in liquid effluents released from each unit to unrestricted areas, conforming to 10 CFR part 50, appendix I;

e. Determination of cumulative and projected dose contributions from radioactive effluents for the current calendar quarter and current calendar year in accordance with the methodology and parameters in the ODCM at least every 31 days;

f. Limitations on the functional capability and use of the liquid and gaseous effluent treatment systems to ensure that appropriate portions of these systems are used to reduce releases of radioactivity when the projected doses in a period of 31 days would exceed 2 percent of the guidelines for the annual dose or dose commitment, conforming to 10 CFR part 50, appendix I;

g. Limitations on the dose rate resulting from radioactive material released in gaseous effluents from the site to areas at or beyond the Site Boundary shall be limited to the following:

1. For noble gases: Less than or equal to a dose rate of 500 mrems/yr to the total body and less than or equal to a dose rate of 3000 mrems/yr to the skin, and

2. For iodine-131, iodine-133, tritium, and for all radionuclides in particulate form with half-lives greater than 8 days: Less than or equal to a dose rate of 1500 mrems/yr to any organ;

h. Limitations on the annual and quarterly air doses resulting from noble gases released in gaseous effluents from each unit to areas beyond the site boundary, conforming to 10 CFR part 50, appendix I;

i. Limitations on the annual and quarterly doses to a member of the public from iodine-131, iodine-133, tritium, and all radionuclides in particulate form with half-lives greater than 8 days in gaseous effluents released from each unit to areas beyond the site boundary, conforming to 10 CFR part 50, appendix I; and

j. Limitations on the annual dose or dose commitment to any member of the public due to releases of radioactivity and to radiation from uranium fuel cycle sources, conforming to 40 CFR part 190.

5.9.1 *Routine Reports*

5.9.1.2 Annual Reports

Note.—A single submittal may be made for a multiple unit station. The submittal should combine sections common to all units at the station.

Annual Reports covering the activities of the unit as described below for the previous calendar year shall be submitted by March 31 of each year. The initial report shall be submitted by March 31 of the year following initial criticality.

Reports required on an annual basis include:

a. Occupational Radiation Exposure Report

A tabulation on an annual basis of the number of station, utility, and other personnel (including contractors), for whom monitoring was required, receiving an annual deep dose equivalent >100 mrem and the associated collective deep dose equivalent (reported in personrem) according to work and job functions (e.g., reactor operations and surveillance, inservice inspection, routine maintenance, special maintenance (describe maintenance), waste processing, and refueling). This tabulation supplements the requirements of 10 CFR 20.2206. The dose assignments to various duty functions may be estimated based on pocket dosimeter, thermoluminescence dosimeter (TLD), or film badge measurements. Small exposures totalling <20% of the individual total dose need not be accounted for. In the aggregate, at least 80% of the total deep dose equivalent received from external sources should be assigned to specific major work functions; and

5.9.1 *Routine Reports*

5.9.1.4 Radioactive Effluent Release Report

Note.—A single submittal may be made for a multiple-unit station. The submittal shall combine sections common to all units at the station; however, for units with separate radwaste systems, the submittal shall specify the releases of radioactive material from each unit.

The Radioactive Effluent Release Report covering the operation of the unit during the previous year shall be submitted prior to May 1 of each year in accordance with 10 CFR 50.36a. The

report shall include a summary of the quantities of radioactive liquid and gaseous effluents and solid waste released from the unit. The material provided shall be consistent with the objectives outlined in the ODCM and Process Control Program and in conformance with 10 CFR 50.36a and 10 CFR part 50, Appendix I, Section IV.B.1.

5.11 High Radiation Areas

As provided in paragraph 20.1601(c) of 10 CFR part 20, the following controls shall be applied to high radiation areas in place of the controls required by paragraph 20.1601 (a) and (b) of 10 CFR part 20:

5.11.1 High Radiation Areas with Dose Rates not Exceeding 1.0 rem/hour:*

A. Each entryway to such an area shall be barricaded and conspicuously posted as a high radiation area. Such barricades may be breached only during periods of entry or exit.

B. Access to, and activities in, each such area shall be controlled by means of a Radiation Work Permit (RWP) or equivalent that includes specification of radiation dose rates in the immediate work area(s) and other appropriate radiation protection equipment and measures.

C. Individuals qualified in radiation protection (e.g., health physics technicians) and personnel continuously escorted by such individuals may be exempted from the requirement for an RWP or equivalent while performing their assigned duties provided that they are following plant radiation protection procedures for entry to, exit from, and work in such areas.

D. Each individual (whether alone or in a group) entering such an area shall possess:

(i) A radiation monitoring device that continuously displays radiation dose rates in the area ("radiation monitoring and indicating device"), or

(ii) A radiation monitoring device that continuously integrates the radiation dose rates in the area and alarms when the device's dose alarm setpoint is reached ("alarming dosimeter"), with an appropriate alarm setpoint, or

(iii) A radiation monitoring device that continuously transmits dose rate and cumulative dose information to a remote receiver monitored by radiation protection personnel responsible for controlling personnel radiation exposure within the area, or

(iv) A self-reading dosimeter and,

(a) Be under the surveillance, as specified in the RWP or equivalent, while in the area, of an individual at the work site, qualified in radiation protection procedures, equipped with a radiation monitoring and indicating device who is responsible for controlling personnel radiation exposure within the area, or

(b) Be under the surveillance, as specified in the RWP or equivalent, while in the area, by means of closed circuit television, of personnel qualified in radiation protection procedures, responsible for controlling personnel radiation exposure in the area.

E. Entry into such areas shall be made only after dose rates in the area have been determined and entry personnel are knowledgeable of them.

5.11.2 High Radiation Areas with Dose Rates Greater than 1.0 rem/hour*, but less than 500 rads/hour: **:

A. Each entryway to such an area shall be conspicuously posted as a high radiation area and shall be provided with a locked door or gate that prevents unauthorized entry, and in addition:

(i) All such door and gate keys shall be maintained under the administrative control of the shift foreman or the health physics supervisor on duty.

(ii) Doors and gates shall remain locked except during periods of personnel entry or exit.

B. Access to, and activities in, each such area shall be controlled by means of an RWP or equivalent that includes specification of radiation dose rates in the immediate work area(s) and other appropriate radiation protection equipment and measures.

C. Individuals qualified in radiation protection procedures may be exempted from the requirement for an RWP or equivalent while performing radiation surveys in such areas provided that they are following plant radiation protection procedures for entry to, exit from, and work in such areas.

D. Each individual entering such an area shall possess:

(i) An alarming dosimeter with an appropriate alarm setpoint, or

(ii) A radiation monitoring device that continuously transmits dose rate and cumulative dose information to a remote receiver monitored by radiation protection personnel responsible for controlling personnel radiation exposure within the area with the means to communicate with and control every individual in the area, or

(ii) A self-reading dosimeter and,

(a) Be under the surveillance, as specified in the RWP or equivalent, of an individual qualified in radiation protection procedures, equipped with a radiation monitoring and indicating device who is responsible for controlling personnel exposure within the area, or

(b) Be under the surveillance, as specified in the RWP or equivalent, by means of closed circuit television, of personnel qualified in radiation protection procedures, responsible for controlling personnel radiation exposure in the area, and with the means to communicate with and control every individual in the area.

E. Entry into such areas shall be made only after dose rates in the area have been determined and entry personnel are knowledgeable of them.

F. Such individual areas that are within a larger area that is controlled as a high radiation area, where no enclosure exists for purpose of locking and where no enclosure can reasonably be constructed around the individual area need not be controlled by a locked door or gate, but shall be barricaded and conmspicously posted as a high radiation area, and a conspicuous, clearly visible flashing light shall be activated at the area as a warning device.

Dated at Rockville, Maryland, this 16th day of December 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31335 Filed 12-22-93; 8:45 am]

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*At 30 centimeters (12 inches) from the radiation source or from any surface penetrated by the radiation.

**At 1 meter (from the radiation source or from any surface penetrated by the radiation.

[Docket No. 50-331]

Iowa Electric Light and Power Co., Duane Arnold Energy Center; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NRF-49, issued to the Iowa Electric Light and Power Company (the licensee), for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new part 20. The change would revise the limitations on

concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendment dated July 28, 1993, implementing the new 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, Appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TS, any alternative to the amendment will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Duane Arnold Energy Center, dated March 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated July 28, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Cedar Rapids Public Library, 500 1st Street, SE., Cedar Rapids, Iowa, 52401.

Dated at Rockville, Maryland, this 17th day of December 1993.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Acting Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31334 Filed 12-22-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on November 24, 1993 (58 FR 62165). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1994 ACRS and ACNW full Committee meetings can be obtained by contracting the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EST).

ACRS Subcommittee Meetings

Thermal Hydraulic Phenomena, January 4 and 5, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC RELAP5/MOD 3 code. The focus of the discussion will be on the use of this code in evaluating the design features of the AP600 passive plant.

Planning and Procedures, January 5, 1994, Bethesda, MD (2:00 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. A portion of this meeting 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.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review the remaining NRC staff's final safety evaluation report and any residual issues associated with the ABWR design.

ABB-CE Standard Plant Designs, February 9, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report (FSER) and the ABB-CE Standard Safety Analysis Report (SSAR) and Design Description/ITAAC for the System 80+ design.

Planning and Procedures, February 9, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. A portion of this meeting 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.

ABB–CE Standard Plant Design, March 8, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's FSER and the ABB–CE SSAR and Design Description/ITAAC for the System 80+ design.

Advanced Boiling Water Reactors, March 9, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on the Final Design Approval for ABWR for consideration by the full Committee.

Planning and Procedures, March 9, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. A portion of this meeting 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.

Thermal Hydraulic Phenomena, March 16–17, 1994, Pittsburgh, PA. The Subcommittee will continue its review of the test programs being conducted in support of the AP600 passive plant design certification review. The focus of the meeting discussions will be on the CMT and PCCS test programs.

ABB–CE Standard Plant Designs, April 5–6, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's FSER and the ABB–CE SSAR and Design Description/ITAAC for the System 80+ design.

Planning and Procedures, April 6, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting 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.

ACRS Full Committee Meetings

405th ACRS Meeting, January 6–8, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed Final Rule to Revise Emergency Planning Regulations on Exercise Requirements*—Review and comment on the proposed final rule on emergency planning regulations that is intended to clarify the requirements for the emergency planning exercises. Representatives of the NRC staff will participate.

B. *Proposed Resolution of Generic Issue 67.5.1, "Reassessment of SGTR Radiological Consequences"*—Review and comment on the proposed resolution of Generic Issue 67.5.1 regarding reassessment of the validity of the present techniques used to calculate radiological consequences resulting from a steam generator tube rupture (SGTR) event. Representatives of the NRC staff will participate.

C. *Reassessment of the Fire Protection Program*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–143, "NRC staff Action to Address the Recommendations in the Report on the Reassessment of the NRC Fire Protection Program."

D. *BWR Core Power Stability/ATWS*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding the status of staff efforts in resolving the issue of BWR core power stability combined with an ATWS event, including the related issue of liquid poison remixing phenomena, and the development of emergency procedure guidelines. Representatives of the industry will participate.

E. *Results of the Public Workshop on License Renewal*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the September 30, 1993 public workshop on license renewal, and a draft commission paper that includes staff recommendations on the future directions of the license renewal. Representatives of the industry will participate, as appropriate.

F. *Rod Control System Failure and Withdrawal of Rod Control Cluster Assemblies*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding: The May 27, 1993 event at Salem Unit 2 during which a single failure in the rod control system resulted in the withdrawal of a single rod from the core while the operator was applying a rod insertion signal; a similar event at the Ginna nuclear power plant; and licensees' responses to Generic Letter 93–04, "Rod Control System Failure and Withdrawal of Rod Control Cluster Assemblies," dated June 21, 1993. Representatives of the industry will participate, as appropriate.

G. *Evaluation of Licensee Feedback on the Impact of NRC Activities on Licensee Operations*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–236, "The Staff's Evaluation of Ongoing Licensee Feedback on the Impact of NRC Activities on Licensee Operations." Representatives of the industry will participate, as appropriate.

H. *Reliability Assurance Program*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding the staff position on the Reliability Assurance Program for the advanced light water reactors.

I. *Certified Design Material for ABWR*—Continue discussion of a proposed ACRS report on Certified Design Material in the areas of Human Factors Engineering, Radiation Protection, Piping Design, and Instrumentation and Control. Representatives of the NRC staff will participate, as appropriate.

J. *Meeting with the Deputy Executive Director for Nuclear Reactor Regulation*—Meet with Mr. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, and Mr. Milhoan who will succeed Mr. Sniezek in early February 1994, and discuss items of mutual interest.

*K. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss 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.

L. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

M. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

406th ACRS Meeting, February 10–11, 1994, Bethesda, MD. Agenda to be announced.

407th ACRS Meeting, March 7–9, 1994, Bethesda, MD. Agenda to be announced.

408th ACRS Meeting, April 10–11, 1994, Bethesda, MD. Agenda to be announced.

ACNW Full Committee Meetings

61st ACNW Meeting, January 19–20, 1994, Bethesda, MD. During this meeting the Committee plans to consider the following:

A. *HLW Topical Report Position Paper*—Hear a briefing by and hold discussions with representatives of the NRC staff on its approach to reviewing the DOE's topical reports on issue

resolution in high-level waste management, including the staff's protocol and methodology in the Topical Report Position Paper.

B. *ACNW Task Action Plans*—Discuss Task Action Plans to implement the provisions and protocols documented in the recently completed ACNW Program Plan, including feedback and direction from the Commission following the ACNW's briefing on December 21, 1993.

C. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

D. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

62nd ACNW Meeting, February 23–24, 1994, Bethesda, MD. Agenda to be announced.

63rd ACNW Meeting, March 23–24, 1994, Bethesda, MD. Agenda to be announced.

Dated: December 17, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–31336 Filed 12–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458; License No. NPF–47]

Gulf States Utilities, Entergy Corp., Entergy Operations, Inc. (River Bend Station, Unit 1); Order Approving Transfers and Notice of Issuance of License Amendments

I

On November 20, 1985, pursuant to 10 CFR part 50, License No. NPF–47 was issued, under which Gulf States Utilities Company (GSU) is authorized to operate and hold a 70 percent ownership share in River Bend Station, Unit 1 (River Bend), which is located in West Feliciana Parish, Louisiana.

II

In June 1992, GSU and Entergy Corporation (Entergy) entered into an agreement providing for the combination of the businesses of their companies. In accordance with the merger plan, GSU, following the merger, will continue to operate as an electric utility, but as a subsidiary of a new holding company to be named Entergy Corporation, with its electric operations fully integrated with those of the Entergy System. Upon consummation of the proposed business combination and subject to the receipt of the necessary approvals, Entergy Operations Inc. (EOI), on behalf of the owners, will assume operations and managerial responsibility for River Bend.

III

To implement the business combination, GSU applied to the U.S. Nuclear Regulatory Commission (NRC) for two license amendments to license NPF–47, by two letters dated January 13, 1993, as supplemented by later filings. Under these requested license amendments, the license would reflect the transfer of ownership of GSU to become a wholly-owned subsidiary of Entergy as a result of a merger between GSU and Entergy, and control over the operation of River Bend would be transferred from GSU to EOI, another wholly-owned subsidiary of Entergy. Notice of these applications for transfer and proposed no significant hazards consideration determinations were published in the **Federal Register** on July 7, 1993 (58 FR 36435 and 58 FR 36436).

IV

The transfer of rights under license NPF–47 is subject to the NRC's approval under 10 CFR 50.80. Based on information provided by GSU and Entergy, and other information before the Commission, it is determined that the proposed transfer of the control of operations of River Bend from GSU to EOI, and the proposed transfer of ownership of GSU to Entergy, subject to the conditions set forth herein, are in the public interest and are consistent with the applicable provisions of law, regulations and orders issued by the Commission. These actions were evaluated by the staff as documented in Safety Evaluations, dated December 16, 1993, which contain final no significant hazards consideration determinations. The conditions of the transfer, to which GSU has not objected, are:

2.C.(3) Antitrust Conditions

a. GSU shall comply with the antitrust license conditions set forth in Appendix C, attached hereto and incorporated in this license.

b. EOI shall not market or broker power or energy from River Bend Station, Unit 1. GSU is responsible and accountable for the actions of its agent, EOI, to the extent said agent's actions affect the marketing or brokering of power or energy from River Bend Station, Unit 1 and, in any way, contravene the antitrust conditions of this paragraph or Appendix C of this license.

2.C.(16) Merger Related Reports

GSU shall inform the Director, NRR:

a. Sixty days prior to a transfer (excluding grants of security interests or liens) from GSU to Entergy or any other entity of facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of GSU's consolidated net utility plant, as recorded on GSU's books of account.

b. Of an award of damages in litigation initiated against GSU by Cajun Electric Power Cooperative regarding River Bend within 30 days of the award.

V

Accordingly, pursuant to sections 103, 105, 161b, 161i, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq. and 10 CFR part 50, it is hereby ordered that the transfers to Entergy Corporation and Entergy Operations Inc., discussed above, are approved, and notice is given that license amendments providing for the transfer of control of operation of River Bend to EOI, subject to the license conditions set out and herein, and the transfer of ownership of GSU to Entergy are issued, and both amendments being subject to the further conditions that should both of these transfers not be completed by June 14, 1994 this order will be null and void, except that for good cause shown, the date upon which the transfers are to be completed may be extended for a short period beyond June 14, 1994.

Dated at Rockville, Maryland this 16th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–31332 Filed 12–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 2; Exemption

I

The Tennessee Valley Authority (TVA) is the holder of Facility Operating License No. DPR–79, which authorizes operation of the Sequoyah Nuclear Plant, Unit 2 (the facility, Unit 2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located on TVA's Sequoyah site in Hamilton County, Tennessee.

II

Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR part 50 require that Types B and C local leak rate tests be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years.

On March 15, 1992, SQN Unit 2 started the Cycle 5 refueling outage. All Type B and Type C local leak rate tests were performed during the outage and the unit was returned to service on May 17, 1992. Between March 1, 1993, and October 19, 1993, Unit 2 was shut down. Due to the length of the shutdown, TVA has postponed the start of the Unit 2 Cycle 6 refueling outage from September 1993 to April 2, 1994. As a result, the expiration of the 2-year time interval for some Type B and Type C tests occurs before the outage starts. To perform the tests in accordance with the requirement would force the unit to shut down in March 1994. To prevent this, the licensee has requested an exemption that would allow a one-time deferment of the Appendix J interval requirement from March 15, 1994 until the shutdown for the refueling outage starting on April 2, 1994, a total of approximately 18 days.

The extension would affect 20 Electrical Penetrations, 164 Isolation Valves, 2 Flanges, 1 hydrogen analyzer, and 1 containment spray header valve, since they were tested during the Unit 2 Cycle 5 refueling outage before April 2 1992. These valves and components, which represent approximately 53 percent of the leak rate test program, are considered by the licensee to be leak tight and in good condition, which was verified by the leak rate tests performed during the Cycle 5 refueling outage. Based on the present containment leak rate that accounts for less than 80 percent of the applicable limit, the licensee believes that the remaining margin is sufficient to ensure that any incremental increase in leakage because of the extension, will not result in unacceptable as-found test results. Also, based on historical data, the licensee believes that any incremental increase in leakage from these components because of the extension would be small. In addition, many of the components were included in the boundary for the last Type A test that was performed in April 1992, and have been subjected to improved maintenance practices that provides increased assurance that the components will be capable of performing their intended safety function.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *."

The underlying purpose of the requirement to perform Type B and Type C containment leak rate tests at intervals not to exceed 2 years, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or being unknown, and long enough to allow the tests to be conducted during scheduled refueling outages. This interval was originally published in Appendix J when refueling cycles were conducted at approximately annual intervals and has not been changed to reflect 18-month or 2-year operating cycles. It is not the intent of the regulation to require a plant shutdown solely for the purpose of conducting the periodic leak rate tests. Based on historical data at SQN, any incremental increase in leakage because of the extension would be small. Improved maintenance practices, implemented during the Unit 2 Cycle 5 outage and improved testing techniques of containment isolation valves to detect any degraded performance indications, provide increased assurance that these components will perform their safety function. In addition, on the average, as-left leak rates are less than 25 percent of the established reference leak rates. Therefore, since the maximum extension is relatively short (18 days) compared to the two-year test interval requirement, it is unlikely that substantial degradation of the containment components leading to the failure of the containment to perform its safety function would occur. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed increase of the 2-year time interval for performing Type B and Type C Containment Leak Rate Tests until the Cycle 6 refueling outage will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR part 50, Appendix J, Sections III.D.2(a) and III.D.3 are not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Tennessee Valley Authority exemption from the requirements of Sections III.D.2(a) and III.D.3 and Appendix J to 10 CFR part 50 as requested in the submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (58 FR 60470).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of December, 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31333 Filed 12-22-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33348; File Nos. 600-19 and 600-22]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerated Approval of Application for Extension of Temporary Registration as a Clearing Agency

December 15, 1993.

On December 1, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] an

[1] 15 U.S.C. 78s(a).

amendment to its Form CA-1 requesting that the Commission extend MBS's registration as a clearing agency under section 17A of the Act for a period of 12 months.[2] Notice of MBS's amended application and request for extension of temporary registration appeared in the **Federal Register** on December 10, 1993.[3] This order approves on an accelerated basis MBS's amended application by extending MBS's temporary registration as a clearing agency until December 31, 1994.

On February 2, 1987, the Commission granted the application of MBS for registration as a clearing agency, pursuant to sections 17A(b) and 19(a)(1) of the Act[4] and Rule 17Ab2-1(c)[5] thereunder, on a temporary basis for a period of 18 months.[6] Subsequently, the Commission issued orders that extended MBS's temporary registration as a clearing agency, the last of which extended MBS's registration through December 31, 1993.[7]

As discussed in detail in the original order granting MBS's registration, one of the primary reasons for MBS's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities.[8] Since the original temporary registration order, MBS has implemented several improvements to its operating and financial standards and continues to work towards enhancing the safety and efficiency of its operations. In addition, MBS has made significant progress towards implementation of a fully operational off-site backup system which the Commission is currently reviewing.

MBS has functioned effectively as registered clearing agency for over six years. Accordingly, in light of the past performance of MBS and the need for MBS to provide continuity of service to its participants, the Commission believes that, pursuant to section 17A(b)(2) of the Act, it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to approve MBS's request to extend its registration for an additional 12 months. The Commission also finds that "good cause" exists to extend MBS's registration on an accelerated basis, prior to the end of the comment period, to prevent any lapse in that registration to occur. Any comments received concerning MBS's amended application will be considered in conjunction with the Commission's consideration of whether to grant MBS permanent registration as a clearing agency under section 17A(b) of the Act.[9]

It is therefore ordered, that MBS's registration as a clearing agency be, and hereby is, approved on a temporary basis until December 31, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31341 Filed 12-22-93; 8:45 am]

BILLING CODE 8010-01-M

[2] Letter from J. Craig Long, Secretary, MBS, to Jack Drogin, Branch Chief, Division of Market Regulation, Commission, dated November 30, 1993.

[3] Securities Exchange Act Release No. 33274 (December 2, 1993), 58 FR 64990.

[4] 15 U.S.C. 78q-1(b) and 15 U.S.C. 78s(a)(1).

[5] 17 CFR 240.17Ab2-1(c).

[6] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (order granting MBS registration as a clearing agency for a period not to exceed 18 months).

[7] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; and 31750 (January 21, 1993), 58 FR 6424.

[8] See, *supra*, note 6.

[9] 15 U.S.C. 78q-1(b).

[10] 17 CFR 200.30-3(a)(50).

[Release No. 34-33349; File No. SR-PSE-93-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Time Within Which Members Must Notify the Exchange of Changes of Address

December 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its Rule 1.13 relating to the time within which members must notify the Exchange of changes to their address where notices may be served. The Exchange is proposing to change the length of such time from sixty (60) calendar days to fifteen (15) business days.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(1) Purpose

PSE Rule 1.13 currently provides that Exchange members and member firms must submit to the Exchange any changes to their address where notices may be served within sixty (60) calendar days of such change.[1] The Exchange believes that a shorter period of time for notifying the Exchange of such changes of address is appropriate due to the need of Exchange members and member firms to be contacted promptly regarding membership requirements, requests for information in regulatory investigations, the commencement of disciplinary investigations actions, and other such matters. Accordingly, the Exchange is proposing a requirement that members and member firms notify the Exchange within fifteen (15) business days of any change of address where notices may be served. Such rule change will serve to foster more efficient communications between the Exchange and its members and member firms. The Exchange does not believe that the proposed rule change will place an undue burden on its members and member firms.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

[1] See also PSE Constitution, Art. VIII, section 1(g), which provides that "[e]very member and member firm shall register with the Exchange addresses and subsequent changes thereof where notice may be served."

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31343 Filed 12-22-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33351; File No. SR-PSE-93-03]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Waiver of Maximum Bid/Ask Differentials in Individual Equity Options

December 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its Rule 6.37 to permit two Floor Officials to waive, on a case-by-case basis, the required maximum bid/ask differentials for options when the bid/ask differential in the security underlying an options contract is greater than ½ of a point.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[2] 17 CFR 200.30-3(a)(12) (1992).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange is proposing to amend its rule establishing the maximum bid/ask differentials that may be created in making a market in options contracts. Rule 6.37(b)(1) currently provides, for example, that a Market Maker may bid and/or offer to create differences of no more than ¼ of a point between the bid and the offer when the bid is less than $2. Under the proposal, two Floor Officials may waive the requirements of subsection (b)(1) when the bid/ask differential in the underlying security is greater than ½ of a point. However, in such instances, the bid/ask differential for the in-the-money series may be, at most, as wide as the bid/ask differential in the underlying security (in the primary market); and the bid/ask differential for the at-the-money series and the out-of-the-money series may be, at most, half as wide as the bid/ask differential in the underlying security (in the primary market). The proposed rule also provides that such exemptions are subject to Options Floor Trading Committee review. The proposal is intended to address situations where the market in an underlying security (usually an over-the-counter issue) is highly illiquid. Under the current rule, Market Makers in such circumstances may be required to provide narrow markets in options contracts without having a reasonable opportunity to hedge their positions with stock. The Exchange believes that Market Makers in these situations have an undue burden and that an exemption from subsection (b)(1) may be warranted on a case-by-case basis. The PSE also notes that currently, under Rule 6.37, if the bid/ask differential in the market for the underlying security is greater than the differential permitted under subsection (b)(1), the bid/ask differential for any in-the-money option series may be identical with the bid/ask differential in the market for the underlying security.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chance Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1992).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31342 Filed 12-22-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Notification of Extension of Filing Deadline

This is to give notice that the deadline for filing applications for physical disaster loans as a result of the Midwest floods has been extended to January 15, 1994 for all nine states that had counties Presidentially declared as disaster areas. Those states and their respective declaration numbers are:

Illinois: 2662
Iowa: 2661
Kansas: 2669
Minnesota: 2664
Missouri: 2663
Nebraska: 2667
North Dakota: 2670
South Dakota: 2668
Wisconsin: 2660

All other information remains the same, i.e., the termination date for filing applications for economic injury loans will remain as previously published for each state.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 9, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-31291 Filed 12-22-93; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination Provision of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of an opportunity to file petitions requesting accelerated tariff elimination under the North American Free Trade Agreement.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 ("the Act") grants the President, subject to the consultation and layover requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico and Canada under Article 302(3) of the North American Free Trade Agreement ("the NAFTA"). This notice opens a first round of consideration for accelerated tariff elimination under the NAFTA, and describes the procedures for filing petitions. Certain petitions may be considered on an expedited timetable. The closing date for filing petitions requesting consideration on an expedited basis is January 21, 1994; for all other requests, the petition deadline is February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Office of North American Affairs, Office of the United States Trade Representative, room 501, 600 17th Street NW., Washington, DC 20506, telephone (202) 395-3412.

Background

The NAFTA will enter into force on January 1, 1994. Annex 302.2 establishes the timetable for the staged elimination of tariffs on all dutiable goods traded between Mexico and the United States and most dutiable goods traded between Mexico and Canada. Duties on goods traded between the United States and Canada remain subject to the tariff elimination timetables agreed to under the U.S.-Canada Free Trade Agreement (CFTA), as modified by three rounds of tariff acceleration negotiations conducted between 1989 and 1993.

Article 302(3) of the NAFTA provides that, at the request of any party to the NAFTA, the parties shall consult to consider accelerating the elimination of customs duties set out in the Agreement. Section 201(b) of the NAFTA Implementation Act grants the President, subject to certain consultation and layover requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. The Statement of Administrative Action (SAA), which was approved by the Congress along with the NAFTA, states that the Administration will give special priority to negotiating the acceleration of tariff reductions for products where the Mexican or Canadian duty is substantially higher than the U.S. tariff. Several products are specifically cited, including bedding components, flat glass, major household appliances and wine. Both the Statement of Administrative Action and section 201(b)(2) of the Act state that the President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with respect to such an article has been considered and denied in the preceding 3 calendar years. (That

is, a request made and denied in 1994 cannot be reconsidered before 1998.)

Based on the above, and on the experience gained in conducting three tariff acceleration rounds under the CFTA, the following procedures will apply, subject to any modifications made in the future.

I. Articles Which May Be Petitioned

Petitions for accelerated tariff elimination may be filed only for articles for which the duty will be eliminated after January 1, 1994, as noted in Annex 302.2 of the NAFTA. Requests may be made with respect to trade in products originating in the United States, Mexico, and Canada.

USTR will generally not act on a petition unless most U.S. producers of that particular product consider the request for acceleration to be non-controversial. Petitions may request acceleration of reductions by one or all of the NAFTA Parties. Normally, the acceleration of the elimination of tariffs will be pursued on a reciprocal basis with Mexico and/or Canada. Since the consultations will be trinational, petitions requesting acceleration by other than all parties must note the reasons for excluding any party. In addition, it is USTR's intention not to consider any petition during this round requesting acceleration between the United States and Canada concerning 8-digit tariff headings that were considered for accelerated duty elimination in the three CFTA rounds. Information on how to obtain a list of such previously considered products is noted below.

II. Timetable

It is the intent of the United States, Mexico and Canada to conduct an initial NAFTA acceleration exercise on an expedited timetable. Petitions requesting consideration on an expedited basis are due at USTR by January 21, 1994. Petitions requesting a non-expedited review are due by February 25, 1994. The Administration intends to consider products cited in the SAA for which petitions are received by January 21, 1994 on an expedited basis, and will include additional petitions received by January 21 to the maximum extent feasible. Under the expedited review schedule, USTR will publish a preliminary list of the products to be presented to Mexico and/or Canada on or about February 7, and request comments on this list, due by February 25. Trinational meetings will begin shortly thereafter, with the intent of reaching agreement on a package for tariff acceleration within 120 days.

USTR will give priority to consideration to products cited in the Statement of Administrative Action with respect to United States-Mexico tariff elimination acceleration. The expedited nature of the timetable for this initial NAFTA acceleration exercise may limit the number of products that can be considered. However, those petitions submitted which cannot be considered on an expedited schedule will be considered under an extended schedule of consultations, as will those petitions received by February 25, 1994, with a further announcement of an agreed acceleration package made at a later date. It is USTR's intent to include as many priority requests as is possible in the expedited round. Advice from the United States International Trade Commission (USITC) and the Trade Advisory Committees will also be requested for all products, including those reviewed on an expedited basis. A future notice will provide information on the timetable for petitions not considered on an expedited basis.

III. Format of Petitions

A model petition format and the information requested is shown in the annex to this notice. In order to be considered, petitions for accelerated tariff reductions must conform to the model format and contain all essential data elements.

Responses to questions 1 through 11 listed in sections A and B of the petition format are essential. Petitioners should also provide as much of the information requested in section C of the format as is available to them.

If a submission contains business confidential material, the specific material must be so identified in order to receive confidential treatment. In such cases, both a non-confidential and a business confidential version of the petition, each clearly marked as to its status, must be submitted. None of the information provided in sections A and B of the petition may be designated business confidential.

A copy of the petition format and this notice can be obtained from the Office of North American Affairs, Office of the United States Trade Representative (USTR), Room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-3412.

IV. General Instructions

1. One product per petition. Each petition may request accelerated tariff elimination for a single product only. For this purpose, "single product" means an 8-digit tariff subheading or, if the petitioner is not requesting acceleration of an entire 8-digit tariff subheading, a single specified product within an 8-digit tariff subheading. All information contained in a petition must pertain solely to the single product that is the subject of the petition. Petitions requesting acceleration on more than one product cannot be considered.

2. Petitioner/product relationship (number 5). At least one item must be checked. If item "e", "j" or "o" is checked, specify the relationship or interest that the petitioner has in the product.

3. Product description (number 6). Petitions for acceleration of an entire 8-digit tariff subheading must provide at least a general description sufficient to identify the product coverage of the 8-digit subheading.

Petitions for acceleration of a single product within an 8-digit subheading must provide:

a. A full and complete description of the article;

b. The article's principal use in the United States;

c. The article's commercial, common or technical name or designation; and, as appropriate:

—Illustrative literature;

—The relative quantity by weight of each component materials for articles composed of two or more materials;

—Chemical analysis, flow charts, CAS number, etc.;

d. Any other information that may assist in determining the appropriate tariff classification of the article;

e. A statement of the reason(s) the petitioner believes that the article is classified in the 8-digit tariff subheading which the petitioner has entered in number 7 of the petition (e.g., outstanding classification by Customs or a classification by Customs on liquidated entries of the article in question) and;

f. A copy of any rulings issued by the U.S. Customs Service or the appropriate authorities in the Government of Canada or the Government of Mexico specifying the classification of the petitioned product in the Harmonized Tariff Schedule of the United States, the Customs Tariff of Canada, and the Tariff Schedule of Mexico.

Petitions for single products within an 8-digit which do not provide the above information cannot be considered. Brand names or trademarks are not acceptable as product descriptions for this purpose and their use may result in rejection of the petition.

4. 8-digit tariff subheadings (number 7). Petitions for acceleration of tariff elimination under United States, Mexican and Canadian tariff schedules

must provide the correct applicable 8-digit tariff subheading number for each of the three tariff schedules. If acceleration is requested under only one or two of the tariff schedules, the appropriate tariff schedule must be identified at the applicable 8-digit subheading in those schedules. Not more than one 8-digit subheading in each tariff schedule must be listed in a petition. Commodity numbers contained in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, cannot be substituted for the number of the 8-digit tariff subheading in the United States, Mexican or Canadian tariff schedules. Petitions using Section B commodity numbers for this purpose cannot be considered.

5. Supplemental information (Section D). This section of the petition should be used to provide information supplementing that provided in numbers 1 through 17 (specify the relevant number(s) being supplemented), or any other relevant information that may assist in consideration of the petition.

6. Submission of petitions. Petitions must be type-written and submitted in 10 copies, in English, at the earliest possible date, but not later than January 21, 1994 for expedited requests, and February 25, 1994 for all other requests, to: Office of North American Affairs, Office of the United States Trade Representative, room 501, 600 17th Street, NW., Washington, DC 20506, ATTN: Mr. John Melle.

Petitions received after these deadlines cannot be considered.

V. Consideration of Petitions

All petitions received by January 21, 1994, and containing complete and correct information as required in this notice will be reviewed and a decision made as to which articles will be proposed to the Governments of Mexico and/or Canada for possible expedited accelerated tariff elimination. Petitions received by February 25, 1994, will be considered on a more extended timetable.

Petitions for articles on which the duty is currently scheduled for elimination on January 1, 1994 in Annex 302.2 of the North American Free Trade Agreement, as modified, cannot be considered.

Petitions not containing complete and accurate information required in numbers 1 through 11 of sections A and B cannot be considered.

Petitions for products previously considered for acceleration under the U.S.-Canada Free Trade Agreement (CFTA) will not be considered during this acceleration round for U.S.-Canada acceleration. Products considered in the three CFTA rounds are listed in the **Federal Register** notices of July 17, 1989, Volume 54, Number 135, at pages 29959 through 29971; October 5, 1990, Volume 55, Number 194, at pages 40964 through 40973; and September 4, 1992, Volume 57, Number 173, at pages 40720 through 40727. Information on whether a product was considered in the CFTA product rounds may also be obtained from:

The Office of the U.S. Trade Representative, (202) 395-3412, or The U.S. Department of Commerce, Office of Canada (202) 482-3103.

Normally, the accelerated elimination of tariffs between the United States, Mexico and/or Canada will be pursued on a reciprocal basis. Petitions containing requests for the accelerated elimination of Mexican or Canadian tariffs will be treated as applying equally to corresponding U.S. tariff treatment, and vice versa. Since the consultations will be trinational, petitions requesting acceleration by other than all NAFTA parties must note the reasons for excluding any party.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

Annex A—Model Petition To Accelerate the Removal of Tariffs Under the North American Free Trade Agreement

Section A. Petitioner Identification

1. Petitioner: _____
2. Address: _____
3. Contact Person: _____
4. Telephone Number: _____
5. Petitioner/Product Relationship:
   a. _____ Producer in the United States
   b. _____ Importer in the United States
   c. _____ Exporter in the United States
   d. _____ Consumer in the United States
   e. _____ Other, in the United States
   Specify: _____
   f. _____ Producer in Mexico
   g. _____ Importer in Mexico
   h. _____ Exporter in Mexico
   i. _____ Consumer in Mexico
   j. _____ Other, in Mexico
   Specify: _____
   k. _____ Producer in Canada
   l. _____ Importer in Canada
   m. _____ Exporter in Canada
   n. _____ Consumer in Canada
   o. _____ Other, in Canada
   Specify: _____

Section B. Product Identification and Tariff Information

6. Product Description: _____

(Important: See paragraph 3 of General Instruction. Supplement in Section D if necessary.)

7. The product is classified in the following 8-digit tariff subheading:
   a. _____ in the Harmonized Tariff Schedule of the United States
   b. _____ in the Tariff Schedule of Mexico
   c. _____ in the Customs Tariff of Canada
8. This petition:
   a. _____ —covers all products in the U.S. 8-digit tariff subheading
   b. _____ —does not cover all products in the U.S. 8-digit tariff subheading
   c. _____ —covers all products in the Mexican 8-digit tariff subheading
   d. _____ —does not cover all products in the Mexican 8-digit tariff subheading
   e. _____ —covers all products in the Canadian 8-digit tariff subheading
   f. _____ —does not cover all products in the Canadian 8-digit tariff subheading

(Important: If items "b", "d" or "f" are checked, the information required in paragraph 3 of the General Instructions for product descriptions of single products within an 8-digit subheading must be provided with this petition.)

9. Under the North American Free Trade Agreement, the current rate of duty in the tariff schedule of:
   a. The United States is _____
   b. Mexico is _____
   c. Canada is _____
10. Accelerated removal is requested for:
   a. _____ the United States duty
   b. _____ the Mexican duty
   c. _____ the Canadian duty

Note: if the request is not made for all three parties, note reason for exclusion, such as prior CFTA consideration.

11. The petitioner requests elimination of the tariff/s:
   a. _____ immediately without further staging
   b. _____ with accelerated staging
   Specify: _____

Section C. Economic and Statistical Information

12. Provide exports in 1990–1992 by the petitioner, and projected exports by the petitioner for the 12-month period following implementation of the petitioner's request:

Year	Quantity	Value
a. From the United States to Mexico:		
1990		
1991		
1992		
b. From Mexico to the United States:		
1990		
1991		
1992		
c. From the United States to Canada:		
1990		
1991		
1992		
d. From Canada to the United States:		
1990		
1991		
1992		

Projected for the 12-month period following duty removal:

13. Provide imports in 1990–1992 by the petitioner, and projected imports by the petitioner in the 12-month period following implementation of petitioner's request:

Year	Quantity	Value
a. From Mexico to the United States:.		
1990		
1991		
1992		
b. From the United States to Mexico:		
1990		
1991		
1992		
c. From Canada to the United States:		
1990		
1991		
1992		
d. From the United States to Canada:		
1990		
1991		
1992		

Projected for the 12-month period following duty removal:

14. Production by the petitioner:

Year	Quantity	Value
a. In the United States		
1990		
1991		
1992		
b. In Mexico:		
1990		
1991		
1992		
c. In Canada:		
1990		
1991		
1992		

15. Names and addresses of known principal producers in the United States:

a._____
b._____
c._____
etc.

16. Petitioner's 1991 share of the market in:

a. the United States was _____%.
b. Mexico _____%.
c. Canada _____%.

Section D. Supplemental Information

(Use additional pages as necessary.)

Signature of person filing the petition: _____

Title or position: _____
Date: _____

[FR Doc. 93–31289 Filed 12–22–93; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–086]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: A meeting of the New York Harbor Traffic Management Advisory Committee will be held on January 19, 1994, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York New York, beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D. S. Hill, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

SUPPLEMENTARY INFORMATION: Authority for conducting NYHTMAC meetings is granted pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App. I). The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, charter renewal update and topics from the floor.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Dated: December 17, 1993.

L.L. Hereth,

Commander, U.S. Coast Guard, Acting Captain of the Port New York, Acting NYHTMAC Executive Director.

[FR Doc. 93–31393 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 93–84; Notice 1]

Solectria Corporation; Petition for Temporary Exemption From Four Federal Motor Vehicle Safety Standards

Solectria Corporation of Arlington, Massachusetts, has petitioned to be exempted from four Federal motor vehicle safety standards for trucks that it converts to electric power. The basis of the petition is that compliance with the standards would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR 555.7), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Previously, petitioner has received NHTSA Exemption No. 92–2 covering Geo Metro passenger cards that it converts to electric power, and markets under the name "Solectria Force." To date, 45 Solectria Forces have been sold. Petitioner now intends to convert new Chevrolet S–10 pickup trucks to electric power. The vehicles to be converted have been certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards. However, petitioner determined that the vehicles may not conform with all or part of four Federal motor vehicle safety standards after their modification. The standards for which exemptions were requested are discussed below.

1. Standard No. 204, Steering Control Rearward Displacement

The conversion affects the ability to meet paragraph S4.2. According to the petitioner, "[b]ecause the weight in the hood is changed, a 30 mile per hour crash test under the conditions of S5 would be needed to determine the steering wheel's rearward displacement."

2. Standard No. 208, Occupant Crash Protection

The conversion affects the ability to meet paragraphs S4.2.2 and S4.6.1. According to the petitioner, "[b]ecause the Solectria pickup has manual Type 2 seat belts, S4.2.2 requires that the pickup meet the requirements of S4.1.2.3. S4.6.1 requires that Solectria's pickup meet the frontal crash protection requirements of S5.1."

3. Standard No. 212, Windshield Mounting

4. Standard No. 219, Windshield Zone Intrusion

According to the petitioner, "[t]he modifications will affect the requirements in S5" of each of these two standards.

Exemption was requested from these four standards for a period of three years. The conversion of the vehicle to electric power results in a net weight increase of 500 pounds which is 17% over the weight at which the vehicle was originally certified. It involves the substitution of electrical propulsion components for the original ones relating to internal combustion propulsion, and modifications to the heating system and drive shaft. Petitioner stated that "thirty-mile per hour barrier crash testing is needed to determine the actual energy absorbing characteristics of the new front compartment components."

Petitioner argued that to require immediate compliance would create substantial economic hardship. As of September 30, 1990, the end of its first fiscal year, the company had a net income of $8,186. However, at the end of its second and third fiscal years, it has net losses, respectively of $87,602 and $106,243. Thus, as of September 30, 1992, it had cumulative net losses of $185,659. It estimates that the total cost of testing for compliance with the four standards would be $155,520. If modifications appear indicated, further testing would be required. An exemption would permit vehicle sales and the generation of cash permitting testing and full certification of compliance while the exemptions are in effect. It anticipates orders for 25 trucks in its first year of production, 50 units in the second year, and 150 vehicles in the third. A denial of the petition would delay Solectria's production "for several years and would likely prevent production altogether."

According to the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because it "will be able to make a substantive contribution to the nation's clean transportation needs."

Interested persons are invited to submit written data, views, and arguments on the petition of Solectria, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The petition and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 21, 1994.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on December 16, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–31312 Filed 12–22–93; 8:45 am]

BILLING CODE 4910–59–M

Corrections

Federal Register
Vol. 58, No. 245
Thursday, December 23, 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.

THE PRESIDENT

3 CFR

Proclamation 6641 of December 15, 1993

To Implement the North American Free Trade Agreement, and for Other Purposes

Correction

In Presidential Proclamation 6641, beginning on page 66867 in the issue of Monday, December 20, 1993, the billing codes and file line were inadventently omitted. On page 66870, the billing code should read, "Billing code 3195-01-P". On page 67259, the file line and billing code should read:

"[FR Doc. 93-31008
Filed 12-15-93; 5:00 pm]
Billing code 3190-01-C"

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Memorandum of December 15, 1993

Trade Agreements Resulting From the Uruguay Round of Multilateral Trade Negotiations

Correction

In the Presidential Memorandum of December 15, 1993, beginning on page 67263 in the issue of Monday, December 20, 1993, the billing codes and file line were inadventently omitted. On page 67263, the billing code should read,"Billing code 3195-01-C". On page 67302, the file line and billing code should read:

"[FR Doc.93-31104
Filed 12-16-93; 1:12 pm]
Billing code 3190-01-C"

BILLING CODE 1505-01-D

federal register

Thursday
December 23, 1993

Part II

Department of Transportation

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
Research and Special Programs Administration
Coast Guard

14 CFR Part 121
49 CFR Part 391
49 CFR Part 217 et al.
49 CFR Part 199
46 CFR Part 16

Omnibus Transportation Employee Testing Act of 1991; Workplace Drug Testing Programs; Management Information System; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Federal Highway Administration

49 CFR Part 391

Federal Railroad Administration

49 CFR Parts 217 and 219

Research and Special Programs Administration

49 CFR Part 199

Coast Guard

46 CFR Part 16

RIN 2105–AB81; 2120–AC33; 2125–AC81; 2130–AA64; 2137–AB95; 2115–AD84

Management Information System (MIS) For Workplace Drug Testing Programs

AGENCIES: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Research and Special Programs Administration (RSPA), and United States Coast Guard (USCG), DOT.

ACTION: Final rules; common preamble.

SUMMARY: This document is a common preamble to five final rules being published by several operating administrations of the Department of Transportation (FAA, FHWA, FRA, RSPA & USCG) elsewhere in today's issue of the **Federal Register**. The Department needs employer drug testing program data in order to address policy and program issues relative to the anti-drug rules' effectiveness. The FAA, FHWA, FRA, RSPA, and USCG final rules are published elsewhere in today's **Federal Register**. These final rules require employers conducting drug testing to maintain and/or submit drug testing program data to the DOT Agency which has regulatory authority over the employer. This data will enhance the Department's ability to assess program effectiveness and compliance.

EFFECTIVE DATE: Effective generally, January 1, 1994. See separate OA's rules for specific date.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Acting Director, Office of Drug Enforcement And Program Compliance, Department of Transportation, 400 7th St. SW., room 9404, Washington, DC 20540, (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Introduction

On December 15, 1992, the Department published a notice of proposed rulemaking (NPRM) to amend 49 CFR Part 40 to establish alcohol and drug testing procedures for implementing the requirements of the Omnibus Transportation Employee Testing Act of 1991. That NPRM also proposed a Management Information System (MIS) to obtain specific drug and alcohol testing program information from employers. Also on December 15, 1992, the Operating Administrations (OAs)—FAA, FHWA, FRA, RSPA, and USCG—issued NPRMs that proposed to establish the specific MIS drug testing reporting requirements for the employers they regulate. A similar MIS was proposed for transit employers in the Federal Transit Administration (FTA) drug use prevention program NPRM published that same day; that MIS requirement will be included in the FTA final rule when issued at a later date.

The Department is issuing the final rules on the drug testing MIS, with this common preamble, to implement the employer reporting requirements for calendar year 1994. The Department needs employer drug testing program data in order to address policy and program issues relative to the anti-drug rules' effectiveness. The FAA, FHWA, FRA, RSPA, and USCG final rules are published elsewhere in today's **Federal Register**.

Over 40 comments on the proposed MIS were submitted to the 49 CFR part 40 NPRM docket. The OAs received comments on their MIS NPRMs. This common preamble responds to the comments submitted to the 49 CFR part 40 NPRM docket and to several common issues raised by commenters to the OAs' NPRM dockets. In addition, on February 8, 1993, the Department published a notice in the **Federal Register** advising that it was conducting a pilot project to evaluate proposed MIS report forms and submission procedures. Forty employers volunteered to participate in the pilot project. The general findings from the pilot project are summarized in this common preamble.

The Department has decided not to amend 49 CFR part 40 by adding § 40.81, as originally proposed. The Department received some comments that indicated that there appeared to be unnecessary duplication, and, in some cases, employers would be confused about which forms to use and how to report MIS data. Instead, each OA final rule will specify the MIS reporting requirements for employers regulated by the OA. All employer MIS reports will be submitted to each OA using the MIS forms and procedures specified in the OA's rules.

Response to Comments

1. Employer report submission date

The NPRM proposed February 15 of the calendar year following the year to which the data pertain as the date for employer submission of MIS reports to the appropriate OAs.

Numerous commenters stated that due to the need to compile and consolidate data from several locations and/or company divisions during January and February, it would be difficult to meet the February 15 reporting date. They requested a range of later dates (February 28–1 April). The Department needs timely submission of this data, but would not be seriously inconvenienced by waiting another month. The OAs' final rules establish March 15 as the reporting date for employers' MIS data to accommodate employers' legitimate need for additional time.

2. Complexity of MIS

Since the Department is implementing the MIS prior to the issuance of final rules on alcohol prevention programs, alcohol testing program data elements have been removed from the MIS forms, except for the two OAs that currently have alcohol testing requirements (FRA and USCG). The Department is still considering adding alcohol testing data reporting requirements to the final alcohol testing rules required by the Omnibus Transportation Employee Testing Act of 1991. Eventually, the Department hopes to combine both drug and alcohol program data in a single MIS report form for each OA where practical.

The Department has attempted to minimize the MIS reporting burden on employers. In response to the comments and the findings from the pilot project, the Department has identified additional ways to reduce the complexity of the MIS report forms and instructions, and, therefore, the burden on employers. The critical data elements needed by the Department and its OAs have been retained, while the format, organization and some of the proposed data elements have been consolidated and simplified, resulting in shorter forms. To ease the reporting burden on employers that have no positive test results we have developed simplified "E-Z" forms.

In response to the Department's inquiry, a significant number of commenters indicated that they would

prefer (or were interested in) electronically submitting the required data to the OAs. Therefore, the Department is committed to developing and providing a system that will allow employers to submit their reports electronically. The OAs' final rules specify the electronic systems currently available for employers' reporting or plans for development of such. It's the Department's intention that all OAs will eventually provide a system for electronic reporting.

3. Methodology

Commenters generally supported the need for the Department and its OAs to acquire anti-drug program data. Some commenters suggested that there may be other, less burdensome ways to acquire the data, such as obtaining the data from OAs' audits of employers' programs. We considered this method, but the cost, both to the Federal government and the employers, and the reduced utility of such data make this infeasible. Data derived from ongoing inspections and audits would not cover common timeframes (such as a calendar year) unless collection of a previous year's data was used. For example audits conducted in 1995 would collect only 1994 data, leading to considerable time lag in evaluating program data. In addition, audit or inspection data would represent a significantly reduced sample of the industry since the audit force could not annually audit the approximately one million employers that are covered by the rules. Audit samples are often biased, because they focus on employers who have poor safety records or against whom complaints have been lodged.

The Department requested comment on the possibility of using a two-tiered system of reports. Under this methodology, some employers could have been required to report on the complete set of data elements and some on a reduced set. Only two comments specifically addressed this issue and both stated that a two-tier system would be too complex and unworkable. The Department's efforts to develop a workable two-tiered process did lead to development of the "E-Z" form described earlier, for use by employers whose drug testing programs have no positive test results.

Some commenters suggested requiring drug testing laboratories to report drug testing data to DOT and to survey some Medical Review Officers (MROs). The Department and its OAs already have access to aggregated laboratory data but it is not definitive (i.e., specific to each employer or regulated industry), and, therefore, does not meet the Department's oversight needs. Laboratory data would not be useful because it includes quality control specimen data and confirmed positive test results that have been verified negative by the MRO. In addition, the Department does not have the authority to impose or enforce a reporting requirement upon laboratories and/or MROs. Only the employer has access to the data needed to review program implementation, compliance and effectiveness.

Some commenters suggested that the "Government" should conduct the testing and compile the data. The current anti-drug rules impose the recordkeeping responsibility on the employer because the employer is required to conduct or arrange for drug testing. The employer, therefore, is the logical entity to collect and report the data. An employer-based drug testing program, in contrast to a government-operated one, reduces the intrusiveness of the Federal government in the day-to-day activities of transportation employers and employees.

Employer-based programs provide employers with the flexibility to conduct drug testing with minimal disruption to their operations. In response to the Omnibus Transportation Employee Testing Act of 1991, the FHWA is conducting a pilot project in four states in which State safety enforcement personnel conduct roadside random drug and alcohol testing of truck drivers. The testing is conducted as part of State safety inspections of the drivers and their vehicles. The FHWA will issue a report in April 1994 on the feasibility of such government-operated drug testing programs.

Several commenters recommended more frequent reporting and some recommended reporting only every 2 or 3 years. More frequent reporting would be more burdensome to employers and unnecessary for the Department's purposes. Biannual or Triannual reporting would not provide information in a timely manner and doesn't respond quickly to trends. We believe that annual reporting is workable for employers and is sufficient to show trends and program findings for the Department's program evaluation and policy development needs. Therefore, the final rules establish annual MIS reporting requirements.

4. Specific data requested

The MIS consists of a standard set of data elements the Department and its OAs need in order to review implementation, compliance and program results, with some modifications specified in the OAs' final rules to accommodate circumstances peculiar to their industries.

Some commenters recommended deleting periodic testing data since this type of testing is generally not required after the first year of testing program implementation. A large majority of employer reports would contain only zeros for periodic testing. Each OA has its own unique requirements for periodic testing. Therefore, each OA rule will specify periodic testing data requirements where necessary for monitoring compliance and enforcement of its program.

Several commenters stated that there is no need to report "Number of employees covered by more than one DOT OA." Although most employers do not employ employees who are subject to testing under two or more OA rules, many of the operational problems brought to the attention of the DOT concern "dual-covered" employees. Dual or multi-modal operational concerns are important and deserve resolution. To help accomplish this, the Department needs baseline data to identify problem areas and develop appropriate solutions; therefore, we are retaining the requirement. Generally, pre-employment, random and return-to-duty tests should be reported to the OA which regulates that function used as the basis for the safety-sensitive employee category. Post-accident tests should be reported to the OA to whom that accident is reportable. Reasonable suspicion and periodic tests should be reported to the OA based on employee function requiring the test. Most employers will simply report "zero" in items requesting data on dual-covered employees.

5. Data on Cost of the Drug Testing Program

The Department asked for comments on whether the OAs' rules should require data on the cost of implementing anti-drug programs. Most commenters did not address this issue, but of the ones that did, most supported reporting cost data. A few stated that cost data would be useless or inappropriate. Some commenters stated that it would be difficult to compile cost data and to standardize how it would be reported. Others stated that it would have utility, but that it should come from industry, consortia groups or associations, not individual employers.

While the Department believes cost data on the mandated elements of drug testing programs (specimen collection, laboratory testing, employee training, and MRO services) would be useful in assessing program effectiveness and

cost-efficiency, difficulties in standardizing how such information would be computed and interpreted, reduce its utility and increase the burden for employers. OA rules' preambles further discuss this issue. The final rules do not require cost data reporting.

6. Data on Employee Drug Abuse Prevention Training

Employee training and education are very important in substance abuse prevention programs. The Department has included MIS data elements to report employee training conducted to meet an OA's requirement or to enhance workplace anti-drug programs. Each OA anti-drug rule requires employers to provide drug awareness training or education for covered employees and specific training for supervisors who make reasonable suspicion test determinations. In general, commenters to the NPRM on this issue stated that final rules should require MIS data only for the training mandated in the OAs' rules. Each OA rule addresses the specific training data requirements applicable to its regulated employers.

Some commenters recommended deleting the data element on "actions taken in response to refusal-to-test". The reason given is that the OA rules require employers to remove from safety sensitive duties a person who refuses to take a drug test. Therefore, other employer actions (i.e., termination, suspension, transfer) would be beyond the scope of the rule. Some of the participants in the pilot test of the MIS also supported deleting this data element, citing that information on the number of refusals-to-test was sufficient. Three of the OAs have decided to drop this reporting element and monitor this area through other means. Two of the OAs (RSPA and FAA) have decided to retain the requirement to report personnel actions imposed in verified positive and refusal-to-test circumstances; the preambles to the FAA and RSPA final rules discuss this issue in detail.

7. Analysis Of Changes In The Final Rules

The following general changes from the proposed rules have been made in the OAs' final rules:

(a) In response to concerns raised by commenters, the MIS report submission date is changed from February 15 to March 15;

(b) The requirement for reporting data element (3), which proposed, in part, to require periodic testing data, may be deleted if the particular OA no longer requires periodic testing or does not require reporting of that data element.

(c) In response to comments and findings from the pilot project, the data element on actions taken in response to a refusal to submit to a drug test, has been withdrawn from some OAs' final rules. Where it has been retained, the OA preamble to its final rule discusses the issue, including justification for retaining the requirement.

(d) The OAs' rules contain the MIS forms to be used by employers subject to their rules. The forms include modifications to the instructions and the forms based on the comments and pilot project findings from employers and other respondents. OA rules will discuss requirements for employers to report data on employees that are covered by two or more OA regulations.

(e) Each OA rule except the USCG's provides a standard, simplified "E-Z" MIS report form for use by employers whose drug testing programs have no verified positive tests. The USCG's MIS form has been simplified to the point that they have determined a separate "E-Z" form is not necessary.

Taking into account these changes, as well as changes to current programs contained in the rules as proposed, the DOT operating administrations estimate a net increase of approximately 12,500 burden hours of increased recordkeeping and reporting burden as compared with comparable DOT OA information collection requirements for drug testing programs currently in place. On balance, this represents less than a 1% increase over current levels. While there is a considerable reduction in some individual OAs have made substantial efforts to minimize information collection burdens through the means discussed in this preamble and the preambles to the final rules of the individual OAs.

Regulatory Process Matters

Each of the OA MIS rule preambles separately addresses a number of administrative matters concerning compliance with administrative requirements in statutes, executive orders and Departmental policies and procedures. Readers should refer to the individual OA rules for statements specific to each rule.

Paperwork Reduction Act

The proposed information collection requirements contained in the notices of proposed rulemaking were reviewed by the Office of Management and Budget (OMB) under section 3504(H) of the Paperwork Reduction Act (44 U. S. C. 3501 *et. seq.*). Revisions of the information collection requirements contained in the final rules have been submitted to OMB for final approval. A **Federal Register** notice will be published when that approval has been obtained.

Common Preamble for the Management Information System (MIS) Final Rules.

Issued on December 13, 1993 in Washington, D.C.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

Rodney E. Slater,

Administrator, Federal Highway Administration.

S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

Admiral J. William Kime,

Commandant, United States Coast Guard.

[FR Doc. 93-30929 Filed 12-17-93; 8:45 am]

BILLING CODE 4910-62-6

federal register

Thursday
December 23, 1993

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Omnibus Transportation Employee Testing Act of 1991; Antidrug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148]

RIN 2120-AC33

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: On November 21, 1988, the Federal Aviation Administration (FAA) issued a final rule requiring specified aviation employers to implement antidrug programs for personnel performing safety-sensitive functions. This final rule modifies that rule by changing the existing employer reporting requirements to conform to a Department of Transportation (DOT) Management Information System (MIS), to provide the FAA with additional data for use in monitoring the antidrug program, and to minimize the reports that must be submitted by small aviation entities. The DOT has published a common preamble elsewhere in today's **Federal Register**, which summarizes public comments to the DOT notice of proposed rulemaking (NPRM) which was published on December 15, 1992.

EFFECTIVE DATE: This rule is effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Carol Keenan, Office of Aviation Medicine, Drug Abatement Division (AAM-800), Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-6710.

SUPPLEMENTARY INFORMATION:

Background

On November, 14, 1988, the FAA issued a final antidrug rule requiring certain aviation employers and operators to develop and implement an antidrug program for employees performing specified aviation activities (53 FR 47024 November 21, 1988). The FAA has amended the final rule several times to address implementation problems and clarify the requirements of the rule.

Current regulatory provisions require employers to submit summary reports of their drug testing program to the FAA semiannually. Data has been gathered and compiled for over 3 years and, after evaluation of the data, the FAA has determined that to properly monitor the industry and ensure compliance with the final antidrug rule, additional but less frequent reporting of information is needed from fewer employers.

On December 15, 1992, the FAA issued a notice of proposed rulemaking (NPRM) (57 FR 59477) that proposed to amend the antidrug rule's reporting requirements. The NPRM responded to a DOT NPRM, published the same day, which proposed the establishment of a Departmental Management Information System (MIS) that would require employers in all segments of the transportation industry to maintain and submit standardized antidrug program information. The FAA proposed changes to the current reporting requirement to support the DOT's goal of establishing a systematic, standardized program to collect, analyze, and interpret antidrug program information.

The FAA also held a series of public hearings on the NPRM and on a related regulation also proposed on December 15, 1992. These hearings were held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California. Each hearing was recorded by a court reporter. The transcript of each hearing and any statements or other material submitted to the hearing panel during the hearings have been placed in the public docket. This material has been reviewed and considered in the development of this final rule.

In the NPRM the FAA was considering requiring all employers to submit annual reports unless expressly authorized by the FAA not to submit a report. The FAA has since gone through two additional reporting cycles and has reconsidered its position regarding the need for all employers to submit reports each year. Rather than excuse employers from submitting reports on a case-by-case basis, the FAA has elected to amend its reporting requirements.

Based on the information provided in antidrug program plans submitted to the FAA for approval, the FAA has determined that over 90 percent of the employees affected by the antidrug rule are covered by approximately 450 companies with 50 or more covered employees. The remaining affected employees are spread among nearly 5,000 employers, with over a third of these employees working for the smallest employers (10 or fewer covered employees).

Further, the FAA has determined that the smallest employers are disproportionately represented among the several hundred companies that initially fail to submit required reports by the deadline in each reporting cycle. The workload and cost associated with preparing letters of investigation for each failure, mailing each letter by certified mail, and ensuring that appropriate action is taken in each case has posed a significant burden on both the affected employers and the FAA. The FAA has determined the majority of the nonreporting occurred due to confusion as to the obligation to report when the employers were members of a consortium or did not have any positive tests during the reporting period. A review of the burden to such small entities to prepare the reports and the relative value of the data obtained has convinced the FAA that the reporting requirement is not necessary. The FAA believes the requirement that employers maintain the testing data, coupled with the inspection of records program, provides reasonable oversight of these small employers.

Reason for Expedited Effective Date

This rule is being made effective in less than the 30 days from publication otherwise required by law. With an effective date of January 1, 1994, the FAA can ensure that information collected under this final rule for calendar year 1994 and, subsequently, that the benefits from this final rule are realized without delay. Because the first report under this rule will not be due until March 15, 1995, and most of the data must be maintained under preexisting regulatory requirements, employers subject to this rule will not be unduly burdened by an effective date of less than 30 days. The FAA has therefore determined that good cause exists under the provisions of 5 U.S.C. 533(d)(3) to warrant an expedited effective date.

Discussion of Comments

General Overview

The comment period for the NPRM closed April 14, 1993. The FAA received eight comments in response to the NPRM, and two individuals addressed the MIS during the public hearings. Four commenters were aviation associations (Air Transport Association (ATA), Allied Pilots Association, British Air Line Pilots Association (BALPA), and Regional Airline Association (RAA)), two were FAA-approved antidrug consortia, and four were small air carriers and repair facilities. The majority of comments were favorable and supported the expanded reporting format. (The BALPA comment addressed testing issues generally and did not include

substantive comments on this rulemaking.)

On February 8, 1993, the DOT, in coordination with the FAA and other operating administrations of the Department, issued a notice of pilot project (58 FR 7506) to evaluate the proposed MIS forms and submission procedures. Five aviation employers volunteered to participate in the pilot project. All five completed and submitted the forms without difficulty or significant costs. The findings from the pilot project have been considered in the development of this final rule, and a copy of the summarized findings has been placed in the docket.

Specific Issues

Reporting Period

Four commenters, including the ATA and RAA, supported the elimination of the semiannual report covering the period January 1 through June 30. No commenter opposed the change to annual reporting.

FAA Response

Less frequent reporting will relieve a significant burden on the aviation industry without reducing the ability to monitor compliance or effectively evaluate data. This final rule changes the reporting requirement to annual report submission only.

Submission Date

Two commenters recommended that the date for submitting the reports be revised. A variety of dates, ranging from January 15 to the end of the first calendar quarter (March 30), was suggested. Commenters supporting an earlier date believed it would be best to provide the FAA with results in a more timely manner. The later date was suggested by some commenters who believed it was necessary to allow sufficient time to compile data.

FAA Response

The timely submission of the data is important, but requiring a January 15 deadline does not allow sufficient time for data compilation and report preparation. Currently, the majority of the reports are received within 45 days after the end of the reporting period (i.e., February 15 or August 15). However, a number of reports are received late, most within 30 days following the due date. This final rule extends the prior due date by one month, to March 15. Extending the due date will not seriously affect the timeliness of the data and will allow employers sufficient time for report preparation and submission.

Report Format

Commenters generally supported the expanded report format, indicating that the collection of additional data would provide a more accurate picture of drug use in the aviation industry. However, some commenters, including the ATA and the RAA, pointed out that the collection of additional data would be more burdensome. Two commenters specifically opposed the proposed reporting format, stating that it was significantly more burdensome and recommended keeping the existing reporting format.

FAA Response

To reduce the reporting burden on employers who have no verified positive test results, the FAA has limited the information to be provided and has developed a simplified "short form." The short form only captures information related to the number of covered employees, number of specimens collected, number of test results reported negative by the medical review officer (MRO), number and disposition of individuals who refused to submit to drug testing, and training of employees.

The FAA has also reduced the MIS reporting burden on aviation employers in the final rule. The findings from the pilot project identified ways to reduce the complexity of the report format and instructions, thereby reducing the burden on employers. The critical data elements have been retained while the format, organization, and some of the data elements have been consolidated and simplified.

Proposed appendix K to 14 CFR part 121, Drug and Alcohol Testing Management Information System Data Collection Form, has been removed from the final rule. Instead of including the reporting form as an appendix, the FAA is requiring data to be submitted to the FAA in the form and manner prescribed by the Administrator. The current reporting formats are published in today's **Federal Register** as exhibits immediately following this rule. The FAA has determined that while the data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable the FAA to make any revisions to the format that become necessary without requiring a formal rulemaking. The reporting format published with this rule contains data elements that differ slightly from the current FAA antidrug regulation but are in conformance with the nomenclature used in rulemaking initiated as a result of the Omnibus Transportation Employee Testing Act of 1991, e.g., follow-up testing. The FAA rule amendment incorporating the Act's provisions will be forthcoming, and until it is published, aviation employers are to continue to report data elements as specified in the current regulation.

The FAA will continue to require reporting on the disposition of individuals who fail or refuse to submit to a drug test required by the FAA antidrug regulations. Reporting information on the "action taken" is necessary to ensure employers take appropriate action in accordance with the antidrug regulations and their FAA-approved antidrug plans. Further, certificate action may be required to be initiated against individuals who refuse to submit to a drug test.

The FAA is retaining the requirement for employers to report data on periodic drug tests of employees required to hold part 67 medical certificates (pilots, etc.). Employers are required to conduct periodic testing during the first year of implementation of their antidrug programs and may elect to continue or cease periodic testing thereafter. Each year there are an estimated 300 new part 121 and 135 certificate holders initiating antidrug programs and conducting periodic testing. In addition, some employers have elected to continue periodic testing after the first year of antidrug program implementation. The FAA believes that receiving information on the results of such testing is valuable in obtaining a more complete picture of the prevalence of drug usage by employees who are required to hold part 67 medical certificates.

Finally, the FAA has decided to issue separate final rules on the drug and alcohol portions of the MIS. Therefore, the alcohol testing program data elements are not included in this final rule. Alcohol testing reporting requirements will be included in the final rule which will implement alcohol misuse prevention programs. Separation of these data elements should reduce the burden associated with use of a new form.

Training Data

The ATA specifically objected to the data element requiring reporting of the number of supervisors trained to make reasonable cause testing determinations. The ATA stated that this information would be more appropriately obtained during compliance audits since it does not serve a safety or administrative purpose.

FAA Response

The FAA recognizes the ATA's concern. However, the FAA is retaining the requirement to report the number of supervisors who have received initial training. Training and education are an important part of substance abuse prevention programs, and reporting the number of supervisors trained to make reasonable cause determinations is required for safety and compliance monitoring. Reporting information on initial training of supervisors will provide data on the number of newly-hired supervisors who may make determinations to test an employee based on reasonable cause. Through its compliance inspections, the FAA has determined that, although most employers provide initial training for supervisors, many fail to provide recurrent training, an integral part of an effective supervisory training program. Reporting data on recurrent training of supervisors is needed to assess the level of recurrent training and to ensure that employers continue to provide the required training.

Electronic Submission

In the NPRM, the FAA requested comment on the usefulness of transmitting employer data electronically through the Anti-Drug Information Center (ADIC). Two commenters, an FAA-approved antidrug consortium and a repair facility, recommended that electronic data submission be permitted. The ATA requested assurance that any data submitted by electronic means be securely maintained and not publicly accessible through ADIC.

FAA Response

The ADIC services were canceled effective October 1, 1993. Although the FAA has initiated the technological, legal, and policy development necessary to implement electronic data submission, such a system is currently not on line. However, once on line the system would be available for use at the option of each employer. The FAA will proceed with any rulemaking required to implement this electronic option as soon as possible.

Comments Beyond the Scope of the Rule

The ATA objected to the reporting of costs associated with implementing antidrug programs. The FAA, like the other operating administrations, does not intend at this time to require reporting of costs associated with implementing antidrug programs.

Two commenters addressed issues for amending the record retention requirements, expanding employee categories for testing, and mandatory disciplinary actions for drug abusers, clearly beyond the scope of the NPRM.

Summary of Significant Changes From the Proposed Rule

The FAA amended several elements of the proposed reporting requirements. Any significant changes to a reporting requirement have been discussed previously and are summarized in this section.

- The FAA has changed the report submission date from February 15 to March 15 to allow adequate time for completing and submitting the report.
- The FAA has removed the alcohol misuse data items from the reporting format. The alcohol misuse reporting requirements will be published with the final rule implementing alcohol misuse prevention programs.
- The FAA has developed a short form format to reduce the reporting burden for employers with no verified positive test results.
- The FAA has not included the reporting forms as part of the antidrug rule. Data is required to be submitted to the FAA in the form and manner prescribed by the Administrator, which will allow the FAA flexibility in making any necessary format changes without requiring formal rulemaking. The current format is published as an exhibit after this rule in today's **Federal Register.**

The FAA is amending its reporting requirements to decrease the number of reports required. Only certain aviation employers conducting drug testing under an FAA-approved antidrug program will be required to submit annual reports of program results to the FAA. The FAA will continue to require those air carriers held to the highest standard of safety—carriers certificated under 14 CFR part 121—to submit annual reports regardless of the size of the carrier. Similarly, the FAA will require reports from large entities because they are generally carriers with significant numbers of passengers or companies that provide safety-sensitive services by contract to part 121 air carriers. Additionally, the Administrator could direct the remaining companies performing drug testing under an FAA-approved antidrug program to prepare and submit a report for any given year upon prior written notice from the FAA. Initially, the FAA intends to survey a number of such employers on an annual basis.

Regulatory Evaluation Summary

This rule is part of a package of drug and alcohol testing rules that is a "significant rulemaking action" as defined by Executive Order 12866 (Regulatory Planning and Review). It has been reviewed under this order. The anticipated costs and benefits associated with this final rule are summarized below.

This amendment will conform the FAA's antidrug program reporting requirements to standardized reporting requirements required for each operating administration by the DOT common preamble. The purpose is to provide DOT and the FAA with critical program information in order to make necessary procedure and program evaluations. These evaluations could lead to policy changes to make the rule more effective, which would in turn enhance public safety.

The amendment will have several different effects on cost. There will be a modest increase in the recordkeeping cost for each report because aviation employers will be required to compile and submit information in greater detail than required previously. However, the elimination of a reporting requirement (semiannual report) will result in a decreased cost to the employer. Additionally, the reduction in the number of reports will reduce the costs of compliance with the antidrug rule for those small employers that no longer have to submit annual reports each year. It will also reduce the FAA's cost of administering the antidrug program. The FAA has also developed a specific format, with instructions that can be used to reduce the costs of compliance. The FAA contends that any additional cost will be offset and that overall there will be little or no additional cost as a result of this rule.

Paperwork Reduction Act

The recordkeeping and reporting requirements of the final antidrug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980, and assigned OMB control number 2120–0535.

Modifications to paperwork package, 2120–0535, amended to reflect the burden associated with this final rule, have been submitted to OMB for approval. The FAA estimates that the change in this amendment will relieve approximately 4,700 employers of 2.5 burden hours annually. See common preamble for status of Paperwork Reduction Act approval.

International Trade Impact Statement

This amendment will have little or no additional cost effect on aviation operations performed under the

provisions of the FAA's regulations. It will have little or no impact on trade opportunities for United States firms doing business overseas and no effect on foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small business entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." This rule will impose little or no additional cost on aviation operators. Therefore, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

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

Conclusion

In this action the FAA amends the requirements imposed upon aviation employers for the maintenance and submission of specific antidrug program information. It was undertaken in response to a DOT initiative to establish a standard Management Information System (MIS) for the Department's drug-testing programs. This MIS will be the basis for monitoring antidrug rule implementation and compliance, and for evaluating the effectiveness of the FAA and the DOT antidrug programs. Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the provisions contained in this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the amendment will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the proposal is not significant pursuant to the criteria of Executive Order 12866. However, because the amendment involves issues of substantial interest to the public, the FAA has determined that the amendment is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 2, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends title 14, Code of Federal Regulations, part 121, appendix I, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section X of appendix I to part 121 is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

X. Reporting of antidrug program results.

A. Annual reports of antidrug program results shall be submitted to the FAA in the form and manner prescribed by the Administrator by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

1. Each part 121 certificate holder shall submit an annual report each year.

2. Each entity conducting an antidrug program under an FAA-approved antidrug plan, other than a part 121 certificate holder, that has 50 or more employees performing a function specified in this appendix on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

3. The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

B. Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA.

C. Each report shall be signed by the employer's antidrug program manager or other designated representative.

D. Each report with verified positive test results shall include all of the following informational elements:

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of positive test results verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

5. Number of negative tests reported by an MRO by type of test and employee category.

6. Number of persons denied a position as a covered employee based on a verified positive preemployment drug test reported by an MRO.

7. Action taken following a verified positive test result(s), by type of action.

8. Number of employees returned to duty during the reporting period after having failed or refused to submit to a drug test required under the FAA rule.

9. Number of employees by employee category with tests verified positive for multiple drugs by an MRO.

10. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

11. Number of covered employees who have received required initial training.

12. Number of supervisory personnel who have received required initial training.

13. Number of supervisors who have received required recurrent training.

E. Each report with only negative test results shall include all of the following informational elements. (This report may only be submitted by employers with no verified positive test results during the reporting year.)

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of negative tests reported by an MRO by type of test and employee category.

5. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

6. Number of employees returned to duty during the reporting period after having failed or refused to submit to a drug test required under the FAA rule.

7. Number of covered employees who have received required initial training.

8. Number of supervisory personnel who have received required initial training.

9. Number of supervisors who have received required recurrent training.

F. An FAA-approved consortium may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

Issued on December 13, 1993, in Washington, DC.

David R. Hinson,

Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Information Systems Data Collection Forms

BILLING CODE 4910–13–U

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes five sections. These sections address the data elements required in the FAA and the DOT drug testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. AVIATION EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i-ii	1
C. DRUG TESTING INFORMATION	ii-v	2-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5

Page 1 **AVIATION EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below the company names, list any other names the company uses ("Doing Business As") and the company's FAA Antidrug Plan Identification Number. Provide the FAA Operating Certificate Number(s) held by the company. Below this, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code). Finally, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, and navigators; "Flight Attendant"; "Flight/Ground Instructor"; "Aircraft Dispatcher"; "Flight Test"; "Maintenance"; "Security/Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on periodic, random, post-accident, reasonable suspicion/cause, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all seven parts of the table in Section C.

Information on actions taken with those persons testing positive is also required. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 2

DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) periodic (2) random, (3) post-accident, (4) reasonable suspicion/cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading **"NUMBER OF SPECIMENS COLLECTED,"** requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading **"NUMBER OF SPECIMENS VERIFIED NEGATIVE,"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS," refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG," requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "TOTAL".

A sample table is provided on page iv with example numbers.

Page 2

Below the part of the table containing pre-employment testing information is a box with the heading "Number of persons denied a position as a covered employee following a verified positive drug test". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Flight Crewmember" and "Flight Attendant" to illustrate the procedures for completing the form.

A

Urine specimens were collected for 157 job applicants for flight crew positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Flight Crewmember".

B

The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for flight crew positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Flight Crewmember".

C

The MRO for your company reported that 4 of those 157 specimens from applicants for flight crew positions were positive (i.e., a drug or drugs were

detected). Enter this information in the third blank column of the table in the row marked "Flight Crewmember".

D

With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, OTHER DRUG TESTING/PROGRAM INFORMATION, on page 5 of the reporting form.

Please note that the sample data collection form also has information for flight attendants on line two. The same procedures outlined for flight crewmembers should be followed for entering the data on flight attendants. With applicants for flight attendant positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Flight Attendant".

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for flight crew positions were collected and 107 for applicants for flight attendant positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crewmember	157	153	4	3	1	0	0	1
Flight Attendant	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 — Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

Page 4 — Next you must provide information on **ACTIONS TAKEN ON VERIFIED POSITIVE TEST RESULTS**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a positive drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a positive drug test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Indicate the sum of the actions taken on the line marked **TOTAL**.

Page 5 — **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 5 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected

in 2 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 5 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **other** (pre-employment, periodic, post-accident, reasonable suspicion/cause, return to duty, or follow-up) drug test required under the FAA regulation and the actions taken following the refusal.

Page 5 — **DRUG TRAINING** (Section E) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

FAA DRUG TESTING MIS DATA COLLECTION FORM OMB No. 2120-0535

YEAR COVERED BY THIS REPORT: 19__

A. AVIATION EMPLOYER INFORMATION

Company Name	Antidrug Plan No. FAA Certificate No.	
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name	Telephone No. ( )	
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____ Date _____

Title _____ ( ) - Telephone Number _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 2.5 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight/Ground Instructor						
Aircraft Dispatcher						
Flight Test						
Maintenance						
Security/Screener						
Air Traffic Controller						
TOTAL						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing **REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):**

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FAA drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING/PROGRAM INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								
PERIODIC								
Flight Crewmember								
Flight/Ground Instructor								
Flight Test								
Air Traffic Controller								

Number of persons denied a position as a covered employee following a verified positive drug test:	

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
RANDOM								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								
POST-ACCIDENT								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								
REASONABLE SUSPICION/CAUSE								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines
RETURN TO DUTY								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								
FOLLOW-UP								
Flight Crewmember								
Flight Attendant								
Flight/Ground Instructor								
Aircraft Dispatcher								
Flight Test								
Maintenance								
Security/Screener								
Air Traffic Controller								
Total								

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

ACTIONS TAKEN ON VERIFIED POSITIVE DRUG TEST RESULTS	Number
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	
TOTAL	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

E. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by FAA drug testing regulations:	
Supervisory personnel who have received *initial* training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FAA drug testing regulations:	
Supervisory personnel who have received *recurrent* training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use:	

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FAA/DOT drug testing regulations.

SECTION A - AVIATION EMPLOYER INFORMATION requires the company name for which the report is done, a current address, the company's FAA Antidrug Plan Identification Number, and the FAA Operating Certificate Number(s) held by the company. Below the company name, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary. Finally, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code).

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, and navigators; "Flight Attendant"; "Flight/Ground Instructor"; "Aircraft Dispatcher"; "Flight Test"; "Maintenance"; "Security/Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - DRUG TESTING INFORMATION requires information on the drug tests conducted by your company. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing including: (1) periodic, (2) random, (3) post-accident, (4) reasonable suspicion/cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. "**COLL**" requires the number of specimens collected in each employee category for each category of testing. "**NEG**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do <u>not</u> include results of quality control (QC) samples submitted to the testing laboratory

in any of the categories. Each column in the table should be added and the answer entered in the row marked "TOTAL".

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **other** (pre-employment, periodic, post-accident, reasonable suspicion/cause, return to duty, or follow-up) drug test required under the FAA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to a drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to a drug test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** -include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the actions takens.

SECTION D - DRUG TRAINING requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

FAA DRUG TESTING MIS EZ DATA COLLECTION FORM

OMB No. 2120-0535

YEAR COVERED BY THIS REPORT: 19___

A. AVIATION EMPLOYER INFORMATION

Company Name	Antidrug Plan No.	
	FAA Certificate No.	
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name	Telephone No. ( )	
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System EZ Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____ Date _____

Title _____ Telephone Number _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight/Ground Instructor						
Aircraft Dispatcher						
Flight Test						
Maintenance						
Security/Screener						
Air Traffic Controller						
TOTAL						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		PERIODIC		POST-ACCIDENT		REASONABLE SUSPICION/ CAUSE		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Flight Crewmember														
Flight Attendant														
Flight/Ground Instructor														
Aircraft Dispatcher														
Flight Test														
Maintenance														
Security/Screener														
Air Traffic Controller														
Total														

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

D. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by FAA drug testing regulations:	
Supervisory personnel who have received *initial* training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FAA drug testing regulations:	
Supervisory personnel who have received *recurrent* training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use:	

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federal register

Thursday
December 23, 1993

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Controlled Substances Testing; Recordkeeping and Reporting Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-93-2]

RIN 2125-AC81

Controlled Substances Testing; Recordkeeping and Reporting Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is modifying the controlled substances testing information required to be maintained by motor carriers in annual summaries. In addition, the FHWA will statistically select and require a sample of motor carriers to report annual summary information. The FHWA will use this and other information to evaluate the controlled substances testing requirements.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn or Mr. Peter Chandler, Office of Motor Carrier Standards, (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published a final rule in the Federal Register on November 21, 1988, requiring motor carriers to test commercial motor vehicle drivers for the use of controlled substances. Testing under this rule must be conducted prior to employment or use, upon reasonable cause/suspicion, after certain recordable accidents, biennially, and randomly. The rule did not explicitly require testing prior to returning to duty following a positive test nor follow-up testing as a part of the required after-care monitoring program. However, the rule implied that these types of tests must be conducted (53 FR 47134, FHWA Docket No. MC-116). The FHWA also published in the Federal Register a notice of proposed rulemaking (NPRM) on December 15, 1992, to require subject employers to maintain an annual summary containing certain information about their controlled substances testing program and, if requested, to submit annual summary information to the FHWA (57 FR 59539). These data will assist the FHWA with addressing policy and program issues by enhancing the FHWA's ability to assess program effectiveness and compliance.

Analysis of Comments

There were 28 commenters to the NPRM. The concerns of most commenters have been addressed in a department-wide document because the reporting requirements are a multi-modal issue. Please refer to the common preamble of the final rules for Management Information System For Workplace Drug Testing Programs, published elsewhere in today's Federal Register, for an analysis of the comments filed with the FHWA, other modal administrations, and the Office of the Secretary. Comments to the FHWA's NPRM that are not addressed in the common preamble of the final rules for Management Information System For Workplace Drug Testing Programs are addressed here.

Information Submitted on the Form

Comment: Two commenters recommended that the number of negative tests not be required to be reported because this number can be computed by subtracting the number of positive tests from the total number of specimens collected.

FHWA Response: The number of negative tests cannot be simply computed by subtracting the number of positive tests from the total number of tests performed because this method fails to account for cancelled tests.

Comment: Pinnacle Transport Services stated that the number of employees verified positive by a medical review officer (MRO) would be the same number as those who were referred to rehabilitation before returning to work. The Baltimore Gas and Electric Co. (BG&E), Pinnacle Transport Services, and the American Trucking Associations, Inc. (ATA) all recommended that information on refresher training not be required to be reported because this training is not required by the FMCSRs. The ATA also recommended that information on initial training not be required to be reported.

FHWA Response: The FHWA has deleted the requirement to report the number of employees who undergo either rehabilitation or refresher training as recommended. However, the FHWA has retained the requirement to report information on the initial training required by 49 CFR 391.119 for supervisors and company officials who make reasonable suspicion determinations. This information is needed to evaluate the effectiveness and accuracy of reasonable suspicion determinations. Such information may reveal violations of the controlled substances testing regulations and, therefore, is needed.

Comment: Although the ATA submitted comments recommending the deletion of certain proposed data elements, the ATA also recommended that additional data on accident severity be collected.

FHWA Response: The FHWA agrees with the ATA that data on accident severity would be helpful in the evaluation of post-accident testing and, therefore, has added an entry for two categories of accidents, fatal and non-fatal.

Comment: Mobile Laboratory Services recommended that blind test results be reported because these results are sent to motor carriers.

FHWA Response: The FHWA is not requiring that blind test results be reported because the FHWA only needs information resulting from MRO verifications for program analysis.

Comment: The BG&E recommended that all motor carriers submit management information system (MIS) data because this would be the only way the FHWA could obtain a true picture of program implementation. The BG&E also recommended that motor carriers who contract with other motor carriers to provide either goods or services should be responsible for the recordkeeping of their own drivers.

FHWA Response: It is not necessary for all employers to submit MIS data for the FHWA to be able to properly evaluate program effectiveness. In addition, the FHWA does not have the resources to collect MIS data from approximately 270,000 motor carriers subject to this final rule. Employers who are required to report MIS data will be randomly selected. These data will be subject to verification by FHWA field staff. However, the FHWA agrees with the BG&E that companies that meet the definition of employer in 49 CFR 390.5 must keep the controlled substances testing results records for their drivers.

Comments Submitted to Related Controlled Substances Rulemaking

Comment: The ATA stated in its comments to FHWA Docket No. MC-116, Controlled Substances Testing, that 49 CFR 391.87(h)(5) should be amended by classifying the disposition of each driver who did not pass a controlled substances test into the following categories: not hired, employment terminated, referred to rehabilitation program, transferred to a non-driving position, and other (specify).

FHWA Response: The FHWA has reevaluated driver disposition information. The FHWA has determined that most of this information is not vital to analyze the program. Therefore, the requirement in 49 CFR 391.87(h)(5) to record driver disposition information is being amended to require motor carriers to maintain the number of drivers not hired following a positive test. The FHWA received other comments to Docket MC–116 which it will address in the alcohol and controlled substances use and testing final rule to be published at a later date.

Analysis of the Final Rule

Though each motor carrier will continue to be required to compile program data in an annual summary, the FHWA will randomly select a sample of motor carriers from the national Motor Carrier Management Information System (MCMIS). The sample of motor carriers will be large enough so that the sample statistics will have a tolerable error of plus or minus one percentage point in a 99 percent confidence interval. For example, this means the FHWA will be 99 percent confident that the actual industry positive rate is within plus or minus one percentage point of the sample statistics.

Employers selected to submit data will be notified by mail on or around January 2 of the year in which the data is due. For example, a motor carrier who is selected and notified in January 1995 must report data for calendar year 1994 by March 15, 1995. The notice to submit data will specify the name and address where the data are to be submitted and enclose copies of both long and short forms. Motor carriers will have the option to submit either form by electronic transmission and will receive information on how to submit the forms electronically.

Previous versions of the forms were included in the NPRM (57 FR 59539) as appendix H to 49 CFR chapter III, subchapter B. The FHWA foresees that the forms may be changed in the future to make them more understandable based on comments received. Therefore, the most current versions of the long and short forms are contained in this document for informational purposes only as Illustrations I and II in the Appendix to this document respectively. The FHWA is not soliciting employers to submit data by including the forms in this document. The FHWA will not enter information into the MIS from unsolicited respondents because the sample is random in nature. The acceptance of unsolicited responses would bias the sample. The aggregation of information collected from solicited reports will be utilized for program analysis and to respond to requests for information from Federal agencies, members of Congress, and the general public.

Motor carriers whose drivers had verified positive test results in the preceding calendar year must utilize the long form. Motor carriers whose drivers had no verified positive test results in the preceding calendar year will be allowed to utilize the short form. Motor carriers whose drivers had refused to test in the preceding calendar year will be allowed to utilize the short form if no drivers had verified positive test results in the preceding year. Test results must be reported for the calendar year in which the MRO made the final determination of the test result regardless of the date the specimen was collected. For example, a final determination of a test result made by a MRO on January 2, 1994, for a specimen collected on December 30, 1993, must be included in the data for calendar year 1994.

Within section B (Covered Employees) of both the long and short forms, motor carriers must submit the number of covered employees in each category subject to testing under the controlled substances testing regulations of more than one DOT operating administration (OA), identified by OA. As formulated by the Department, employers who are subject to the controlled substances testing regulations of two or more OAs must submit data to each regulating OA for those employees covered by that OA's rule. Employees who perform functions covered by more than one OA should be identified by their employer under the covered position that they will be reported. Data on dual covered employees should be reported to the appropriate OA.

Reportability is determined by employee function. Therefore, employees who are subject to the controlled substances testing regulations of more than one OA must be reported as follows:

For pre-employment and random testing, an employee should be reported to whichever OA covers more than 50% of that employee's function. For post-accident and reasonable cause/suspicion testing, however, reportability should be determined by the function the employee was performing at the time of the accident or incident. Finally, for return to duty and follow-up testing, the employee should be reported to the same OA to whom the initial positive was reported.

Although this rule's annual summary, and any reports made to the FHWA because of the rule, do not contain the requirement to summarize educational training of drivers, motor carriers must continue to record and maintain training provided to drivers as required by § 391.121(b)(3). The documentation of the training continues to be required and must be maintained in accordance with § 391.87(d). The FHWA will review driver training documentation during reviews of a motor carrier's compliance with the drug testing regulations.

Rulemaking Analyses and Notices

Regulatory Impact

This rule is being made effective in less than the 30 days from the publication otherwise required by law. With an effective date of January 1, 1994, the FHWA can ensure that information is collected under this final rule for calendar year 1994 and, subsequently, that the benefits from this final rule will not be due until March 15, 1995, and most of the data must be maintained under preexisting regulatory requirements, employers subject to this rule will not be unduly burdened by an effective date of less than 30 days. The FHWA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is part of a package of alcohol and drug testing rules that is a significant regulatory action under Executive Order 12866. It has been reviewed under this order. It is a significant rule within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. Based on the evaluation, the FHWA hereby certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that

this rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This rule contains collection of information requirements. The FHWA has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq*). See common preamble on the status of the Paperwork Act approval.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances testing, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: December 13, 1993.

Rodney E. Slater,

Federal Highway Administrator.

For the reasons set out in the preamble, 49 CFR part 391 is amended as follows:

PART 391—QUALIFICATION OF DRIVERS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. In § 391.87, paragraph (h) is revised to read as follows:

§ 391.87 Notification of test results and recordkeeping.

* * * * *

(h) A motor carrier shall maintain all administrative records pertaining to its controlled substances testing program and an annual calendar year summary of the results of its controlled substances testing program performed under this subpart.

(1) The administrative records shall include agreements with collection facilities, laboratories, MROs, consortia, names and positions of company officials and their role in the motor carrier's controlled substances testing program, monthly laboratory summaries, recordkeeping and testing procedures including random testing selection and notification procedures.

(2) The motor carrier's summary shall include the following information:

(i) Number of drivers subject to subpart H;

(ii) Number of drivers subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency;

(iii) Number of specimens collected by type of test (e.g., pre-employment, random, reasonable cause/suspicion, post-accident);

(iv) Number of positives verified by a MRO by type of test, type of controlled substance;

(v) Number of negatives verified by a MRO by type of test;

(vi) Number of persons denied a position as a driver following a verified controlled substances test;

(vii) Number of drivers verified positive by a MRO who were returned to duty as a driver during the reporting period;

(viii) Number of drivers with tests verified positive by a MRO for multiple controlled substances;

(ix) Number of drivers who refused to submit to a controlled substances test required under this subpart; and

(x) Number of supervisors who have received required training during the reporting period.

(3) All motor carriers shall complete the annual summary by March 15 of the following calendar year. If a motor carrier is notified by mail on or around January 2 of the calendar year in which the annual summary is due, the motor carrier shall submit the annual summary report information, in the form and manner prescribed by the FHWA, by March 15 of the same year. When the information is submitted to the FHWA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Information Systems Data Collection Forms

BILLING CODE 4910-22-P

ILLUSTRATION I - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes three sections. Collectively, these sections address the data elements required in the FHWA and the DOT drug testing regulations. The three sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. MOTOR CARRIER EMPLOYER INFORMATION	I	1
B. COVERED EMPLOYEES	I	1
C. DRUG TESTING INFORMATION	I-iv	2

Page 1 **MOTOR CARRIER EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done, a current address, the U.S. DOT number, and the ICC number. Below this, a signature, date, and current telephone (including the area code) are entered by the person certifying the correctness and completeness of the form.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under DOT regulations. There is only one category of covered employees for FHWA, and that is "Drivers" in the tables. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION,** requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under all appropriate operating administrations.

Page 2 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table

should be for applicants or company employees in a **covered position** only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iii.

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on random, post-accident/non-fatal, post-accident/fatal, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each testing category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT TESTING INFORMATION.** The format and explanations used for the sample table apply to all seven parts of the table in Section C.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading **"NUMBER OF SPECIMENS COLLECTED,"** requires a count for all collected specimens. It should not include refusals to test. The second blank column with the heading **"NUMBER OF SPECIMENS VERIFIED NEGATIVE,"** requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,"** refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,"** requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

A sample table is provided on page iii with example numbers.

Page 2

Below the table for drug testing information is a box with the heading **"Number of persons denied a position as a covered employee following a verified positive drug test".** This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2 Also following the table that summarizes DRUG TESTING INFORMATION, you must record the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example will use "Pre-Employment" testing to illustrate the procedures for completing the form.

A — Urine specimens were collected for 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

B — The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for driver positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT".

C — The MRO for your company reported that 4 of those 157 specimens from applicants for driver positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT	157	153	4	3	1	0	0	1

A B C D

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are

made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.**

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. First, indicate the **NUMBER OF VERIFIED POSITIVES.** Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 2 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

Page 2 — **DRUG TRAINING/EDUCATION** requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

FHWA DRUG TESTING MIS DATA COLLECTION FORM OMB No. 2125-0543

A. MOTOR CARRIER EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____
Principal Place of Business for Safety:

Physical Address _____ Mailing Address _____

_____ _____

U.S. DOT Number _____ ICC Number _____

I, the undersigned, certify that the information provided on this Federal Highway Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature _____ Date of Signature

_____ Title _____ Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 2 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS-1); Federal Highway Administration; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FHWA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for employees in COVERED POSITIONS as defined by FHWA/DOT drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in the table entitled "EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST". Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. DRUG TESTING INFORMATION

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
RANDOM								
POST-ACCIDENT/NON-FATAL								
POST-ACCIDENT/FATAL								
REASONABLE SUSPICION								
RETURN TO DUTY								
FOLLOW-UP								

Number of persons denied a position as a covered employee following a verified positive drug test:	
Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FHWA rule:	

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG					
NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	

DRUG TRAINING/EDUCATION	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

ILLUSTRATION II - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS "EZ" Data Collection Form.** This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the FHWA and DOT drug testing regulations.

SECTION A - MOTOR CARRIER EMPLOYER INFORMATION requires the company name for which the report is done, a current address, the U.S. DOT number, and the ICC number. Below this, a signature, date, and current telephone (including the area code) are entered by the person certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under FHWA regulations. There is only one category of covered employees for FHWA, and that is "Drivers" in the tables. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION,** requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under <u>all</u> appropriate operating administrations.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a **covered position** only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers **do not** include refusals for testing. "COLL" requires the number of specimens collected in each employee category for each category of testing. "NEG" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do <u>not</u> include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table for drug testing data you must provide counts for **employees returned to duty during this reporting period after having failed or refused a drug test required under the FHWA rule.**

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

FHWA DRUG TESTING MIS "EZ" DATA COLLECTION FORM

OMB No. 2125-0543

A. MOTOR CARRIER EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Principal Place of Business for Safety:

Physical Address _____ Mailing Address _____

_____ _____

U.S. DOT Number _____ ICC Number _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

_____ Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS-1); Federal Highway Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FHWA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT/ NON-FATAL		POST-ACCIDENT/ FATAL		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Drivers														

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FHWA rule:	
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	**Number**
Covered employees who refused to submit to a random drug test required under the FHWA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	
DRUG TRAINING/EDUCATION	**Number**
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

FHWA Form No. MCS-155 (12-93)

[FR Doc. 93-30931 Filed 12-17-93; 8:45 am]

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federal register

Thursday
December 23, 1993

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 219
Annual Reporting Requirements; Amendments to Alcohol/Drug Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 219

[Docket No. RSOR-6; Notice No. 37]

RIN 2130-AA64

Annual Reporting Requirements; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: On December 15, 1992, FRA proposed to replace its current annual reporting requirements with a standardized management information system (MIS) to collect alcohol and drug testing information from railroads. FRA will use this data to evaluate the effectiveness of its program to control alcohol and drug misuse in railroad operations. FRA has amended its proposed MIS in response to comments received and in accordance with a common preamble published by the Department of Transportation (DOT) elsewhere in today's **Federal Register**.

DATES: This final rule is effective on January 1, 1994.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR-6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Don Shatinsky, Alcohol and Drug Program Manager (RRS-11), Office of Safety, FRA, Washington, DC 20590 (telephone: (202) 366-0127) or Patricia V. Sun, Trial Attorney (RCC-30), Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1992 (57 FR 59608), FRA proposed to repeal its existing reporting requirements (§ 217.13(d)) and substitute a management information system to collect data on the results of railroad drug misuse prevention programs. (FRA intends to publish separately a similar MIS to collect railroad alcohol misuse program data as part of a final rule which will amend its alcohol and drug regulations in response to the Omnibus Transportation Employee Testing Act of 1991 (Act).) FRA will use this information to monitor compliance and enforcement.

The Department of Transportation is considering the use of blood for alcohol testing, and may develop departmental testing procedures. Accordingly, FRA will not collect information on blood alcohol testing conducted under the current FRA procedures in § 219.303(c). The data elements for cause blood alcohol testing have therefore been deleted.

Elsewhere in today's **Federal Register** is a common preamble published by the Office of the Secretary of Transportation (OST) that discusses amendments common to each of the MIS final rules that the Department is issuing today. This common preamble is incorporated herein by reference and must be considered when reviewing FRA's Final Rule.

Although the rule is being made effective in less than the 30 days from publication otherwise required by law, this will not unduly burden railroads since the first report under this rule will not be due until March 15, 1995, and most of the rule's information collections are already maintained under pre-existing regulatory requirements. With an effective date of January 1, 1994, FRA can ensure that information is collected under this rule for calendar year 1994 so that the benefits from the rule can be realized without delay. FRA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

Response to Comments

In its notice of proposed rulemaking (NPRM), FRA proposed to increase the number of railroads required to report annually by applying the MIS to all railroads not excluded under the small railroad exclusion in § 219.3 (about 175 total). (Currently, FRA requires only those railroads with 400,000 or more total manhours (approximately 60 railroads) to submit annual operating rules and practices reports that include alcohol and drug program data.) FRA also proposed a standardized data collection form, which reporting railroads would have to submit by February 15 of each year.

Several commenters, including the American Short Line Railroad Association (ASLRA), felt that annual reporting would be too burdensome for smaller railroads and urged FRA to include only those railroads already required to report under the current system. Some commenters said that FRA's proposed data collection form was too complex and that collecting data for the MIS could be difficult, since the required information would not be readily available. Two commenters also felt that the proposed deadline of February 15 was unrealistic, particularly since the MIS requires more information than FRA's current system, which has a reporting deadline of March 1.

FRA will not require railroads with fewer than 400,000 total manhours to submit MIS reports, since its analysis of reporting under § 217.13 indicates that over 95 percent of industry testing data is captured at the current 400,000 manhours reporting cutoff. Thus, excluding very small railroads will reduce the overall reporting burden without significant impact on industry test results.

In addition, to minimize the burden on other railroads, FRA, in concert with DOT, will make several other changes. (As mentioned above, these changes are also discussed in the common preamble.)

First, FRA will change the reporting deadline from February 15 to March 15. For example, an employer's first MIS report, containing aggregate data for calendar year 1994, will not be due until March 15, 1995. Larger railroads, which are currently required to report by March 1 each year, will already have reporting systems in place, and smaller railroads will have additional time to phase in implementation.

Second, smaller railroads in particular will often have no positive test results. For these employers, FRA has developed a simplified two page "Drug Testing Management Information System (MIS) Zero Positives Data Collection Form" (an "E-Z form" analogous to the Internal Revenue Service's 1040A form, for example), that allows these employers to report solely on the number of covered employees (including those covered by more than one DOT administration), the number of specimens collected and verified negative, and the number of refusals to test. This form will be published as Appendix D2 to Part 219 and is an exhibit attached to this rule.

Third, FRA will allow electronic reporting, which was supported by the American Public Transit Association, the Brotherhood of Locomotive Engineers and the Brotherhood of Railway Signalmen. To facilitate this, FRA will offer custom computer programs in a "run time" (executable) mode that will allow railroads to submit their annual reports on a computer diskette in lieu of a paper submission. Documentation will be supplied with the software. (FRA will publish additional details and information on how to obtain the software in a separate notice.)

In addition, FRA has deleted the "Additional Testing Data" requirements which asked for information on post-positive disciplinary action, evaluation,

treatment and rehabilitation in response to comments from the American Association of Railroads and the ASLRA that it would be difficult for railroads to obtain this information from employee assistance programs.

Finally, to further minimize the burden on employers, FRA will not require cost reporting, which was supported by only one commenter.

Section-By-Section Analysis

As proposed, FRA will add a new subpart I (titled "Annual Reporting Requirements") to part 219 to incorporate the requirements of the MIS. Each report under subpart I will cover a calendar year. The closing date will be December 31 and the report will be due at FRA by March 15 of the following year. Subpart I will not apply to those railroads that have fewer than 400,000 total hours of employment.

FRA has retitled the standard data collection form (standard form) that will be published as appendix D to part 219 (as noted above, the E–Z version of the form will be appendix D2) and is an exhibit attached to this rule. The standard form is now titled "Drug Testing Management Information System (MIS) Data Collection Form" to emphasize that a separate MIS to collect railroad alcohol misuse program data will be published as part of FRA's final rule on prevention of alcohol misuse. In the MIS published today, FRA seeks solely to collect information on for cause breath alcohol and urine alcohol testing. (As discussed above, FRA has deleted the data elements on for cause blood alcohol testing.) Like drug urinalysis, breath alcohol testing currently may be conducted as testing for cause under subpart D of the FRA regulation or otherwise for cause under a railroad's own program. Although urine alcohol testing is not authorized under the FRA regulation (and was not included in FRA's NPRM (57 FR 59588) proposing amendments in response to the Act), properly conducted urine alcohol testing can add further capacity to detect and remedy alcohol safety problems.

Throughout this form, there are minor differences from the data collection form that was published in FRA's NPRM. Although the form has been shortened, it now has five sections instead of three. "Railroad Employer Information" and "Covered Employees," have been broken out into separate sections. The alcohol testing information section has been deleted and the for cause alcohol testing charts are now in the "Drug Testing Information" section. Two new sections, "Other Drug Testing/Program Information" and "Drug Training/Education," have been added. For ease of reference, the form now contains several charts on each page. FRA will publish any future amendments to these forms in the **Federal Register**.

In the "Covered Employees" section, employers must submit the number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by agency. Many commenters raised the issue of multimodal coverage. As formulated by the Department, employers who fall under two or more DOT Agency regulations requiring alcohol and drug testing must submit data to each regulating operating administration (OA) for those employees covered by that OA's rule. Employees who perform functions covered by more than one OA should be identified by their employer as to which covered position they will be reported under. Alcohol and drug program data on dual covered employees should be reported to the appropriate OA.

For railroads, the issue of multimodal coverage primarily affects holders of commercial driver's licenses (CDLs). Although many commenters suggested that all railroad CDL holders should report to FRA only, FRA and DOT believe that reportability should be determined by employee function. Therefore, CDL holders who do not perform covered service and are covered solely by Federal Highway Administration (FHWA) regulations will be reported to FHWA only. CDL holders who perform covered service and perform functions subject to both FRA and FHWA coverage (and any other employees subject to dual coverage) should be reported as follows:

For pre-employment and random testing, an employee should be reported to whichever OA covers more than 50% of that employee's function. For post-accident and reasonable suspicion testing, however, reportability should be determined by the function the employee was performing at the time of the accident or incident. Finally, for post-positive return to service and follow-up testing, the employee should be reported to the same OA to whom the initial positive was reported. For example, a signalman who holds a CDL but performs less than 50% of his time driving would be reported to FRA for pre-employment and random testing. If that signalman were to have a reportable accident while driving a commercial motor vehicle, however, that post-accident test result should be reported to FHWA, as should any post-positive return to service and follow-up test results. On the other hand, if a supervisor determined that the same signalman was impaired by a controlled substance while performing covered service under FRA regulations, that reasonable suspicion test result and any post-positive return to service and follow-up test results should be reported to FRA.

As discussed above, The "Drug Testing Information" section now asks for information concerning for cause alcohol testing and places the chart concerning pre-employment and covered service transfer testing on the same page with those concerning random, post-positive return to service and follow-up testing. Although FRA has removed the questions on post-positive discipline, evaluation, treatment, and relapse, FRA retains the authority to inspect employer records upon request.

In the "Other Drug Testing/Program Information" section, FRA seeks information on polydrug abuse among drug abusers. FRA will also collect information on employee refusals to provide breath or body fluid samples for testing, since FRA has proposed that a nine month disqualification from covered service be mandatory for a refusal to submit to reasonable suspicion testing (as it already is for a refusal to submit to post-accident or random testing).

Finally, the "Drug Training/Education" section merely places supervisory training information in a separate section.

The following is a listing of the data elements that must be covered on the standard form:

Covered Employees

1. Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal service, other).

2. Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency. (Elements 1. and 2. have been combined into one chart.)

Drug Testing Information

3. Number of specimens collected by type of test (*i.e.*, pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

4. Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

5. Number of specimens verified positive for one or more of the five drugs by a MRO by type of test,

employee category, and type of drug. If a test has been verified positive by a MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

6. Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

7. Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

8. For cause drug testing, the number of specimens collected by reason for test (*i.e.*, accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee category and type of drug, including drugs tested for under railroad authority only.

9. For cause drug testing, the number of specimens verified negative by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

10. For cause drug testing, the number of specimens verified positive by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

11. For cause breath alcohol testing under railroad authority, by reason for test (*i.e.*, accident/injury, rules violation, or reasonable suspicion), the number of tests conducted, the number of tests with a positive result (*i.e.*, breath alcohol concentration (BAC) = or > .02), and the number of refusals.

12. For cause urine alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result and the number of refusals.

13. For cause breath alcohol testing under FRA authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

14. Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

15. Based on the tests and inspections described in element 14, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

16. Based on the tests and inspections described in element 14, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

Other Drug Testing/Program Information

17. Number of specimens verified positive for more than one drug, by employee category and type of drug.

18. Number of covered employees who refused to submit to a random drug test required under FRA authority.

19. Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

20. Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

Appendix D to part 219, which is attached as an exhibit to this rule, is the standard form to collect the above-listed data as required by this regulation.

The following is a listing of data elements as they appear on the E–Z form:

Covered Employees

1. Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal service, other).

2. Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency. (Elements 1. and 2. have been combined into one chart.)

Drug Testing Information

3. Number of specimens collected and verified negative by type of test (*i.e.*, pre-employment and covered service transfer, random, for cause due to accident/incident, for cause due to rules violation, reasonable suspicion, post-positive return to service, and follow-up), and employee category.

4. For cause breath alcohol testing under railroad authority, the number of tests conducted by reason for test (*i.e.*, accident/injury, rules violation, or reasonable suspicion).

5. For cause urine alcohol testing under railroad authority, the number of tests conducted by reason for test.

6. For cause breath alcohol testing under FRA authority, the number of tests conducted by reason for test.

7. Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

8. Based on the tests and inspections described in element 7, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

9. Based on the tests and inspections described in element 7, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

10. Number of covered employees who refused to submit to a random drug test required under FRA authority.

11. Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

12. Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

Appendix D2 to part 219, which is attached as an exhibit to this rule, is the E–Z form to collect the above-listed data as required by this regulation.

Executive Order 12866 and DOT Regulatory Policy and Procedures

This rule is part of an alcohol and drug rulemaking package that is "significant" under Executive Order 12866, and has been reviewed under that Order. It is a significant regulatory action under the Department of Transportation's Regulatory Policy and Procedures.

The rule publishes standard reporting requirements that will provide OST and FRA with critical data necessary for policy and program evaluations. This modification will provide overall benefit to public safety by enhancing FRA's ability to ensure that this critical program is operating effectively. FRA anticipates that this requirement will cause minimal change in compliance burden and cost, since most of the program data requested would have been maintained in the implementation of an effective drug program under the current regulation.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

This rule is part of an alcohol and drug rulemaking package that is "significant" under Executive Order 12866, and has been reviewed under that Order.

Federalism Implications

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this rule because it changes several approved collections of information and initiates several new information collection requirements. (See common preamble on status of Paperwork Reduction Act approval.) After publication of the NPRM, an FRA contractor asked four railroads to estimate the number of hours required to complete the proposed form. Estimates ranged from 4 to 60 hours.

The final rule both adds and subtracts information collection requirements to the proposed form. For the standard form, FRA estimates that information gathering, record maintenance and form preparation will approximate 65 hours each year. (This does not include any software modifications for railroads that choose to report electronically.) Approximately 40 railroads are expected to submit the standardized form annually.

In the final rule, FRA adds a short form for railroads that have no positive test results to report. For the simplified form, FRA estimates that information gathering, record maintenance and form preparation will approximate 20 hours each year. Approximately 20 railroads are expected to submit this short form annually.

FRA has requested Office of Management and Budget (OMB) approval of these revised information collection requirements. A Federal Register notice will be published when Paperwork Reduction Act approval is obtained. Current information collection requirements under part 219 were approved under OMB No. 2130–0526.

List of Subjects

49 CFR Part 217

Railroad operating rules, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Control of alcohol and drug use, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA amends parts 217 and 219, title 49, Code of Federal Regulations as follows:

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

§ 217.13 [Amended]

2. Section 217.13 is amended by removing paragraph (d).

PART 219—[AMENDED]

3. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

4. Part 219 is amended by adding a new subpart I consisting of § 219.803 to read as follows:

Subpart I—Annual Report

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad with more than 400,000 total manhours shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) A railroad that is subject to more than one DOT agency drug regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad shall determine which DOT agency regulation or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad shall submit the required annual reports no later than March 15 of each year. The report shall be submitted on one of the forms specified by the FRA. A railroad with no positive test results shall submit the "Drug Testing Management Information System Zero Positives Data Collection Form" form attached as Appendix D2 to this part. All other railroads shall submit the "Drug Testing Management Information System Data Collection Form" attached as Appendix D to this part.

(e) A railroad submitting the "Drug Testing Management Information System Data Collection Form" shall address each of the following data elements:

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (ie., pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

(4) Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

(5) Number of specimens verified positive for one or more of the five drugs by a MRO by type of test, employee category, and type of drug. If a test has been verified positive by a MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

(6) Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

(7) Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

(8) For cause drug testing, the number of specimens collected by reason for test (*i.e.*, accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee category and type of drug, including drugs tested for under railroad authority only.

(9) For cause drug testing, the number of specimens verified negative by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(10) For cause drug testing, the number of specimens verified positive by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(11) For cause breath alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result (*i.e.*, breath alcohol concentration (BAC) = or > .02), and the number of refusals.

(12) For cause urine alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(13) For cause breath alcohol testing under FRA authority, by reason for test, the number of tests conducted, the

number of tests with a positive result, and the number of refusals.

(14) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(15) Based on the tests and inspections described in element 14, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(16) Based on the tests and inspections described in element 14, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(17) Number of specimens verified positive for more than one drug, by employee category and type of drug.

(18) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(19) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(20) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

(f) A railroad authorized to submit the "Drug Testing Management Information System Zero Positives Data Collection Form" attached as Appendix D2 to this part shall address each of the following data elements:

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected and verified negative by type of test (*i.e.*, pre-employment and covered service transfer, random, for cause due to accident/incident, for cause due to rules violation, reasonable suspicion, post-positive return to service, and follow-up), and employee category.

(4) For cause breath alcohol testing under railroad authority, the number of tests conducted by reason for test (*i.e.*, accident/injury, rules violation, or reasonable suspicion).

(5) For cause urine alcohol testing under railroad authority, the number of tests conducted by reason for test.

(6) For cause breath alcohol testing under FRA authority, the number of tests conducted by reason for test.

(7) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(8) Based on the tests and inspections described in element 7, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(9) Based on the tests and inspections described in element 7, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(10) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(11) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(12) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

5. Part 219 is amended by adding appendix D to read as follows:

BILLING CODE 4910-06-P

APPENDIX D - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Railroad Administration (FRA) **Drug Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-v as an example to facilitate the process of completing the form correctly.

This reporting form includes five sections. Collectively, these sections address the data elements required in the FRA and the U.S. Department of Transportation (DOT) drug testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. RAILROAD EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-vi	3-5
D. OTHER DRUG TESTING/PROGRAM INFORMATION	vi	6
E. DRUG TRAINING/EDUCATION	vi	6

Page 1 **RAILROAD EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are required certifying the correctness and completeness of the form.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each Hours of Service Act employee category that must be tested under FRA regulations. The categories are: "Engine Service", "Train Service", "Dispatcher/Operator", "Signal Service", and "Other." The **OTHER** category is a count of employees performing covered service that are not included in specific preceding categories. Examples include yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, etc. These counts should be based on the company records as of January 1 of the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the column.

Additional information must be completed if your company employs personnel who perform duties covered by the anti-drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN**

ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Section C is used to summarize drug testing results for applicants and drug and alcohol testing results for covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment/covered service transfer testing. The remaining six parts are for entering drug testing data on random testing, post-positive return to service testing, follow-up testing, for cause drug testing (one part each for "for cause testing" due to accidents/injuries, rules violations, and reasonable suspicion), and for cause alcohol testing (one part each for breath tests due to railroad rules, urine tests due to railroad rules, and breath tests mandated by the FRA), respectively. Items necessary to complete the drug testing tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part **PRE-EMPLOYMENT/COVERED SERVICE TRANSFER TESTING**. The format and explanations used for the sample apply to all seven parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of page 3. Specific instructions for providing this latter information are given after the instructions for completing the tables in Section C.

Page 3

DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment/covered service transfer section of the table should be separated into the category of employment for which the person was applying/transferring. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random testing, (2) post-positive return to service testing, (3) follow-up testing, (4) for cause testing due to accidents/injuries, (5) for cause testing due to rule violations, and (6) for cause testing due to reasonable suspicion. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading **"NUMBER OF SPECIMENS COLLECTED,"** requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading **"NUMBER OF SPECIMENS VERIFIED NEGATIVE,"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,"** refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,"** requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page v with example numbers.

Page 3 — Below the part of the table containing pre-employment/covered service transfer testing information is a box with the heading **"Number of applicants/transfers denied employment/transfer in a covered position following a verified positive drug test"**. This is simply a count of those persons who were not hired/transferred into a covered position because they tested positive for one or more drugs.

Page 3 — Below the part of the table containing post-positive return to service testing information, you must record the **number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FRA rule**. This information should be available from the personnel office and/or drug program manager.

Page 4 — **FOR CAUSE TESTING** data are provided in three separate parts of the table – one for accidents/injuries, one for rules violations, and one for reasonable suspicion. In the shaded portion of the parts for accidents/injuries and rules violations you must indicate whether the testing was conducted under FRA authority or under railroad authority.

The sections of the table for accidents/injuries and rules violations contain two additional columns which must be completed for testing done under railroad authority. The first additional column, labeled "Other Prohibited," requires that you list any drugs, other than the five listed, that are tested under railroad rule (e.g., butalbital). The rightmost column, labeled "Combined," requires that you indicate whether any of these positives were in combination with one or more positive findings for the five drugs (same specimen). If yes, you must attach details (e.g., 2 marijuana/butalbital).

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment/covered service transfer testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Engine Service" and "Train Service" to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 job applicants for engine service positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Engine Service".

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for engine service positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Engine Service".

C The MRO for your company reported that 4 of those 157 specimens from applicants for engine service positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Engine Service".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, **OTHER DRUG TESTING/PROGRAM INFORMATION**, on page 6 of the reporting form.

Please note that the sample data collection form also has information for train service on line two. The same procedures outlined for engine service should be followed for entering the data on train service. With applicants for train service positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Train Service".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for engine service positions were collected and 107 for applicants for train service positions. The total for that column would be 264 (i.e., 157+107). The same procedure should

- be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT/"COVERED SERVICE" TRANSFER TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service	157	153	4	3	1	0	0	1
Train Service	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **FOR CAUSE BREATH ALCOHOL TESTS DONE UNDER RAILROAD RULE/POLICY** requires information concerning breath alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rules or collective bargaining agreements (i.e., NOT in reliance on Subpart D of CFR Part 219).

FOR CAUSE URINE ALCOHOL TESTS UNDER RAILROAD RULE/POLICY requires information concerning urine alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rules or collective bargaining agreements (i.e., NOT in reliance on Subpart D of 49 CFR Part 219).

"FRA" FOR CAUSE BREATH ALCOHOL TESTS requires information concerning breath alcohol tests conducted on covered employees for cause, under Subpart D of 49 CFR Part 219.

Page 6 There are three items required under **OPERATIONAL TESTS AND INSPECTIONS** concerning the railroad's program for supervising its employees and ensuring they are free from impairments caused by drugs or alcohol.

Page 6 **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 6 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES.** Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 engine service specimens, then you would write "Engine Service" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 engine service specimens, then you would write "Engine Service" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 6 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, for cause, post-positive return to service, or follow-up) drug test required under the FRA regulation.

Page 6 **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

FRA DRUG TESTING MIS DATA COLLECTION FORM

OMB No. 2130-0526

YEAR COVERED BY THIS REPORT: 19___

A. RAILROAD EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the information provided on the attached Federal Railroad Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. The willful falsification of any information in this report may also subject the submitter to civil or criminal prosecution under Title 45, U.S.C. Section 438(e).

The Federal Railroad Administration estimates that the average burden for this report form is 65 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety; Federal Railroad Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2130-0526); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FRA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FTA	RSPA	USCG
Engine Service						
Train Service						
Dispatcher/Operator						
Signal Service						
Other*						
TOTAL						

* Includes yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, and other miscellaneous employees performing covered service as defined in 49 CFR 228.5 (c).

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL RAILROAD ADMINISTRATION (FRA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FRA drug testing regulations.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING/PROGRAM INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT/COVERED SERVICE TRANSFER								
Engine Service								
Train Service								
Dispatcher/Operator								
Signal Service								
Other								
Total								
RANDOM								
Engine Service								
Train Service								
Dispatcher/Operator								
Signal Service								
Other								
Total								
POST-POSITIVE RETURN TO SERVICE								
Engine Service								
Train Service								
Dispatcher/Operator								
Signal Service								
Other								
Total								
FOLLOW-UP								
Engine Service								
Train Service								
Dispatcher/Operator								
Signal Service								
Other								
Total								

Number of applicants/transfers denied employment/transfer in a covered position following a verified positive drug test:	

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FRA rule:	

C. DRUG TESTING INFORMATION (continued)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG						
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines	Other Prohibited [1]	Combined [2]
FOR CAUSE DRUG TESTING DUE TO ACCIDENT*/INJURY *(Accidents NOT qualifying under 49 CFR Part 219 Subpart C) (Testing Conducted Under: FRA Rule___ Railroad Rule___)										
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										
DUE TO RULES VIOLATION (Testing Conducted Under: FRA Rule___ Railroad Rule___)										
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										
REASONABLE SUSPICION (Testing Conducted Under: FRA Rule___ Railroad Rule___)										
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										

[1] Other drugs tested under railroad rule where the use was prohibited by 49 CFR 219.102.

[2] Indicate whether any of these positives were in combination with one or more positive findings for the five drugs (same specimen). If yes, attach details (e.g., 2 marijuana/butalbital).

C. DRUG TESTING INFORMATION (continued)

FOR CAUSE ALCOHOL TESTING

TYPE OF TEST	NUMBER CONDUCTED	NUMBER POSITIVE (= or > .02%)	NUMBER OF REFUSALS
"FOR CAUSE" BREATH ALCOHOL TESTS UNDER RAILROAD RULE/POLICY The following items request information concerning breath alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rule or collective bargaining agreements (i.e. NOT in reliance on Subpart D or CFR Part 219).			
1. Following ACCIDENTS/INCIDENTS:			
2. Following RULE VIOLATIONS:			
3. REASONABLE SUSPICION of current use or impairment:			
"FOR CAUSE" URINE ALCOHOL TESTS UNDER RAILROAD RULE/POLICY The following items request information concerning urine alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rule or collective bargaining agreements (i.e. NOT in reliance on Subpart D or CFR Part 219).			
1. Following ACCIDENTS/INCIDENTS:			
2. Following RULE VIOLATIONS:			
3. REASONABLE SUSPICION of current use or impairment:			
"FRA" FOR CAUSE BREATH ALCOHOL TESTS The following items request information concerning breath alcohol tests conducted on covered employees for cause, under Subpart D of 49 CFR Part 219			
1. Following ACCIDENTS/INCIDENTS:			
2. Following RULE VIOLATIONS:			
3. REASONABLE SUSPICION of current use or impairment:			

OPERATIONAL TESTS AND INSPECTIONS

The following items request information concerning the railroad's program for supervising its employees and ensuring that they are free from impairments caused by drugs or alcohol:

Total number of covered employees observed in documented tests and inspections related to enforcement of the railroad's rules and policies on drug and alcohol use (including, but not limited to, observations for which urine tests were conducted and observations after accidents/incidents and rule violations):	
Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs:	
Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol:	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FRA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FRA regulation:	

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FRA drug testing regulations:	

6. Appendix D1 to part 219 is reserved and appendix D2 to part 219 is added to read as follows:

Appendix D1—[Reserved]

APPENDIX D 2 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Railroad Administration (FRA) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the FRA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A - RAILROAD EMPLOYER INFORMATION requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are required certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each Hours of Service Act employee category that must be tested under FRA regulations. The categories are: "Engine Service", "Train Service", "Dispatcher/Operator", "Signal Service", and "Other." The **OTHER** category is a count of employees performing covered service that are not included in specific preceding categories. Examples include yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, etc. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the column.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - DRUG TESTING INFORMATION requires information for drug testing and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment/covered service transfer section of the table should be separated into the category of employment for which the person was applying/transferring. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random testing, (2) for cause testing due to accidents/injuries, (3) for cause testing due to rule violations, (4) for cause testing due to reasonable suspicion, (5) post-positive return to service testing, and (6) follow-up testing. For the three types of for-cause testing, indicate whether testing was conducted under FRA or railroad rule. These numbers **do not** include refusals for testing. **"COLL"** requires the number of specimens collected in each employee category for each category of testing. **"NEG"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the **number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FRA rule.** This information should be available from the personnel office and/or drug program manager.

FOR CAUSE ALCOHOL TESTING requires information concerning breath and urine alcohol tests conducted under railroad rules and FRA rules as specified.

FOR CAUSE BREATH ALCOHOL TESTS DONE UNDER RAILROAD RULE/POLICY requires information concerning breath alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rules or collective bargaining agreements (i.e., NOT in reliance on Subpart D of CFR Part 219).

FOR CAUSE URINE ALCOHOL TESTS UNDER RAILROAD RULE/POLICY requires information concerning urine alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rules or collective bargaining agreements (i.e., NOT in reliance on Subpart D of 49 CFR Part 219).

"FRA" FOR CAUSE BREATH ALCOHOL TESTS requires information concerning breath alcohol tests conducted on covered employees for cause, under Subpart D of 49 CFR Part 219.

There are three items required under **OPERATIONAL TESTS AND INSPECTIONS** concerning the railroad's program for supervising its employees and ensuring they are free from impairments caused by alcohol or drugs.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, for cause, post-positive return to service, or follow-up) drug test required under the FRA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received the required drug training during the current reporting period

FRA DRUG TESTING MIS EZ DATA COLLECTION FORM OMB No. 2130-0526

YEAR COVERED BY THIS REPORT: 19___

A. RAILROAD EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify that the information provided on the attached Federal Railroad Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. The willful falsification of any information in this report may also subject the submitter to civil or criminal prosecution under Title 45, U.S.C. Section 438(e).

The Federal Railroad Administration estimates that the average burden for this report form is 25 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety; Federal Railroad Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2130-0526); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FRA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FTA	RSPA	USCG
Engine Service						
Train Service						
Dispatcher/Operator						
Signal Service						
Other*						
TOTAL						

* Includes yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, and other miscellaneous employees performing covered service as defined in 49 CFR 228.5 (c).

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
EMPLOYEE CATEGORY	PRE-EMPLOYMENT /COVERED SERVICE TRANSFER		RANDOM		FOR CAUSE Accident/Injury Testing Conducted Under Rule: FRA __ Railroad __		FOR CAUSE Rules Violation Testing Conducted Under Rule: FRA __ Railroad __		REASONABLE SUSPICION Testing Conducted Under Rule: FRA __ Railroad __		POST-POSITIVE RETURN TO SERVICE		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Engine Service														
Train Service														
Dispatcher/Operator														
Signal Service														
Other														
Total														

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FRA rule:	

C. DRUG TESTING INFORMATION (continued)

FOR CAUSE ALCOHOL TESTING

TYPE OF TEST	NUMBER CONDUCTED
"FOR CAUSE" BREATH ALCOHOL TESTS UNDER RAILROAD RULE/POLICY The following items request information concerning breath alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rule or collective bargaining agreements (i.e. NOT in reliance on Subpart D or CFR Part 219).	
1. Following ACCIDENTS/INCIDENTS:	
2. Following RULE VIOLATIONS:	
3. REASONABLE SUSPICION of current use or impairment:	
"FOR CAUSE" URINE ALCOHOL TESTS UNDER RAILROAD RULE/POLICY The following items request information concerning urine alcohol tests conducted on covered employees for specific cause under the authority of the railroad's rule or collective bargaining agreements (i.e. NOT in reliance on Subpart D or CFR Part 219).	
1. Following ACCIDENTS/INCIDENTS:	
2. Following RULE VIOLATIONS:	
3. REASONABLE SUSPICION of current use or impairment:	
"FRA" FOR CAUSE BREATH ALCOHOL TESTS The following items request information concerning breath alcohol tests conducted on covered employees for cause, under Subpart D of 49 CFR Part 219	
1. Following ACCIDENTS/INCIDENTS:	
2. Following RULE VIOLATIONS:	
3. REASONABLE SUSPICION of current use or impairment:	

OPERATIONAL TESTS AND INSPECTIONS

The following items request information concerning the railroad's program for supervising its employees and ensuring that they are free from impairments caused by drugs or alcohol:

Total number of covered employees observed in documented tests and inspections related to enforcement of the railroad's rules and policies on drug and alcohol use (including, but not limited to, observations for which urine tests were conducted and observations after accidents/incidents and rule violations):	
Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs:	
Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FRA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FRA regulation:	

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FRA drug testing regulations:	

Issued in Washington, DC on December 13, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93-30932 Filed 12-17-98; 8:45 am]

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federal register

Thursday
December 23, 1993

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Drug Testing: Management Information System (MIS) Standardized Data Collection and Reporting; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-129]

RIN 2137-AB95

Drug Testing: Management Information System (MIS) Standardized Data Collection and Reporting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to require operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities who are subject to 49 CFR parts 192, 193, and 195 to implement, maintain, and submit an annual report for their drug testing program data. This final rule is essential for RSPA to collect the drug testing statistical data and use the data to analyze its current approach to deterring and detecting illegal drug abuse in the pipeline industry, and, as appropriate, plan a more efficient and effective approach.

EFFECTIVE DATE: This rule will be effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Compliance, RSPA, DOT, 400 7th Street, SW., Washington, DC 20590-0001 (202-366-6223) or the Dockets Unit (202) 366-4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1992, RSPA published a Notice of Proposed Rulemaking (NPRM) (57 FR 59720), to require pipeline operators subject to part 199 to submit specific drug testing data to RSPA annually. The NPRM proposed that operators would maintain all drug testing data on a calendar-year basis with a closing date of December 31 each year. The Office of the Secretary (OST), also issued an NPRM in the **Federal Register** the same day outlining MIS format and requirements for reporting drug program data.

The OST NPRM proposed that MIS reports would require specific drug testing data elements on standardized forms and these items were outlined in 49 CFR part 40, § 40.81. OST has elected not to amend Part 40 by adding the provisions as proposed in § 40.81. The MIS requirements for operator reporting are set forth in this final rule. Elsewhere in today's **Federal Register** is a common preamble to this and other DOT agency MIS final rules which addresses the common issues relevant to the MIS requirements for the transportation industries.

The OST NPRM proposed that operators with employees who fall under two or more DOT agency regulations requiring drug testing shall submit data to each agency for those employees covered by that agency rule. Under this final rule, employees who perform functions covered by more than one DOT agency shall be identified by the operator as to which covered function they will be reported under. Drug testing data on dual covered employees shall be reported to RSPA and/or any other appropriate DOT agency.

Discussion of Comments

The comment period for RSPA's NPRM closed on April 14, 1993, and all comments received were considered, as well as, the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California, respectively. RSPA received 46 comments in response to the NPRM, including comments from 36 pipeline operators, three industry associations, two consortia, one state agency, and four from individuals. The majority of the commenters had no objection to the basic concept of the MIS drug test reporting requirements as proposed. Several commenters indicated that submission of such drug testing data to RSPA would support their position that substance abuse in the pipeline industry is not widespread and that random test rates should be lowered. A number of the commenters provided detailed comments on proposed changes to the MIS report format which included such items as streamlining the reporting format, limiting the number of data elements, and suggested submission dates for the reports.

Specific Issues

Covered Employees Categories

Several commenters indicated that requiring operators to identify and report separately on employees who perform operation, maintenance, or emergency-response functions would place an undue burden on operators and provide no visible benefit to RSPA. They believe this requirement would increase the recordkeeping requirements for operators and increase associated costs of maintaining records. Many operators, such as the Columbia Gas Distribution companies, indicated that the overlap of job categories make it very difficult for operators to distinguish these job categories.

RSPA Response

RSPA has determined that requiring operators to classify employees by separate covered employee categories, as proposed, is not feasible given the general overlap of employee functions among the numerous operators within the pipeline industry. Therefore, the reporting format has been revised to use one category, "covered employees", representing all individuals who perform operation, maintenance, or emergency-response functions on the pipeline.

Report Format

Many commenters were opposed to one or more of the reporting elements proposed in the NPRM. Comments submitted by Exxon and the Interstate Natural Gas Association of America (INGAA) addressed several areas of the form that they contended would present an undue burden in the collection and reporting of data. These comments included objections to the proposed employee categories outlined; dual coverage/reporting for employees covered by other DOT agencies; and, the requirement to submit annual reports no later than February 15th. Some operators objected to the size and complexity of the report format and the numerous detailed instructions required to complete the form. One consortium indicated that costs of designing software and implementing this type of informational software into the current drug management programs would be immense. Another consortium, which represents numerous small operators and municipalities, suggested that consortia should be allowed to report on behalf of the companies they serve, thus reducing the paperwork required. Many operators provided suggested changes and modifications to reduce the recordkeeping and reporting burden.

RSPA Response

RSPA has incorporated some of these refinements into the final MIS report forms, which appear as exhibits A and B to this final rule. RSPA has eliminated the requirement to report separately the covered employees' functions. To reduce the reporting burden on operators who have no verified positive test results, RSPA has limited the information to be provided and has developed a simplified "E-Z form" for submitting their reports.

RSPA has also reduced some of the MIS reporting burden on operators in this final rule based on information developed from the MIS pilot project. A notice published on February 8, 1993, (58 FR 7506) sought volunteer participation of pipeline operators to evaluate the proposed MIS forms and submission procedures. The MIS pilot project was coordinated with OST and the other DOT operating administrations. Seven operators were selected and received the MIS packages. Of the seven, six operators were interviewed. Three of the operators did not complete the data collection forms, so only four collection forms were available for analysis. The findings and conclusions from the pilot project have been considered in the development of this final rule. A copy of the summarized findings has been placed in the RSPA NPRM docket number PS-129.

The MIS pilot concluded that drug testing data availability is good for operators testing under the RSPA rule; however, there are some data that cannot be provided by the operator. Test results by employee category cannot be provided due to overlap in employee function. Periodic testing is not required by the RSPA rule. Finally, covered employee training and refresher training are not required by the RSPA drug testing rule.

Instead of including the reporting forms as an appendix to Part 199, as proposed in the NPRM, RSPA is requiring data to be submitted to RSPA in the standard form and manner prescribed by the Administrator. The current MIS report forms are published in today's **Federal Register** as exhibits A and B immediately following this rule. RSPA has determined that while the drug testing data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking.

RSPA has also decided to issue separate final rules on the drug and alcohol portions of the MIS. Therefore, alcohol testing program data elements are not included in this final rule or on the reporting forms. Alcohol testing MIS reporting requirements would be included in a final rule to implement alcohol misuse prevention programs. Separation of the drug and alcohol data elements should reduce the burden associated with the use of a new form.

Reporting Burden on Small Operators

Some commenters opposed the extensive reporting requirements being proposed by RSPA. They indicated no justification for an approach that relies heavily on submitting all records to RSPA for review. One operator stated that it does not believe that comprehensive data from all operators is required for RSPA to evaluate the effectiveness of the program. They suggested that RSPA could determine what could comprise a representative sample of the industry and request specific data from particular operators for purposes of making an evaluation.

RSPA Response

RSPA has determined that approximately 2,419 operators would be subject to the reporting provisions of this final rule. RSPA estimates that approximately one-third of these operators have fewer than 50 employees performing covered functions. RSPA believes that excluding these small operators from the reporting requirement would not adversely effect the overall drug testing data that would represent the pipeline industry. From time to time RSPA would survey these small operators and require them to prepare and submit such reports to this agency. This data would be analyzed and compared with data being submitted by the large operators.

Therefore, RSPA is not requiring small operators (50 or fewer covered employees) to submit annual MIS reports, at this time. The final rule includes a provision requiring small operators to submit data to RSPA upon request. If at some future time, RSPA decides that annual data submission from small operators is necessary, RSPA would undertake additional rulemaking.

Submission Date

Numerous commenters, including Southern Natural Gas, Hope Gas Inc. and INGAA, recommended that the date for the submission of the MIS reports be revised. A wide variety of dates and reasons was suggested. Many operators are subject to other reporting requirements by other federal and state regulatory agencies and many of these reports, as well as the year-end financial statements, are due at approximately the same time as the proposed February 15 deadline. The commenters indicated that adding a month to the proposed submission date should alleviate some of the administrative burdens associated with the numerous reporting obligations of the operators.

RSPA Response

RSPA agrees that allowing operators until March 15 to submit their annual MIS drug testing reports will not affect the timeliness of the data and will allow sufficient time for operators to compile and prepare their reports. The final rule establishes a March 15 due date.

Contractor Statistical Data

RSPA's NPRM discussed several issues regarding the inclusion of a contractors' drug testing statistical data in an operator's MIS drug report. RSPA sought comments on whether RSPA should defer for the first year the requirement that pipeline operators report information on contractor employees' drug testing results. RSPA was concerned about any potential difficulties in collecting data from contractors and consortia. RSPA was also concerned about multiple reports with duplicative information from contractors being submitted by the various operators for whom the contractor may perform services.

The majority of the commenters were opposed to requiring operators to collect and submit contractor employee drug testing statistical data. The American Gas Association (AGA) contends that "contractors, not operators, should be responsible for reporting to RSPA on the operation of their testing programs. The current system is susceptible to widespread inaccuracies because many pipeline and transmission companies use some of the same contractors, leading to duplicative reporting." Many commenters suggested that RSPA require contractors to submit their MIS reports directly to RSPA and not include the statistics in the operator's report. Other commenters suggested that operators maintain the contractor drug testing statistical data and have it available for review during audits or inspections by the federal and state agencies.

RSPA Response

RSPA has considered all the factors concerning the requirement to have pipeline operators report contractor employee drug testing statistical data on their annual reports to this agency. RSPA contends that requiring submission of contractor drug testing data, by operators, would result in major problems such as duplicative reporting and inaccurate data which could affect the overall pipeline industry positive rate. RSPA has decided not to require pipeline operators to report drug information, as required in § 199.25, for contractor employees who are subject to the part 199 drug testing regulations.

Operators shall continue to maintain the records required by § 199.23 and shall ensure that all contractors are maintaining the same type of records. This issue will be evaluated during the review of reports in the first year and methods may be developed to collect contractor drug testing data.

Electronic Submission

In the OST NPRM, comments were requested concerning the usefulness of electronically transmitting operator MIS data. Only two comments were received which addressed the issue of electronic submission. One consortium recommended that electronic reporting should be utilized where possible; but that small operators without the capability of electronic reporting should not be penalized either through cost or undue administrative burden. One operator stated that without electronic filing capability, the February 15 deadline is unrealistic.

RSPA Response

Although RSPA is exploring the steps necessary to implement electronic MIS data submission, this option is not yet available because RSPA does not have the capability to receive data electronically. RSPA will pursue this recommendation and, if feasible, issue a document addressing this matter in a future edition of the **Federal Register**.

Cost Data

The OST NPRM discussed whether the Department should obtain from employers the cost of implementing the program as an element of information to evaluate program effectiveness.

RSPA Response

RSPA did not propose and does not intend at this time to require operators to report information regarding costs associated with implementing their anti-drug programs.

Elimination of "age" Data Element

Many operators have questioned RSPA's requirement to maintain the "age" of applicants/employees who test positive or refuse to test under the current regulations. They contend that collection of this data element provides no beneficial data.

RSPA Response

RSPA has revised the recordkeeping requirements in § 199.23(a)(2) to avoid duplicative information collection requirements. Section 199.23(a)(2) requires operators to keep certain records on employees who have a positive drug test result, including the type of test, and records that demonstrate rehabilitation, if any. The required information includes:

(i) The functions performed by the employee;

(ii) The prohibited drug(s) used;

(iii) Disposition of the employee; and

(iv) The age of the employee.

The MIS report will require operators to maintain and report the information currently required in items (i)-(iii), as well as the type of test. RSPA has eliminated from recordkeeping or reporting requirements the fourth item concerning the age of each employee who failed a drug test. RSPA does not believe this is an essential data element.

Reason for Expedited Effective Date

This rule is being made effective in less than the 30 days from publication otherwise required by law. With an effective date of January 1, 1994, RSPA can ensure that information is collected under this final rule for calendar year 1994 and, subsequently, that the benefits from this final rule are realized without delay. Because the first report under this rule will not be due until March 15, 1995, and most of the data must be maintained under pre-existing regulatory requirements, operators subject to this rule will not be unduly burdened by an effective date of less than 30 days. RSPA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The final rule is part of a package of alcohol and drug testing regulation that is a significant regulatory action under Executive Order 12866. It has been reviewed under this order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. This final rule would cause minimal changes in the existing compliance burden and cost of the anti-drug programs affected by the amendment. Therefore, we have not further evaluated the costs and benefits of this final rule.

Paperwork Reduction Act

The final rule sets forth new drug program information collection requirements. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR Part 1320. See common preamble on status of Paperwork Act approval.

Regulatory Flexibility Act

The final rule affects all entities subject to part 192, except operators of master meter systems and liquefied petroleum gas (LPG) operators, 193, or 195, which are exempt. Master meter systems and LPG operators constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing, Recordkeeping and reporting.

In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

PART 199—DRUG TESTING

1. The authority citation for Part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. Section 199.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 199.1 Scope and compliance.

(a) * * * However, this subpart does not apply to operators of "master meter systems" as defined in § 191.3 of this chapter or to liquefied petroleum gas (LPG) operators.

* * * * *

3. Section 199.23 is amended by revising paragraph (a)(2) to read as follows:

§ 199.23 Recordkeeping.

(a) * * *

(2) Records of employee drug test results that show employees who had a positive test, and the type of test (e.g.,

post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least 5 years, and include the following information:

(i) The function performed by each employee who had a positive drug test result.

(ii) The prohibited drug(s) that were used by an employee who had a positive drug test.

(iii) The disposition of each employee who had a positive drug test or refused a drug test (e.g., termination, rehabilitation, removed from covered function, other).

* * * * *

4. Part 199 is amended by adding a new section 199.25 to read as follows:

§ 199.25 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing results in the form and manner prescribed by the Administrator, not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590.

(c) Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's MIS form, is acceptable for submission to RSPA.

(d) Each report shall be signed by the operator's anti-drug program manager or designated representative.

(e) Each operator's report with verified positive test results or refusals to test shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of positive test results, verified by a Medical Review Officer (MRO), by type of test and type of drug.

(5) Number of employee action(s) taken following verified positive(s), by type of action(s).

(6) Number of negative tests reported by an MRO by type of test.

(7) Number of persons denied a position as a covered employee following a verified positive drug test.

(8) Number of covered employees, returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule.

(9) Number of covered employees with tests verified positive by an MRO for multiple drugs.

(10) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to- duty, or follow-up) drug test and the action taken in response to each refusal.

(11) Number of supervisors who have received required initial training during the reporting period.

(f) Each operator's report with only negative test results shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of negative tests reported by an MRO by type of test.

(5) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.

(6) Number of supervisors who have received required initial training during the reporting period.

Issued in Washington, DC on December 10, 1993.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Information Systems Data Collection Forms

BILLING CODE 4810-60-P

EXHIBIT A - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes three sections. Collectively, these sections address the data elements required in the RSPA and the DOT drug testing regulations. The three sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. PIPELINE EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. DRUG TESTING INFORMATION	i-iv	2

Page 1 **PIPELINE EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the primary nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under RSPA regulations. Covered functions for RSPA are: Operation, Maintenance, and Emergency Response. The most likely source for this information is the employer's personnel department. This count should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION,** requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Page 2 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident, (4) reasonable suspicion/cause, (5) return to duty, and (6) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only. Each part of this table must

be completed for each category of testing. These numbers do not include refusals for testing. A sample section of the table with example numbers is presented on page iii.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion/cause, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each testing category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, PRE-EMPLOYMENT TESTING INFORMATION. The format and explanations used for the sample table apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of Section C. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "NUMBER OF SPECIMENS COLLECTED," requires a count for all collected specimens. It should not include refusals to test. The second blank column with the heading "NUMBER OF SPECIMENS VERIFIED NEGATIVE," requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS," refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG," requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

A sample table is provided on page iii with example numbers.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example will use "Pre-Employment" testing to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 job applicants for covered positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for covered positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT".

C The MRO for your company reported that 4 of those 157 specimens from applicants for covered positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.**

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT	157	153	4	3	1	0	0	1

A B C D

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE

FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2 — Below the table for DRUG TESTING INFORMATION is a box with the heading **"Number of persons denied a position as a covered employee following a verified positive drug test"**. This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2 — Also following the table that summarizes DRUG TESTING INFORMATION, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule. This information should be available from the personnel office and/or drug program manager.

Page 2 — Next, you must provide information on ACTIONS TAKEN ON VERIFIED POSITIVE TEST RESULTS. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a positive drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a positive drug test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Enter the sum of the number of actions taken on the line marked TOTAL.

Page 2 — SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG requires information on specimens that contained more than one drug. First, indicate the NUMBER OF VERIFIED POSITIVES. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives and "2" in the columns for "Marijuana" and "Opiates".

Page 2 — EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the NUMBER OF COVERED EMPLOYEES who refused to submit to a **random** or **other** (pre-employment, post-accident, reasonable suspicion/cause, return to duty, or follow-up) drug test required under the RSPA regulation and the actions

taken following the refusal. Indicate the number of actions taken on the appropriate line.

Page 2 **DRUG TRAINING/EDUCATION** requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

RSPA DRUG TESTING MIS DATA COLLECTION FORM OMB No. 2137-0579

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form:

_____ _____

Check the one box that indicates the primary nature of your operation.

- ☐ Gas gathering
- ☐ Gas transmission
- ☐ Gas distribution
- ☐ Transportation of hazardous liquids
- ☐ Transportation of carbon dioxide

I, the undersigned certify that the information provided on this Research and Special Programs Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature _____ Date of Signature

_____ Title _____ Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.1 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for employees in COVERED POSITIONS as defined by RSPA/DOT drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in the Table: COVERED EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST. Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. DRUG TESTING INFORMATION

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
RANDOM								
POST-ACCIDENT								
REASONABLE SUSPICION/CAUSE								
RETURN TO DUTY								
FOLLOW-UP								

Number of persons denied a position as a covered employee following a verified positive drug test:	
Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule:	

ACTIONS TAKEN ON VERIFIED POSITIVE DRUG TEST RESULTS	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	
TOTAL	

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG

NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of employees who refused to submit to a drug test required under the RSPA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

DRUG TRAINING/EDUCATION	NUMBER
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by RSPA drug testing regulations:	

EXHIBIT B - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS "EZ" Data Collection Form.** This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the RSPA and DOT drug testing regulations.

SECTION A - PIPELINE EMPLOYER INFORMATION requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the RSPA regulation. There is only one category of covered employees for RSPA — Operation/Maintenance/Emergency Response. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION,** requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - DRUG TESTING INFORMATION requires information for drug testing and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into this table should be for applicants or company employees in **covered positions** only. Each part of this table must be completed for each category of testing including: (1) pre-employment, (2) random, (3) post-accident, (4) reasonable suspicion/cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. **"COLL"** requires the number of specimens collected in each employee category for each category of testing. **"NEG"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do <u>not</u> include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table that summarizes DRUG TESTING INFORMATION, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or other (pre-employment, post-accident, reasonable suspicion/cause, return to duty, or follow-up) drug test required under the RSPA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- No longer employed with company - include covered employees who resigned or were terminated as the result of a refusal to submit to a drug test.
- Reassigned to non-covered functions - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to a drug test.
- Entered rehabilitation, if applicable, and/or returned to covered functions - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- Other - include covered employees who did not fall under one of the previous options and specify the action taken.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

RSPA DRUG TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2137-0579

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form:

_____ _____

Check the one box that indicates the primary nature of your operation.

- ☐ Gas gathering
- ☐ Gas transmission
- ☐ Gas distribution
- ☐ Transportation of hazardous liquids
- ☐ Transportation of carbon dioxide

I, the undersigned, certify that the information provided on the attached Research and Special Programs Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature _____ Date of Signature

_____ Title _____ Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.1 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE												
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION/ CAUSE		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Operation/Maintenance/ Emergency Response												

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule:	

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of employees who refused to submit to a drug test required under the RSPA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

DRUG TRAINING/EDUCATION	NUMBER
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by RSPA drug testing regulations:	

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BILLING CODE 4910-60-C

federal register

Thursday
December 23, 1993

Part VII

Department of Transportation

Coast Guard

46 CFR Part 16

Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 91-019]

RIN 2115-AD84

Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the Coast Guard's regulations for chemical drug and alcohol testing of commercial vessel personnel to include information collection requirements regarding marine industry drug and alcohol testing programs. The Coast Guard will collect this data in order to assess the effectiveness of the marine industry drug and alcohol testing programs.

EFFECTIVE DATE: This rule is effective on January 1, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced 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, 2100 Second Street, SW., room 3406, 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 Commander Mark Grossetti, U.S. Coast Guard Headquarters, Office of Marine Safety, Security and Environmental Protection (G-MMI-2), telephone (202) 267-1421.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal document drafters are Lieutenant Commander Mark Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 15, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information (57 FR 59752). The Coast Guard received thirty-three letters in response to the proposed rule. A public hearing was not requested and one was not held.

Background and Purpose

On December 14, 1987, the Coast Guard published regulations regarding operating a vessel while intoxicated (52 FR 47526). Those regulations established standards of intoxication and authorized law enforcement officers and marine employers to direct individuals operating a vessel to undergo a chemical test for reasonable cause. On November 21, 1988, the Coast Guard issued a final rule requiring marine employers to establish chemical drug programs for their covered employees and job applicants that included pre-employment, random, post-accident and reasonable cause tests. Periodic testing was also required, but remains the responsibility of individual mariners. Additionally, the rules for post-accident testing require testing for alcohol (53 FR 47063). On the same date, the Department of Transportation (DOT) published an interim final rule establishing drug testing procedures (53 FR 47002). The interim final rule followed closely the Department of Health and Human Services (DHHS) regulation entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970). On December 1, 1989, DOT published a final rule (54 FR 49854) which responded to all comments to the interim rule and incorporated appropriate changes (49 CFR part 40).

In October 1989, approximately one year after the Coast Guard published its 1988 final rule, the Secretary of Transportation appointed a Special Assistant for Drug Enforcement and Program Compliance. The Special Assistant is responsible for determining the effectiveness of the transportation industry drug and alcohol testing programs. A November 1989 General Accounting Office report entitled, "Drug Testing: Management Problems and Legal Challenges Facing DOT's Industry Programs", provided additional suggestions for monitoring the effectiveness of the drug testing programs.

DOT has determined that the most appropriate method to monitor the effectiveness of the transportation industry drug testing programs is to create a Management Information System (MIS). Representatives from each DOT operating administration participated in a working group to formulate a MIS proposal for the drug and alcohol testing programs. Numerous alternatives and information collection processes were considered. It was noted that whereas DHHS certified laboratories could provide only laboratory analysis data, medical review officers (MROs) could provide only drug test verification information, and collection facilities could provide only specimen collection data, employers receive drug testing information from labs, MROs and collection facilities, and therefore, could provide all the necessary data for an effective MIS. Thus, the regulated employers are the appropriate source of comprehensive drug testing data.

To implement and sustain an effective, multi-modal MIS, the Coast Guard proposed to develop data collection rules appropriate for the maritime industry. The maritime industry data may then be combined with the data from other transportation industries to provide an overall view of the effectiveness of the transportation industry drug testing programs.

DOT has issued a "common preamble" elsewhere in today's edition of the **Federal Register** which addresses comments received by DOT in response to the MIS rulemaking and the MIS pilot project conducted to evaluate the proposed MIS report forms and procedures.

Reason for Expedited Effective Date

This rule is being made effective in less than the 30 days from publication otherwise required by law. With an effective date of January 1, 1994, the Coast Guard can ensure that information is collected under this final rule for calendar year 1994 and, subsequently, that the benefits from this final rule are realized without delay. Because the first report under this rule will not be due until March 15, 1995, and most of the data must be maintained under pre-existing regulatory requirements, employers subject to this rule will not be unduly burdened by an effective date of less than 30 days. The Coast Guard has therefore determined that good cause exists under the provisions of 5 U.S.C 553(d)(3) to warrant an expedited effective date.

Discussion of Comments and Changes

The Coast Guard received thirty-three written comments in response to the December 15, 1992, notice of proposed rulemaking. Five of the letters contained comments pertaining to issues raised in other rulemaking documents issued by DOT in the December 15, 1992 **Federal Register**. These comments have been placed in the appropriate rulemaking dockets. All other comments are addressed below.

Support for Concept of MIS

Many commenters supported the concept of collecting information on the drug and alcohol testing program. These

comments recognized the need to monitor this important program. They also recognized that a system that gauges the program's effectiveness can be used to make appropriate adjustments that could reduce the burden of the entire testing program.

Burden on Marine Industry

Many other commenters expressed concern about the burden that MIS will place upon the marine industry.

Response: The Coast Guard recognizes that the implementation of the entire drug and alcohol program creates additional work for the marine industry, but is necessary in working toward a drug and alcohol-abuse free transportation environment which inherently would enhance safety. The additional burden of MIS, which will allow the Coast Guard to monitor the drug and alcohol program, is relatively small compared to the benefits. Moreover, in response to the comments received, this final rule makes changes to the NPRM, as discussed below, that greatly simplify the MIS form and thereby reduce the burden on marine employers from what was originally proposed. Also, since many marine employers use consortiums to assist with their compliance with the drug testing requirements, the consortiums will have access to the data required by MIS and will submit it on behalf of the employers, greatly reducing the burden of individual employers.

Duplicate Collection of Information

Some commenters indicated that the proposed MIS rule would duplicate the submission of some drug testing information. The Coast Guard already receives all results from serious marine incident testing and receives positive test results on persons holding licenses, certificates of registry (CORs), and merchant mariner's documents (MMDs).

Response: The Coast Guard collects information on chemical testing whenever an individual holding a license, COR, or MMD fails a chemical test and whenever testing is conducted in connection with a serious marine incident as part of a statutorily mandated investigation. MIS cannot substitute for collection of chemical testing information in these matters which must be collected in connection with a particular incident rather than as part of an annual statistical report. Relieving employers from the burden of including this information in MIS would limit the completeness of the data. Excluding such information from MIS would require employers to sort through drug testing records to exclude results from serious marine incident testing and positive results on individuals with licenses, CORs, or MMDs. This would increase the amount of time required to complete the form. Including the information on the MIS form will allow DOT to readily merge and compare the information to other modal data.

Source of Data

One comment recommended that the rule require the submission of the data from the laboratories, rather than the marine employer.

Response: As indicated in the preamble to the MIS NPRM, laboratories could only provide laboratory analysis data. The scope of information needed by MIS originates at several sources. However, it all would be readily available to the employer. Thus, the employers remain the appropriate source for submission of comprehensive drug testing data.

Simplify Form

Several comments indicated that the proposed MIS form appeared unwieldy and ominous.

Response: The form has been amended to reflect the comments received. As a result, the new form is shorter and more simple to complete than the one proposed. It should be noted that the lengthiest part of the form is the instructions. Detailed instructions are necessary to ensure that the form is completed correctly. The first submission will probably require a complete reading of the instructions for familiarity with the form. However, after the first submission, it is anticipated that employers will be acquainted with the form and subsequent submissions should not necessitate a complete review of the instruction pages.

Provide a Short Form

One commenter suggested the use of an alternate, simplified form that could be used when all drug tests for the reported year are negative.

Response: The Coast Guard prepared a separate "short form" in response to this idea. However, when the draft "short form" was compared to the revised regular form, it was only one information block shorter than the revised regular form. That information block was for specimens verified positive for more than one drug. The Coast Guard has determined that with the simplification of the regular form, the "short form" is not necessary.

Type of Drug Irrelevant for Negative Results

One comment pointed out that the proposed 46 CFR 16.500(b)(5) incorrectly required information on the type of drug for negative tests.

Response: The Coast Guard has corrected this error in the final rule.

Category of Crewmembers

Several commenters, including consortiums, indicated that an inordinate amount of time and effort would be required to separate crewmembers into the three proposed categories of crewmembers: licensed, unlicensed, and other.

Response: In consideration of reducing the burden that MIS will impose on the marine industry, the Coast Guard has consolidated the requirement into one category: Crewmembers. This consolidation has greatly reduced the complexity of the form.

Pre-employment Testing by Unions

Some commenters indicated that as marine employers they rely on maritime unions to conduct their pre-employment tests. As a result, they only hire crewmembers with negative tests and have no knowledge of the number of mariners who were pre-employment tested or the number who tested positive.

Response: The Coast Guard is aware of the pre-employment testing methods that many marine employers follow. Marine employers need only submit pre-employment testing data regarding the testing they conduct. The Coast Guard will be careful with conclusions it might draw from pre-employment testing data, knowing the results submitted by marine employers do not reflect pre-employment testing done by unions.

Training

Several comments questioned the need for information on refresher or recurrent training when it is not required by Coast Guard regulations.

Response: The Coast Guard agrees with these commenters and has removed the requirement for reporting refresher training. However, the requirement for reporting initial training is retained.

Combined Report for Consortiums

One comment recommended that consortiums submit information on a combined basis for all of their clients rather than on behalf of each individual marine employer.

Response: The Coast Guard agrees with this recommendation. Rather than receive many reports from each consortium, which will have to be individually entered into the Coast Guard's data base, the receipt of one

comprehensive report from each consortium will result in a lessened paperwork burden for both the Coast Guard and the industry. However, in order for the Coast Guard to know which marine employers have actually submitted a report, the final rule continues to require that each marine employer notify the Coast Guard of the consortium that will submit the employer's data. Since the consortium will only need to submit one comprehensive report, a requirement has been added for the consortium to also submit a list of marine employers whose data is included in the report.

Survey

Several comments suggested that the Coast Guard should conduct an annual survey of a percentage of marine employers instead of requiring a report from each one.

Response: In order to ensure the most accurate accounting of its drug and alcohol testing program, the Coast Guard is requiring that all employers required to implement a chemical testing program submit an MIS report. Through efforts to improve implementation of the Coast Guard's drug testing program, it has become evident that obtaining information about the testing activities of each individual employer is essential. This information will assist the Coast Guard in monitoring the drug testing program in order to measure its effectiveness. The Coast Guard must obtain a reliable information base of certain vital statistics, such as the size of the regulated population, testing rates, and positive rates, before program adjustments or regulatory changes can be made.

As the MIS data is collected and produces a strong information base, the Coast Guard will consider the possibility of changing these requirements in order to reduce reporting burdens. The Coast Guard anticipates that most small employers will be participating in a consortium, therefore they will not have to submit MIS data. If this is verified, the Coast Guard will consider exempting smaller employers who do not report via consortiums as well as the possibility of surveying smaller employers. The Coast Guard anticipates publishing a **Federal Register** notice after at least a few years of MIS data has been collected to seek comment on whether modifications concerning who is required to report are appropriate.

Conclusions on Effectiveness

One comment questioned how the Coast Guard will be able to draw statistically valid conclusions on the data received from Coast Guard-required drug testing, when the industry actually conducts additional, more strict testing under its own authority.

Response: The Coast Guard will be aware of this fact when analyzing the data received and will draw conclusions accordingly. It should be noted that generally only larger employers have the resources to conduct a separate drug testing program from the federally-required program.

Delay Submission Deadline

One comment recommended that the proposed February 15 submission date would not allow sufficient time to compile and submit the MIS report.

Response: The Coast Guard agrees. The required submission date has been changed to March 15.

Electronic Filing

Some commenters recommended that an electronic filing option be considered by the Coast Guard.

Response: The Coast Guard agrees that electronic filing could reduce the paperwork burden for some marine employers. However, at the present time the Coast Guard is not equipped or prepared to receive the MIS data electronically. The Coast Guard will pursue this recommendation and, if feasible, issue a document addressing this matter in a future edition of the **Federal Register**.

Foreign Vessels/Waters

One commenter was unclear as to the applicability of the MIS rules to foreign-flag vessels or to U.S.-flag vessels operating in foreign waters.

Response: MIS will be included in 46 CFR part 16. Since that part is not applicable to foreign-flag vessels, those marine employers will not be required to submit MIS reports. Because part 16 is not applicable with respect to any person onboard U.S.-flag vessels operating in waters that are subject to the jurisdiction of a foreign government until January 2, 1995, initially, MIS reports pertaining to persons onboard such vessels will not be required (46 CFR 16.207). The Coast Guard will publish any necessary amendment on or before December 1, 1994, to resolve the applicability of part 16 to such vessels.

Billets

Several commenters questioned the meaning of the term "billet" and further mentioned difficulties determining how many crewmembers would have to be reported since many crewmembers could fill a single "billet".

Response: The Coast Guard has removed the term "billet" from this final rule. Also, as mentioned earlier, there will only be one category of covered employees: crewmembers. Therefore, the term "covered employees" on the form means crewmembers as defined at 46 CFR 16.105. This rule merely requires a count of employees that were tested or were subject to testing under Coast Guard regulations and prospective employees that were pre-employment tested by marine employers.

Multimodal Employees

Some commenters expressed concern over the difficulty, if not impossibility, of reporting the number of crewmembers also subject to the drug testing requirements of another DOT operating administration, citing the possibility of an employee holding a Federal Aviation Administration license to fly an airplane for recreational purposes.

Response: This rule does not require employers to report information on the recreational activities of employees. Neither is its intent to require an extensive search of each employee's background to determine if they work for another employer under another DOT agency's jurisdiction. Employers are required to determine whether any of their employees are covered by the regulations of more than one DOT agency due to activities that employee undertakes in the course of his or her employment duties for that employer. If an employer hires an individual to drive a truck and operate a vessel, that employer would be covered by both Coast Guard and Federal Highway Administration (FHWA) regulations. The employer would include that employee in the FHWA column in the table requesting that information. This information will assist DOT in determining the extent to which employers must comply with regulations issued by multiple DOT agencies, and help DOT design policy accordingly.

Another area of potential confusion regarding multimodal employees involves the submission of MIS data to the appropriate agency. For pre-employment and random testing, MIS data on an employee should be reported to whichever operating administration covers more than 50% of that employee's function. For post-accident and reasonable cause testing, however, the reportability of MIS data should be determined by the function the employee was performing at the time of the accident or incident. The MIS reporting requirements of the Coast

Guard and the other operating administrations within DOT do not alter the existing responsibility of employers or prospective employers of individuals holding licenses, merchant mariner's documents, or certificates of registry, to report that an individual has failed a chemical test for dangerous drugs to the nearest Coast Guard Officer in Charge, Marine Inspection in accordance with 46 CFR 16.201(c). Further, marine employers continue to be responsible for submitting all post-accident chemical testing results in accordance with 46 CFR 16.240.

Refusals

Some commenters recommended that the actions taken as a result of a refusal to test should not be required to be reported.

Response: The Coast Guard agrees with this comment and this requirement has been deleted from the final rule language.

Annual Costs

One comment requested that an additional data item be required to be submitted: the annual cost of drug testing.

Response: The Coast Guard would be interested in receiving this information. However, in order to keep the burden of MIS to a minimum, the Coast Guard is committed to requiring only the basic data elements needed for forwarding to DOT. Marine employers desiring to submit this information to the Coast Guard are certainly free to do so at any time.

Multiple Drugs

One commenter questioned the need to submit data concerning the number of positive test results for more than one drug.

Response: DOT requires this data to obtain information on the prevalence of multi-drug use which can be used to determine if testing methodologies should be altered.

Regulatory Assessment

This final rule is part of a package of alcohol and drug testing rules that is a significant regulatory action under Executive Order 12866. It has been reviewed under the Order. It is considered to be significant under the DOT regulatory policies and procedures (44 FR 11304; February 26, 1979) because of substantial public interest in and importance of the chemical testing program. The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Assessment is unnecessary. This revision to 46 CFR part 16 creates standard reporting requirements for marine employers to submit data on their drug and alcohol testing programs. The Coast Guard will collect this data in order to assess the effectiveness of the maritime industry drug and alcohol testing programs.

This amendment will cause minimal changes in maritime industry compliance burdens and costs. This rule requests data that marine employers already may be collecting or to which they have easy access. Instructional materials and guidance being developed by DOT will also reduce the burden of compliance with the regulations.

Small Entities

This final rule requires submission of data that marine employers already may be collecting. Instructional materials and guidance being developed by DOT also will reduce the burden of compliance with the regulations. The form to be used in submitting the required data has been simplified in response to comments to ensure a minimal impact on small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). See common preamble on status of Paperwork Act approval.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of employees onboard U.S. vessels.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. This is an administrative regulation which clearly has no environmental impacts.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. Subpart E is added to read as follows:

Subpart E—Management Information System

§ 16.500 Management Information System requirements.

(a) All marine employers shall collect the drug and alcohol testing program data identified in this section for each calendar year, January 1 to December 31. Marine employers shall submit this data to the Coast Guard by March 15 of the following year. The data shall be submitted to Commandant (G–MMI), 2100 Second Street, SW, Washington, DC, 20593–0001.

(b) All marine employers shall collect the following drug and alcohol testing program data:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of more than one DOT agency because of the nature of their assigned duties, identified by each agency.

(3) Number of drug and alcohol tests by test type. The drug test types are pre-employment, random, post-accident and reasonable cause. The alcohol test types are post-accident and reasonable cause.

(4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type and type of drug(s). Number of alcohol tests resulting in a blood alcohol concentration of .04 percent by weight or more by test type.

(5) Number of negatives reported by a MRO by type of test.

(6) Number of applicants denied employment based on a positive drug test result verified by an MRO.

(7) Number of marine employees with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having met the requirements of § 16.370(d) and part 5 of this chapter.

(8) Number of marine employee drug test results that MROs verify positive for more than one drug or combination of drugs.

(9) Number of covered employees who refused to submit to a drug test required under this part.

(10) Marine employee training and education information.

(c) The data listed in paragraph (b) of this section must be submitted on Form CG–5573, which is reproduced in appendix B to this part and may be obtained at any Officer in Charge, Marine Inspection. All items on the form must be completed. Data may be submitted by consortia or other employer representatives on behalf of a marine employer. Reports submitted in this manner may be on one form, but must also be accompanied by a list of marine employers for whom the report is submitted. Unless submitting the report on their own behalf, each marine employer must notify the Coast Guard (Commandant (G-MMI)) in writing of the consortium or representative that will submit the employer's data, and remains responsible for ensuring that the data is submitted and is accurate.

(d) Marine employers that conduct operations regulated by another Department of Transportation Operating Administration must submit appropriate data to that Operating Administration for those employees covered by that Operating Administration's regulations.

3. Appendix A is added and reserved and appendix B is added to part 16 read as follows:

Appendix A—[Reserved]

Billing Code 4910–14–P

APPENDIX B - DRUG AND ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

This reporting form includes four parts. Collectively, these parts address the data elements required in the United States Coast Guard (USCG) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. The form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The four sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. MARINE EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. MARINE EMPLOYEE DRUG TESTING INFORMATION	ii-iv	2
D. MARINE EMPLOYEE ALCOHOL TESTING INFORMATION	iv-v	2

Page 1 **MARINE EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, typed or printed name, title, date, and current telephone number (including the area code) are required from the person certifying the correctness and completeness of the form.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count of employees (including prospective employees who were pre-employment tested) who were subject to testing under the USCG/DOT drug testing regulations. The most likely source for this information is the employer's personnel department. The count should include all covered employees working for the company during the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees under the appropriate additional operating administration(s).

The following instructions are to be used as a guide for completing the drug testing information in the USCG/DOT Drug and Alcohol Testing MIS Data Collection Form. A sample testing results table with a narrative explanation is provided on pages ii-iii as an example to facilitate the process of completing the form correctly.

Section C is used to summarize the drug testing results for applicants and covered employees. There are four categories of testing to be completed. Items necessary to complete this table include:

1) the number of specimens collected in each testing category;
2) the number of specimens tested which were reported negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control samples submitted to the testing laboratory in the table.

A sample table with detailed instructions is provided.

Page 2 **MARINE EMPLOYEE DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. A sample of the table with example numbers is presented on page iii.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading **"NUMBER OF SPECIMENS COLLECTED,"** requires a count for all collected specimens by testing category. It should not include refusals to test. The second blank column with the heading **"NUMBER OF SPECIMENS REPORTED NEGATIVE,"** requires a count for all completed tests by testing category that were reported negative by your Medical Review Officer (MRO).

The third blank column with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,"** refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,"** requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens verified positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

SAMPLE MARINE EMPLOYEE TEST RESULTS TABLE

The following example is for Section C, **MARINE EMPLOYEE DRUG TESTING INFORMATION**, and summarizes pre-employment testing results. The procedures detailed here also apply to the

other categories of testing in Section C which require you to summarize testing results for employees.

A Urine specimens were collected for 157 job applicants for covered positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

B The MRO for your company reported that 153 of those 157 specimens from applicants were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT".

C The MRO for your company reported that 4 of those 157 specimens from applicants were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen.

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS REPORTED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT	157	153	4	3	1	0	0	1

A B C D

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Page 2 — Below the table for **MARINE EMPLOYEE DRUG TESTING INFORMATION** is a box with the heading **"Number of persons denied a position as a covered employee following a verified positive drug test"**. This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2 — Also following the table for **MARINE EMPLOYEE DRUG TESTING INFORMATION**, you must provide counts for employees who have tested positive and have returned to work in a covered position during the reported period. This information should be available from the personnel office and/or drug program manager.

Page 2 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. First, indicate the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the same number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives and "2" in the columns for "Marijuana" and "Opiates".

Page 2 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, or reasonable cause) drug test required under the USCG regulation.

Page 2 — **DRUG AND ALCOHOL TRAINING** requires information on the number of covered employees and supervisory personnel who have received the required drug and alcohol training during the current reporting period.

The following instructions are to be used as a guide for completing the alcohol testing information for the USCG/DOT **Drug and Alcohol Testing MIS Data Collection Form**. A sample testing results table with a narrative explanation is provided on page v as an example to facilitate the process of completing the form correctly.

Section D is used to summarize the alcohol testing results for covered employees. There are two categories of testing to be completed in this table. Items necessary to complete this table includes:

1) the number of alcohol tests performed for each testing category; and
2) the number of test results which were equal to or greater than 0.04.

A sample table with detailed instructions is provided.

Page 2 — **MARINE EMPLOYEE ALCOHOL TESTING INFORMATION** (Section D) requires information for post-accident and reasonable cause alcohol testing. These numbers **do not** include refusals for testing. A sample table with example numbers is presented on page v.

Two types of information are necessary to complete this table. The first blank column with the heading "NUMBER OF TESTS" requires a count of all alcohol tests performed for each testing category.

The second blank column with the heading "NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04" requires a count of positive tests.

SAMPLE MARINE EMPLOYEE TEST RESULTS TABLE

The following example is for Section D, MARINE EMPLOYEE ALCOHOL TESTING INFORMATION, which summarizes post-accident and reasonable cause testing results.

A Tests were conducted on 6 employees in covered positions during the reporting year. This information is entered in the first blank column of the table in the row marked "POST-ACCIDENT". The test results for these 6 employees were the following:

Employee	Results
#1	0.06
#2	0.00
#3	0.00
#4	0.04
#5	0.00
#6	0.02

B The test results for 2 of the employees in covered positions were equal to or greater than 0.04. Enter this information in the second blank column of the table in the row marked "POST-ACCIDENT".

TYPE OF TEST	NUMBER OF TESTS	NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT	6	2
REASONABLE CAUSE	10	1

A B

Please note that the sample data collection form also has information for REASONABLE CAUSE testing on line two. For REASONABLE CAUSE testing, 10 tests were conducted and 1 was equal to or greater than 0.04.

USCG DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2115-0003

YEAR COVERED BY THIS REPORT: 19__

A. MARINE EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify that the information provided on this United States Coast Guard Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature	Printed Name	Date
Title	Phone Number	

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF USCG COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	RSPA
Crewmembers						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE UNITED STATES COAST GUARD (USCG):
   - Results should be reported only for employees in COVERED POSITIONS as defined by the USCG drug and alcohol testing regulations.
   - The information requested should only include testing for: marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40; and alcohol using the standard procedures required by USCG regulations 33 CFR Part 95 and 46 CFR Parts 4 and 16.
3. Information on refusals for testing should only be reported in the table entitled "EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST". Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

The United States Coast Guard estimates that the average burden for this report form is 31 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant, U.S. Coast Guard Headquarters (G-MMI); 2100 2nd St., S.W.; Washington, D.C. 20593-0001; OR Office of Management and Budget, Paperwork Reduction Project (2115-0003); Washington, D.C. 20503.

REVERSE OF CG-5573 (11-93)

This part of the form requires information on VERIFIED POSITIVE and REPORTED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. MARINE EMPLOYEE DRUG TESTING INFORMATION

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS REPORTED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
RANDOM								
POST-ACCIDENT								
REASONABLE CAUSE								

Number of persons denied a position as a covered employee following a verified positive drug test:	
Number of marine employees with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having met the requirements of 46 CFR 16.370 (d) and 46 CFR Part 5:	

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG					
NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under USCG regulations:	
Covered employees who refused to submit to a non-random drug test required under USCG regulations:	

DRUG AND ALCOHOL TRAINING	Number
Covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug and alcohol use as required by USCG drug and alcohol testing regulations:	
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug and alcohol use as required by USCG drug and alcohol testing regulations:	

D. MARINE EMPLOYEE ALCOHOL TESTING INFORMATION

TYPE OF TEST	NUMBER OF TESTS	NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT		
REASONABLE CAUSE		

2

Dated: December 14, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93-30934 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-14-P

federal register

Thursday
December 23, 1993

Part VIII

The President

Proclamation 6643—National Law Enforcement Training Week, 1994

Federal Register
Vol. 58, No. 245
Thursday, December 23, 1993

Presidential Documents

Title 3—

The President

Proclamation 6643 of December 21, 1993

National Law Enforcement Training Week, 1994

By the President of the United States of America

A Proclamation

One of the most essential and challenging jobs in America belongs to our law enforcement officers. The men and women who safeguard our lives and property every hour of every day are true heroes. They must be physically fit, well-versed in criminal law and procedure, skilled in the use of weapons and other technologies, adept at communicating, leading, and problem-solving, and able to make split-second decisions in life-or-death situations. There is no time to look up answers in a textbook out on the street; an officer's education and training make all the difference.

High-quality instruction and preparation are the foundations of successful law enforcement. As the problem of crime grows and criminals become more sophisticated, knowledge of law enforcement skills must enable officers to bring every available tool to bear to prevent crime and to apprehend those who, with no regard for the rights of others, defy our laws. It is no longer sufficient for officers to know how to use a car, a gun, and a fingerprint pad; today's professionals must be proficient in disciplines as complicated and diverse as computer technology, chemical analysis, genetic fingerprinting, sociology, and psychology.

On this occasion, we salute the men and women who prepare our law enforcement officers for duty. The expertise and education instilled by those who teach and train law officers make our criminal justice system more efficient and increase public confidence in government's ability to protect its citizens.

Since successful law enforcement depends on community involvement, law enforcement education for the broader public should also be recognized and encouraged. From field trips to town meetings to university courses, teaching aimed at more general audiences can better capture the interest of citizens and motivate young people to consider careers in law enforcement.

We, as a Nation, offer our heartfelt gratitude and support to those who instruct and inspire our officers. We encourage officers and other Americans to avail themselves of the many law enforcement training opportunities available to them.

The Congress, by Senate Joint Resolution 75, has designated January 2, 1994, through January 8, 1994, as "National Law Enforcement Training Week," and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim January 2, 1994, through January 8, 1994, as National Law Enforcement Training Week. I urge all Americans to observe this week with appropriate exhibits, ceremonies, and activities, including programs designed to heighten the awareness of all citizens and to stimulate and encourage our Nation's youth to recognize the vital significance of law enforcement in America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of December, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–31536
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H.R. 1944/P.L. 103-197

To provide for additional development at War in the Pacific National Historical Park, and for other purposes. (Dec. 17, 1993; 107 Stat. 2301; 3 pages)

H.R. 2840/P.L. 103-198

Copyright Royalty Tribunal Reform Act of 1993 (Dec. 17, 1993; 107 Stat. 2304; 13 pages)

H.R. 3000/P.L. 103-199

Act For Reform In Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States or the FRIENDSHIP Act (Dec. 17, 1993; 107 Stat. 2317; 16 pages)

H.R. 3216/P.L. 103-200

Domestic Chemical Diversion Control Act of 1993 (Dec. 17, 1993; 107 Stat. 2333; 9 pages)

H.R. 3514/P.L. 103-201

To clarify the regulatory oversight exercised by the Rural Electrification Administration with respect to certain electric borrowers. (Dec. 17, 1993; 107 Stat. 2342; 2 pages)

S. 422/P.L. 103-202

Government Securities Act Amendments of 1993 (Dec. 17, 1993; 107 Stat. 2344; 24 pages)

S. 664/P.L. 103-203

Making a technical amendment of the Clayton Act. (Dec. 17, 1993; 107 Stat. 2368; 1 page)

S. 714/P.L. 103-204

Resolution Trust Corporation Completion Act (Dec. 17, 1993; 107 Stat. 2369; 49 pages)

S. 1777/P.L. 103-205

To extend the suspended implementation of certain requirements of the food stamp program on Indian reservations, to suspend certain eligibility requirements for the participation of retail food stores in the food stamp program, and for other purposes. (Dec. 17, 1993; 107 Stat. 2418; 1 page)

H.R. 2150/P.L. 103-206

Coast Guard Authorization Act of 1993 (Dec. 20, 1993; 107 Stat. 2419; 37 pages)

H.J. Res. 300/P.L. 103-207

Providing for the convening of the Second Session of the One Hundred Third Congress. (Dec. 20, 1993; 107 Stat. 2456; 1 page)

S. 1507/P.L. 103-208

Higher Education Technical Amendments of 1993 (Dec. 20, 1993; 107 Stat. 2457; 33 pages)

H.R. 1237/P.L. 103-209

National Child Protection Act of 1993 (Dec. 20, 1993; 107 Stat. 2490; 6 pages)

H.R. 2535/P.L. 103-210

To amend title 38, United States Code, to provide additional authority for the Secretary of Veterans Affairs to provide health care for veterans of the Persian Gulf War. (Dec. 20, 1993; 107 Stat. 2496; 3 pages)

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