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WASHINGTON, DC

[Two Sessions]

WHEN: July 9, 1996 at 9:00 am, and
July 23, 1996 at 9:00 am.

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–4–FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule which revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1996 season shipments. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901; or Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts from all sources are less than $5,000,000. A majority of these handlers and producers may be classified as small entities. In recent years, average combined sales of peaches and nectarines per handler have been about $600,000. Typically, about three-fourths of peach and nectarine handlers have sales of less than the average for the industry.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 7, 1995, and unanimously recommended that the handling requirements for California nectarines and peaches, respectively, be revised. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. These committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

This rule finalizes an interim final rule that revised the handling requirements for nectarines in § 916.350 California Nectarine Container and Pack Regulation (7 CFR 916.350), and in § 916.356 California Nectarine Grade and Size Regulation (7 CFR 916.356); as well as for peaches in § 917.442 California Peach Container and Pack Regulation (7 CFR 917.442) and in § 917.459 California Peach Grade and Size Regulation (7 CFR 917.459). The interim final rule was issued on March 21, 1996, and published in the Federal Register (61 FR 13386, March 27, 1996).

The interim final rule provided a 30-day comment period which ended on April 26, 1996. One comment was received from Gary W. Van Sickle, Field Director for the NAC and the PCC requesting changes in the dimensions and display panel of the new reusable

and recyclable container. He noted that the size of the box was more accurately 12×19¾, rather than 12×20. He also stated that with regard to some styles of the new reusable and recyclable container, the lid was not the only display panel upon which a label could be affixed. Therefore, he suggested that either the lid or the outside end would be appropriate for the new containers.

Mr. Van Sickle also requested a correction in the size requirement for Nectarine 23, a nectarine variety recommended to be removed from the variety-specific size requirements and placed in the blanket size requirements. Mr. Van Sickle noted that since the December 7, 1995, meeting of the NAC, additional information had been received which indicated that the Nectarine 23 variety should remain in the variety-specific requirements. The NAC, as well as the PCC, has a policy of recommending the deletion of varieties from the variety-specific requirements when shipments of the variety fall below 5,000 packages. After receipt of all information, it was determined that the shipments of the Nectarine 23 variety for the 1995 season totaled 24,104 packages, well above the 5,000 package threshold. For that reason, the Nectarine 23 variety should remain in the variety-specific size requirements for the 1996 season.

The Department finds that Mr. Van Sickle's suggestions are well founded and are incorporated within this rule.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph (a)(4)(iv) of § 916.350 by modifying one size designation for the weight-count standards in Column B of Table 1 for early-season and mid-season nectarine varieties and one size designation for the weight-count standards in Column B of Table 2. Continuing research conducted by the NAC indicate that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two seasons based on that consideration. Results from the 1995 season suggest that a minor modification of Table 1 and Table 2 is necessary to provide more accurate weight-count standards for early-season and mid-season nectarines, and late-season nectarines.

The NAC recommended these revised weight-count standards for nectarines after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties, as well as late-season varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 50 in a 16-pound sample of early-season and mid-season fruit is more appropriately 39 rather than 38. Also the maximum number of nectarines of size 50 in a 16-pound sample of late-season fruit is more appropriately 37 rather than 36.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the NAC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples required an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be ''marked'' smaller than its equivalent tray-pack size. When packs are ''marked'' smaller this causes the container to be sold for a lower price.

Revised and refined weight-count standards should provide for more accurate marking of sizes when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of ''tree ripe'' added to § 916.350 paragraph (b) for the 1995 season. According to the NAC, ''tree ripe'' is an optional marking with regard to maturity that is stamped on containers of nectarines. Currently, the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than ''mature.'' The definition of ''tree ripe'' was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as ''tree ripened.'' It has been recommended by the NAC that the terms ''tree ripe'', and ''tree ripened'', and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of nectarines to be at a minimum California Well Matured in order to be marked ''tree ripe'' or ''tree ripened'', or other interchangeable terms such as ''ripened on the tree'', or ''ripened on tree'' will clarify the current regulation by specifying when the ''tree ripe'' or some similar marking using the words ''tree'' and ''ripe'', can be used and help to ensure that buyer expectations are met.

The NAC also recommended that a new container, that also allows for markings on the lid of the container, be approved for nectarine shipments for the 1996 season only. The NAC will review the impact of the use of this container with shippers prior to the 1997 season.

The marketing order, under § 916.350, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on nectarine containers have to be applied to the outside end of the container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12×19 ¾ inch box, that is available for use with nectarines. However, the design of some styles of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The NAC believes that allowing for markings to be placed on the container lid or on the outside end of the container will facilitate the use of all styles of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraphs (a)(1) and (a)(1)(i), including Table 1. For fruit being inspected and certified as meeting the maturity requirements for ''well matured'', determinations are generally in terms of maturity guides (e.g., color chips) specified in Table 1.

This rule revises paragraph (a)(1) by exempting certain nectarine varieties from the requirement that a blush or red color be present on the skin of the nectarines. By their nature, some newer yellow nectarine varieties fail to attain any color other than yellow on the skin of the fruit. The U. S. Standards for Grades of Nectarines requires that a blush or red color be present on the skin of the fruit in order for the fruit to be considered as U. S. No. 1 grade.

This rule also revises Table 1 of paragraph (a)(1)(I) of § 916.356 for nectarines to add the maturity guides for four nectarine varieties. Specifically, an addition to the maturity guides was recommended for Grand Diamond, King Jim, and Spring Brite at a maturity guide of L, and Rose Diamond at a maturity guide of J.

The NAC recommended these maturity requirement changes for these nectarine varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for six nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season. This rule also modifies the variety-specific size requirements for two varieties of nectarines by reassigning those varieties.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity and, therefore, the quality of the product, but also the size of the fruit. Increased size results in increases in the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

Paragraph (a)(3) is revised to include the Johnny's Delight and May Jim varieties; paragraph (a)(4) is revised to include the Arctic Rose variety; and paragraph (a)(6) in § 916.356 is revised to include the Flame Glo, Prima Diamond III, Prima Diamond IV, Prima Diamond VIII, and the White Jewels nectarine varieties.

This rule also revises § 916.356 to remove eleven nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1995 season. Paragraph (a)(2) of that section is revised to remove the Royal Delight nectarine variety. Paragraph (a)(4) is revised to remove the Sunfre variety, and paragraph (a)(4) is also revised to delete the May Jim variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the May Jim variety from this paragraph was recommended. Paragraph (a)(6) is revised to remove the Del Rio Rey, Independence, La Pinta, Late Le Grand, Royal Red, Son Red, Sun Grand, and 181–119 (Sierra Star) nectarine varieties. Paragraph (a)(6) is also revised to remove the Arctic Rose variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the Arctic Rose variety from this paragraph was recommended.

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying one size designation for the weight-count standards in Column B of Table 1 for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two seasons based on that consideration. Results from the 1995 season suggest that a minor modification of Table 1 is necessary to provide more accurate weight-count standards for early-season and mid-season peaches.

The PCC recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1996 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 54 in a 16-pound sample of early-season and mid-season fruit is more appropriately 44 rather than 43.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of peaches for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples needed an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be ''marked'' smaller than its equivalent tray-pack size. When packs are ''marked'' smaller this causes the container to be sold for a lower price. During the 1994 season, new weight-count assignments for early varieties

were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of ''tree ripe'' added to § 917.442 paragraph (b) for the 1995 season. According to the PCC, ''tree ripe'' is an optional marking with regard to maturity that is stamped on containers of peaches. Currently the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than ''mature.'' The definition of ''tree ripe'' was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as ''tree ripened.'' It has been recommended by the PCC that the terms ''tree ripe'' and ''tree ripened'' and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of peaches to be at a minimum California Well Matured in order to be marked ''tree ripe'' or ''tree ripened'', or other interchangeable terms such as ''ripened on the tree'', or ''ripened on tree'' will clarify the current regulation by specifying when the ''tree ripe'' or some similar marking using the words ''tree'' and ''ripe'' can be used and help to ensure that buyer expectations are met.

The PCC also recommended that a new container, that also allows for markings on the container lid, be approved for peach shipments for the 1996 season only. The PCC will review the impact of this container with shippers prior to the 1997 season.

The marketing order, under § 917.442, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on peach containers have to be applied to the outside end of the container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12 × 19¾ inch box, that is available for use with peaches. However, the design of some styles of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The PCC believes that allowing for markings to be placed on the container lid or on the outside end of the container will facilitate the use of all styles of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraph (a)(1), including TABLE 1. For fruit being inspected and certified as meeting the maturity requirements for ''well matured'', maturity determinations are generally in terms of maturity guides (e.g., color chips) specified in Table 1. This rule revises Table 1 of paragraph (a)(1)(ii) of § 917.459 for peaches to change the maturity guide for the Elegant Lady peach variety from a maturity guide M to a maturity guide L. It also adds two peach varieties for which color chips had not been established previously. The Early Delight peach variety has been recommended to be added with a maturity guide H and the May Sun variety has been recommended to be added with a maturity guide I.

The PCC recommended these maturity requirement changes for these peach varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule also revises § 917.459 to establish variety-specific size requirements for six peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, and, therefore, the quality of the product, but also size of the fruit. Increased size results in increases in the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

In § 917.459 paragraph (a)(5) is revised to include the May Sun peach variety; and paragraph (a)(6) is revised to include the July Sun, Kaweah, Snow Giant, Snow King, and Sugar Giant peach varieties.

This rule also revises § 917.459 to remove eleven peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1995 season. In § 917.459 paragraph (a)(2) of § 917.459 is revised to remove the Flordaprince peach variety; paragraph (a)(5) is revised to remove the First Lady, Merrill Gem, Royal May, Sierra Crest, Summer Crest, and 50–178 peach varieties; and paragraph (a)(6) is revised to remove the Angelus, August Delight, Parade, and Scarlet Lady peach varieties. Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The removal of the Flordaprince variety from paragraph (a)(2) results in there being no varieties regulated within size 96 for the 1996 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number (a)(2) for future regulation of peaches at size 96.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

In addition, this rule revises paragraph (a)(6) of § 917.459 by adding three peach varieties which were inadvertently removed from this paragraph, and deleting three varieties which were left in this paragraph. Those peach varieties which are being added

to paragraph (a)(6) of § 917.459 include the Fancy Lady, Snow Ball, and Sugar Lady peach varieties. Those peach varieties which were inadvertently left in the variety-specific size requirement at paragraph (a)(6) of § 917.459 and are being removed include the July Lady, Red Cal, and Redglobe peach varieties. The Sugar Giant peach variety should also be added to the variety-specific size requirement in paragraph (a)(6) of § 917.459. This variety was recommended to be added by the PCC in 1996 and was inadvertently left out of the interim final rule.

Further, this rule revises paragraph (a)(6) of § 917.459 by changing the name of the peach variety, Red Boy. The exclusive handler of this peach variety changed the name in the 1995 season. For that reason, the name of the Red Boy peach variety is changed to Red Dancer.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 61 FR 13386 on March 27, 1996, is adopted as a final rule with the following changes:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 916.350 [Amended]

2. In § 916.350, paragraph (c) is revised to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

* * * * *

(c) Each container of nectarines in plastic, 12 × 19¾ inch reusable and recyclable containers shall meet and bear, on the container lid or on the outside end, all applicable marking requirements under the order.

§ 916.356 [Amended]

3. In § 916.356, paragraph (a)(6) is amended by adding the name ''Nectarine 23''.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 917.442 [Amended]

2. In § 917.442, paragraph (c) is revised to read as follows:

§ 917.442 California Peach Container and Pack Regulation.

* * * * *

(c) Each container of peaches in plastic, 12 × 19¾ inch reusable and recyclable containers shall meet and bear, on the container lid or on the outside end, all applicable marking requirements under the order.

§ 917.459 [Amended]

3. In § 917.459, paragraph (a)(6) is amended by adding the names ''Fancy Lady,'' ''Red Dancer'', ''Snow Ball'', ''Sugar Giant'', and ''Sugar Lady'', and removing the names ''July Lady'', ''Red Boy'', ''Red Cal'', and ''Redglobe''.

Dated: June 13, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–15628 Filed 6–19–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 94–132–2]

Screening at Privately Owned Bird Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that apply to privately owned quarantine facilities for imported birds to provide for the use of nylon screening and to clarify the meaning of ''double screened.'' These amendments will give facility operators a choice of screening materials and clarify the regulations.

EFFECTIVE DATE: July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye R. Butler, Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92.100 through 92.107, ''Subpart A—Birds'' (referred to below as ''the regulations''), govern the importation of certain birds to prevent the introduction of communicable diseases of livestock and poultry. As a condition of importation, all imported birds must be quarantined for a minimum of 30 days upon their arrival in the United States. Under § 92.101(c)(2)(ii), certain personal pet birds may remain in the owner's possession during the 30-day quarantine if kept separate from other birds. In all other cases, imported birds must be quarantined in either a U.S. Department of Agriculture quarantine facility or in a privately owned quarantine facility that meets standards set forth in § 92.106(c).

The standards for privately owned quarantine facilities for imported birds include installation of screening over all openings to the outside to prevent the entry of rodents and insects, which could transmit disease. The regulations require that all screening be metal and that all openings to the outside be double-screened (see § 92.106(c)(2)(ii)(A)).

On March 12, 1996, we published in the Federal Register (61 FR 9957–9958, Docket No. 94–132–1) a proposal to amend the regulations by providing for the use of nylon screening and by clarifying the meaning of the term ''double screened.''

We solicited comments concerning our proposal for 60 days ending May 13, 1996. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Our economic analysis indicates that the amendments will have little economic impact on privately owned bird quarantine facilities. Metal and nylon mesh are comparably priced. In addition, the rule adds nylon mesh as a screening option; it does not require quarantine facilities to be re-screened. We anticipate that the clarification concerning double screening will have no effect on facilities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1662; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 92.106, paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(P)(*1*) are revised to read as follows:

§ 92.106 Quarantine requirements.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) Be constructed only with material that can withstand continued cleaning and disinfection. All solid walls, floors, and ceilings must be constructed of impervious material. All openings to the outside must be double-screened, with an interior screen of metal or nylon mesh that is impervious to biting insects such as gnats or mosquitos, and an exterior metal screen that is rodent-proof and is made of wire, such as rabbit wire, hardware cloth, or smooth welded wire, with mesh size no larger than 1 inch x 1.5 inches (2.54 cm x 3.81 cm). The interior and exterior screens must be separated by at least 3 inches (7.62 cm);

* * * * *

(P) * * *

(*1*) Any of the exterior walls may be replaced by a double-screened wall set in a concrete or concrete-block curb. The double screening shall be of wire mesh or wire mesh and nylon mesh, as provided in paragraph (c)(2)(ii)(A) of this section, with the interior and exterior screens of the sun room wall separated by at least 3 inches (7.62 cm); the concrete or concrete block curb must be at least 12 inches high, impermeable to water, and able to prevent the escape of water, manure, and debris.

* * * * *

Done in Washington, DC, this 14th day of June 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–15759 Filed 6–19–96; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB70

Book-entry Procedures for Federal Agricultural Mortgage Corporation Securities

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit System Reform Act of 1996 (1996 act) provides that the Federal Agricultural Mortgage Corporation (Farmer Mac) shall have access to the Federal Reserve Banks' book-entry system (Fed book-entry system). The Farm Credit Administration (FCA) is issuing a final rule authorizing the issuance of Farmer Mac securities in book-entry format. Farmer Mac will use the Fed book-entry system in connection with the issuance and settlement of its unsecured debt securities and its guaranteed securities using substantially the same procedures used by all other Government-sponsored enterprises (GSEs).

EFFECTIVE DATE: June 13, 1996.

FOR FURTHER INFORMATION CONTACT: Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4051.

SUPPLEMENTARY INFORMATION:

I. Background

Section 105 of the 1996 act amends sections 8.3(d) and (e) of the Farm Credit Act of 1971, as amended (act), to require that Farmer Mac have access to the Fed book-entry system and that the Federal Reserve Banks Act as depositories for, and as fiscal agents of, Farmer Mac.[1] Congress mandated Farmer Mac's access to the Fed book-entry system as part of a broad-based reform of Farmer Mac's charter and statutory authority. Among other reform measures, the 1996 Act liberalized Farmer Mac's charter to allow it to pool loans in a fashion similar to such other GSEs as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which operate in the secondary market for mortgage-backed securities. To facilitate Farmer Mac's use of its new authority and to help it meet its new responsibilities, Congress amended the act to ''streamline Farmer Mac's business operations,'' including ''providing for Farmer Mac's access to

[1] Pub. L. 104–105 (Feb. 10, 1996), 110 Stat. 163–64. 12 U.S.C. 2279aa–3(d)–(e).

the book-entry system of the Federal Reserve System.'' [2]

Currently, all Farmer Mac securities (both debt and guaranteed) are issued, settled, and traded through the facilities of the Depository Trust Company (DTC), one of the private depositories available to issuers whose securities are not tradable on the Fed book-entry system. DTC's costs (and the costs of other private depositories) are higher than those of the Federal Reserve Banks, which results in higher costs for Farmer Mac and its investors. Furthermore, it appears that investors may differentiate adversely between Farmer Mac's securities and all other GSEs' securities because Farmer Mac securities are not issued through the Fed book-entry system. Access to the Fed book-entry system, therefore, is viewed as an important element in the Congressionally mandated effort to reform and revitalize Farmer Mac.

II. Implementing Regulations

To implement Farmer Mac's new statutory authority to access the Fed book-entry system, regulations are necessary to establish a framework for issuance and subsequent disposition of Farmer Mac securities issued through the Fed book-entry system. Without such regulations, investors would not know what law governs the holding, transferring, and pledging of the Farmer Mac securities in which they have invested. This uncertainty could create a perception of market risk that could detrimentally affect investment in Farmer Mac securities and possibly could place Farmer Mac securities at a marketing disadvantage compared to the securities of other GSEs.[3]

FCA regulations governing book-entry procedures with respect to Farm Credit System (FCS) securities were adopted in 1977 and are located at 12 CFR part 615, subpart O. The FCA's book-entry regulations are based on the Department of the Treasury's book-entry regulations at 31 CFR part 357, subpart O. The regulations establish procedures that permit FCS banks to utilize the Fed book-entry system in the same way as do other GSEs. The FCA extended its book-entry regulations in 1988 by adding a new subpart R to 12 CFR part 615 to cover securities issued by the FCS Financial Assistance Corporation. Rather than duplicating the basic book-entry regulations found in subpart O, subpart R incorporates by reference the pertinent book-entry provisions from subpart O and applies them to the Financial Assistance Corporation.

The FCA is adopting the same abbreviated approach to applying book-entry regulations to Farmer Mac in this rulemaking. The final rule creates a new subpart S in part 615 that authorizes the issuance of Farmer Mac securities in book-entry format pursuant to pertinent provisions of subpart O of part 615, which are incorporated by reference. The incorporated provisions of subpart O include: §§ 615.5460 (definitions), 615.5465 (authority of Reserve Banks), 615.5470 (scope and effect of book-entry procedure), 615.5475 (transfer or pledge), 615.5480 (withdrawal of securities), 615.5485 (delivery of securities), 615.5490 (classes of accounts), 615.5492 (identification of accounts), and 615.5494 (servicing book-entry securities, including payment of interest and payment at maturity or upon call).

III. Necessity for Immediate Regulatory Action

In passing the 1996 act, Congress recognized the difficulties Farmer Mac has had in meeting its statutory mandate and the resulting deterioration in its core capital.[4] In what the House Committee on Agriculture termed ''the most extensive attempt yet to make Farmer Mac a viable secondary market for agricultural real estate and moderate rural housing loans,'' [5] the 1996 act eases prior statutory operating requirements and expands the activities in which Farmer Mac can engage. It is clear that Congress also expects Farmer Mac to act quickly to stabilize its financial position and rebuild its core capital. Section 117 of the 1996 act requires that, if Farmer Mac does not complete mandatory recapitalization of its core capital within 2 years, its activities will be critically restricted. If the 2-year goal is not met, Farmer Mac will not be allowed to purchase a new qualified loan or issue or guarantee a new loan-backed security.[6]

In the very near future, Farmer Mac plans to issue debt securities backed by mortgages purchased by Farmer Mac pursuant to its new authority under the 1996 act. Farmer Mac intends to utilize the Fed book-entry system to issue the securities, as sanctioned by the 1996 act. To avoid creating any ambiguities regarding Farmer Mac's authority to obtain access to the Fed book-entry system and to ensure that the book-entry treatment of Farmer Mac's securities will be the same as that of other GSEs, the FCA is taking expedited action to adopt book-entry regulations covering Farmer Mac.

In view of the clear Congressional mandate expressed in the 1996 act that Farmer Mac have access to the Fed book-entry system and the equally clear Congressional intent that Farmer Mac utilize its new authorities to rebuild its core capital and meet its other statutory mandates as soon as possible, the FCA believes that expedited rulemaking action is warranted for book-entry regulations covering Farmer Mac. Moreover, the regulations adopted are minor, technical, and noncontroversial. For these reasons, the FCA finds good cause to omit notice and comment as impracticable, unnecessary, and contrary to the public interest pursuant to section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553–59 (APA). The same reasons and, in particular, the time limit Congress has imposed on Farmer Mac to recapitalize its core capital base, provide good cause to adopt an effective date for the regulations that is less than 30 days after publication in the Federal Register. 5 U.S.C. 553(d). The FCA's finding of good cause for expedited rulemaking action also supports specifying an effective date for the regulations that is prior to the date of filing of the report to Congress required by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801–808. *See* 5 U.S.C. 808. Finally, consistent with the reasons for its expedited actions under the APA, the FCA finds that, pursuant to section 5.17(c)(2) of the act, an emergency exists that requires that these regulations take effect prior to the expiration of the 30-day Congressional notice and waiting period for final agency regulatory action.

The FCA notes that the U. S. Treasury Department recently proposed TRADES (Treasury/Reserve Automated Debt Entry System) regulations (61 FR 8420, March 4, 1996), which will govern book-entry treatment of Treasury securities. Since FCA's book-entry regulations are based on the Treasury's book-entry regulations, the FCA expects to revise all of its book-entry regulations, including those covering Farmer Mac, to conform with the Treasury's TRADE regulations when they are finalized. Accordingly, there will be opportunity for public comment on FCA book-entry regulations at that time.

[2] H.R. Rep. No. 446, 104th Cong., 2d Sess., pt. 1, at 8 (1996).

[3] All other GSEs that utilize the Fed book-entry system, including the Farm Credit System, have regulations in place that govern their book-entry securities. See, *e.g.*, 24 CFR part 81 (Fannie Mae); 1 CFR part 462 (Freddie Mac); 31 CFR part 354 (Student Loan Marketing Association (Sallie Mae)).

[4] H.R. Rep. No. 446, *supra* note 2, at 9.

[5] *Id.* at 8.

[6] Pub. L. 104–105, *supra* note 1, § 117.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 105 of Pub. L. 104–105, 110 Stat. 162, 163–64.

2. Subpart S is added to read as follows:

Subpart S—Federal Agricultural Mortgage Corporation Securities

Sec.

615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation securities.

Subpart S—Federal Agricultural Mortgage Corporation Securities

§ 615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation Securities.

(a) The Federal Agricultural Mortgage Corporation (Farmer Mac) is a Federally chartered instrumentality of the United States and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Farmer Mac, either in its own name or through an affiliate controlled or owned by Farmer Mac, is authorized by section 8.6 of the Act:

(1) To issue and/or guarantee the timely payment of principal and interest on securities representing interests in or obligations backed by pools of agricultural real estate loans (guaranteed securities); and

(2) to issue debt obligations (which, together with the guaranteed securities described in paragraph (b)(1) of this section, are referred to as Farmer Mac securities). Farmer Mac may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance, and the prices of Farmer Mac securities.

(c) Farmer Mac securities shall be governed by §§ 615.5460, 615.5465, 615.5470, 615.5475, 615.5480, 615.5485, 615.5490, 615.5492, and 615.5494. In interpreting those sections for purposes of this section, the term ''Farmer Mac securities'' shall be read for ''Farm Credit securities,'' and ''Farmer Mac'' shall be read for ''banks of the Farm Credit System'' and ''Farm Credit bank.''

Dated: June 14, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration.

[FR Doc. 96–15733 Filed 6–19–96; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 385

[Docket Nos. RM95–8–002 and RM94–7–003]

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Issued: June 14, 1996.

AGENCY: Federal; Energy Regulatory Commission.

ACTION: Final rule; notice of filing of motion for extension of time.

SUMMARY: On June 12, 1996, the American Public Power Association, the Electricity Consumers Resource Council, the National Rural Electric Cooperative Association and the Ohio Consumers' Counsel (Joint Movants) filed a joint request to extend the comment period for compliance filings made under this final rule (Order No. 888, 61 FR 21540, May 10, 1996) from the 15-day comment period established in the final rule to a 45-day comment period. Joint Movants also asked that the Commission require that the compliance tariff filings, as well as redline versions of those filings, be made in electronic format and posted on the FERC Bulletin Board. Copies of the motion are on file with the Commission and are available for public inspection.

DATES: Any person desiring to respond to the motion should file an answer on or before June 21, 1996.

ADDRESSES: Send answers to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David D. Withnell, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First St., NE., Washington, DC 20426, Telephone: (202) 208–2063.

Lois D. Cashell,

Secretary.

[FR Doc. 96–15760 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 96–51]

Replacement of CF 7506 by CF 7501

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to replace a reference to Customs Form (CF) 7506 in § 10.62(c)(2), Customs Regulations, with a reference to CF 7501. This change was inadvertently omitted from a final rule document published in the Federal Register on October 6, 1995 (60 FR 52294) which replaced all other references to CF 7506 in the Customs Regulations with references to CF 7501.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Raymond Janiszewski, Office of Trade Compliance, (202)927–0380.

SUPPLEMENTARY INFORMATION:

Background

Previously, CF 7506, Warehouse Withdrawal Conditionally Free of Duty and Permit, was the form used to make warehouse withdrawals for merchandise conditionally free of duty. The CF 7506 has now been eliminated, and the CF 7501 is to be used instead.

In a final rule document published in the Federal Register (60 FR 52294) on October 6, 1995, references to CF 7506 were deleted and replaced by reference to CF 7501. Inadvertently, the reference to CF 7506 in § 10.62(c)(2), Customs Regulations (19 CFR 10.62 (c)(2)), was not deleted in that document and replaced with a reference to CF 7501. This document corrects that omission.

Regulatory Flexibility Act, Executive Order 12866, Inapplicability of Public Notice and Comment Requirements, and Delayed Effective Date Requirements

Inasmuch as this amendment merely substitutes one Customs Form for another, pursuant to 5 U.S.C. 553 (a)(2) and (b)(B), good cause exists for

dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. 553 (a)(2) and (d)(3). Also, for the same reason, it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604.

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin initiative, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons set forth in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1498, 1508, 1623, 3314;

* * * * *

§ 10.62 [Amended]

2. Section 10.62(c)(2) is amended by removing the reference ''Customs Form 7506'' and by adding ''Customs Form 7501'' in its place.

George J. Weise,

Commissioner of Customs.

Approved: May 30, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–15750 Filed 6–19–96; 8:45 am]

BILLING CODE 4820–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 209

RIN 3220–AB16

Railroad Employers' Reports and Responsibilities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations to add sections to permit employers to dispose of payroll records after five years, and for the utilization of payroll records to credit service under the Railroad Retirement Act in the case of employers that have ceased operations. These amendments will alleviate needless record retention and ease reporting requirements for employers that have permanently ceased operations.

EFFECTIVE DATE: June 20, 1996.

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

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

SUPPLEMENTARY INFORMATION: Employer reports are used to establish employee compensation and service records. These reports are based on payroll records. The Board's rules and procedures regarding the authorization of disposal of these records and the utilization of payroll records of employers who have abandoned service in lieu of employer reports are presently contained in Board Orders, which are not readily available to the public. Accordingly, the Board adopts regulations specifying that railroad employers may dispose of payroll records more than five years old where there is no dispute pending as to the compensation reported for the periods covered by those records. The Board also to amends its regulations to provide that the Board will accept payroll records in lieu of prescribed reports if there is no official of the employer available to prepare and certify to the accuracy of such reports and if the tax liability involved has been discharged.

On February 15, 1996, the Board published this rule as a proposed rule (61 FR 5970) inviting comments on or before April 15, 1996. No comments were received. No changes have been made to the proposed rule. The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, title 20, chapter II, part 209 of the Code of Federal Regulations is amended as follows:

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

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

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

2. Part 209 is amended by adding §§ 209.16 and 209.17 to read as follows:

§ 209.16 Disposal of payroll records.

Employers may dispose of payroll records for periods subsequent to 1936, *provided that* the payroll records are more than five years old and that there is no dispute pending pertaining to the compensation reported for the period of those records.

§ 209.17 Use of payroll records as returns of compensation.

Payroll records of employers which have permanently ceased operations may be accepted in lieu of prescribed reports *provided that* there is no official of the employer available to prepare and certify to the accuracy of such reports and, *provided further that* any employer and employee tax liability incurred under the Railroad Retirement Tax Act has been discharged.

Dated: June 11, 1996.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–15705 Filed 6–19–96; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 92F–0339]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with a solution of sodium gluconate, citric acid, phosphoric acid, and sodium mono- and didodecylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by Rio Linda Chemical Co.

DATES: Effective June 20, 1996 written objections and requests for a hearing by July 22, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a publication listed in § 178.1010 (21 CFR 178.1010), effective June 20, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 22, 1992 (57 FR 43741), FDA announced that a food additive petition (FAP 2B4334) had been filed by Rio Linda Chemical Co., c/o 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposed that the food additive regulations be amended in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with sodium gluconate, citric acid, phosphoric acid, and sodium alkylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-contact surfaces, food-processing equipment, and utensils. Based on information in the food additive petition, FDA has determined that a more specific and therefore more appropriate name for the form of sodium alkylphenoxybenzenedisulfonate used to generate the subject sanitizing solution is sodium mono- and didodecylphenoxybenzenedisulfonate. This more specific name will be used throughout the remainder of this document.

I. Safety and Functional Effect of Petitioned Use of the Additive

Sanitizing solutions are mixtures of chemicals that function together to sanitize food-contact surfaces and are regulated as such. Each listed component in a sanitizing solution has a functional effect, and the agency evaluates the data submitted in support of the efficacy of the entire sanitizing solution. The subject sanitizing solution is an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with a solution of sodium gluconate, citric acid, phosphoric acid, and sodium mono- and didodecylphenoxybenzenedisulfonate. The functions of these components, and the basis for FDA's determination of the safety of these components in the subject sanitizer, are described below.

A. Chlorine Dioxide

Chlorine dioxide functions as an antimicrobial agent in the subject sanitizing solution. Chlorine dioxide is regulated for use in sanitizing solutions under § 178.1010(b)(34) and is regulated for use as an antimicrobial agent in water used in poultry processing under 21 CFR 173.69. On the basis of the data submitted in support of the already-regulated uses of chlorine dioxide, the data contained in the food additive petition submitted in support of this sanitizing solution, and studies in the scientific literature, FDA finds that the use of chlorine dioxide in the subject sanitizing solution is safe (Ref. 1).

B. Sodium Gluconate

Sodium gluconate functions as a sequestering agent in the subject sanitizing solution. Sodium gluconate is listed as GRAS for use in food as a sequestering agent under 21 CFR 182.6757. In addition, FDA regulations permit the addition to a sanitizing solution of any substance that is GRAS for use in food (§ 178.1010(b)). On the basis of the data supporting the GRAS status of sodium gluconate, FDA finds that the use of sodium gluconate in the subject sanitizing solution is safe (Ref. 1).

C. Citric Acid

Citric acid functions as a sequestering agent in the subject sanitizing solution. Citric acid is affirmed as GRAS for use in food under 21 CFR 184.1033. In addition, as stated in the previous paragraph, FDA regulations permit the addition to a sanitizing solution of any substance that is GRAS for use in food. On the basis of the data supporting the GRAS status of citric acid, FDA finds that the use of citric acid in the subject sanitizing solution is safe (Ref. 1).

D. Phosphoric Acid

Phosphoric acid functions as an activator in the subject sanitizing solution. Phosphoric acid is listed as GRAS for use in food under 21 CFR 182.1073. In addition, FDA regulations permit the addition to a sanitizing solution of any substance that is GRAS for use in food. On the basis of the data supporting the GRAS status of phosphoric acid, FDA finds that the use of phosphoric acid in the subject sanitizing solution is safe (Ref. 1).

E. Sodium Mono- and Didodecylphenoxybenzenedisulfonate

Sodium mono- and didodecylphenoxybenzenedisulfonate functions as a surfactant in the subject sanitizing solution. Sodium mono- and didodecylphenoxybenzenedisulfonate is regulated for use as an emulsifier and surface active agent in the manufacture of food-contact materials under the listing for sodium mono- and dialkylphenoxybenzenedisulfonate in 21 CFR 178.3400(c). On the basis of the data submitted in support of the already-regulated use of sodium mono- and didodecylphenoxybenzenedisulfonate and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of sodium mono- and didodecylphenoxybenzenedisulfonate in the subject sanitizing solution is safe (Ref. 1).

F. Conclusion on Safety

As discussed above, FDA has evaluated data on the antimicrobial efficacy of the entire sanitizing solution and data in the petition and other relevant materials on the safety of each of the components of the sanitizing solution. On the basis of this evaluation, the agency concludes that these data and materials establish the safety and efficacy of the additive for use as a sanitizing solution on food-processing equipment and utensils including dairy-processing equipment, and that the regulations should be amended in § 178.1010 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not

available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum entitled ''FOAM ADD 10—A terminal no-rinse sanitizer—Manufactured by Rio Linda Chemical Corp.,'' dated June 10, 1994.

IV. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before July 22, 1996 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.1010 is amended by adding new paragraphs (b)(46) and (c)(40) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(46) An aqueous solution of chlorine dioxide and related oxychloro species generated by acidification of an aqueous solution of sodium chlorite with a solution of sodium gluconate, citric acid, phosphoric acid, and sodium mono- and didodecylphenoxybenzenedisulfonate. In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

* * * * *

(c) * * *

(40) The solution identified in paragraph (b)(46) of this section shall provide, when ready for use, at least 100 parts per million and not more than 200 parts per million of chlorine dioxide as determined by the method developed by Bio-cide International, Inc., entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide (50–250 ppm Available ClO_2),'' dated June 11, 1987, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this method are available from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC; at least 380 parts per million and not more than 760 parts per million of sodium gluconate; and at least 960 parts per million and not more than 1,920 parts per million of sodium mono- and didodecylphenoxybenzenedisulfonate. Other components listed under paragraph (b)(46) of this section shall be used in the minimum amount necessary to produce the intended effect.

* * * * *

Dated: June 7, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–15726 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Rhone Merieux, Inc. The ANADA provides for the use of a generic neomycin sulfate oral solution in drinking water or in milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis.

EFFECTIVE DATE: June 20, 1996.

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

SUPPLEMENTARY INFORMATION: Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210, filed ANADA 200–153, which provides for the use of neomycin sulfate oral solution in drinking water or in milk of cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial scours) caused by *Escherichia coli* susceptible to neomycin. ANADA 200–153 is approved as a generic copy of The Upjohn Co.'s NADA 11–035. The ANADA is approved as of May 8, 1996, and the regulations are amended in 21 CFR 520.1485(b) and (d)(3) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21

CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1485 is amended by revising paragraph (b) and the last sentence of paragraph (d)(3) to read as follows:

§ 520.1485 Neomycin sulfate oral solution.

* * * * *

(b) *Sponsors.* See Nos. 000009, 050604, and 059130 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(3) * * * Discontinue treatment prior to slaughter as follows: For sponsors 000009 and 059130: 30 days for cattle and goats, and 20 days for swine and sheep; for sponsor 050604: 1 day for cattle (not for use in veal calves), 2 days for sheep, and 3 days for swine and goats.

Dated: June 10, 1996.

Shephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–15566 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Neomycin Sulfate Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. and two supplemental abbreviated new animal drug applications (ANADA's), one filed by Pfizer, Inc., and the other filed by Rhone Merieux, Inc. The applications provide for use of neomycin sulfate soluble powder in drinking water or in milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis. The supplements provide for revised preslaughter withdrawal times following use of the drug and revised tolerances for neomycin residues in edible tissues of treated animals.

EFFECTIVE DATE: June 20, 1996.

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

SUPPLEMENTARY INFORMATION: The Upjohn Co., Agricultural Division, Kalamazoo, MI 49001–0199, filed supplemental NADA 11–315; Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental ANADA 200–046; Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210, filed supplemental ANADA 200–050. The supplements provide for revised withdrawal times for use of neomycin sulfate soluble powder in drinking water or in milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial scours) caused by *Escherichia coli* susceptible to neomycin sulfate. The supplements are approved as of April 3, 1996, and § 520.1484(c)(3) (21 CFR 520.1484(c)(3)) is amended to reflect the approvals. The basis for approval is discussed in the freedom of information summary as indicated below. Also, the firms sponsored studies which provided data to support revised tolerances for residues of neomycin in the edible tissues of cattle, swine, sheep, and goats. Based on evaluation of the data as provided in the General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals Guidelines, tolerances of 1.2 parts per million (ppm) in muscle, 3.6 ppm in liver, and 7.2 ppm in kidney and fat, and withdrawal times of 1 day for cattle, 2 days for sheep, and 3 days for swine and goats, are established. The revised withdrawal times are provided in § 520.1484(c)(3). The revised tolerances for neomycin residues are established in amended 21 CFR 556.430.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for marketing exclusivity because the applications do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or new human food safety studies (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicants.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1484 is amended in paragraph (c)(3) by revising the last sentence to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

* * * * *

(c) * * *

(3) * * * Discontinue treatment prior to slaughter as follows: For sponsor 059130—cattle and goats, 30 days; swine and sheep, 20 days; for sponsors 000009, 000069, 050604—cattle (not for use in veal calves), 1 day; sheep, 2 days; swine and goats, 3 days.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.430 is revised to read as follows:

§ 556.430 Neomycin.

A tolerance of 7.2 parts per million (ppm) is established for residues of parent neomycin (marker residue) in uncooked edible kidney (target tissue), 7.2 ppm in fat, 3.6 ppm in liver, 1.2 ppm in muscle of cattle, swine, sheep, and goats. A tolerance of 0.15 ppm is established for neomycin in milk.

Dated: May 31, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–15724 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, and 250

[T.D. ATF–379; Re Notice Nos. 634, 649, 748, and 758]

RIN 1512–AA20

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use (73R–24P)

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends and recodifies the regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations formerly in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products) are recodified as a new part, designated 27 CFR part 17. In conjunction with the recodification, a number of changes to the drawback regulations have been made. Further, the regulations formerly in 27 CFR part 170, subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) have been distributed between 27 CFR part 19 and the new part 17; and conforming amendments have been made in 27 CFR parts 70, 194, and 250. Significant changes from prior regulations are discussed below under **SUPPLEMENTARY INFORMATION.**

EFFECTIVE DATE: This Treasury decision is effective on August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Notices of Proposed Rulemaking

On July 29, 1987, ATF published Notice No. 634 in the Federal Register (52 FR 28286). That notice proposed the recodification of regulations concerning nonbeverage drawback, including changes from the former regulations (27 CFR part 197). Public comment was requested concerning the proposed changes. A 90-day comment period was provided, which ended on October 27, 1987. In response to Notice No. 634, ATF received four written public comments. In addition, some review comments were received from ATF personnel after the publication of Notice No. 634.

On December 8, 1987, ATF solicited additional public comments regarding the nonbeverage drawback regulations. On that date, ATF published Notice No. 649 (52 FR 46628), which requested comments specifically relating to drawback on nonbeverage products brought into the U.S. from Puerto Rico or the Virgin Islands. In conjunction, the comment period for Notice No. 634 was extended until January 8, 1988. No additional comments concerning Notice No. 634 were received pursuant to that extension.

On August 31, 1992, ATF decided to republish the proposed recodification and amendment of 27 CFR part 197. Notice No. 748 was published in the Federal Register (57 FR 39536). Because more than 4 years had elapsed since the end of the previous comment periods, the proposed regulations were republished in their entirety, with some additional changes, so that anyone else who wished to comment on them would have an opportunity to do so.

Notice No. 748 prescribed a 30-day comment period, which was scheduled to end on September 30, 1992. On September 14, 1992, ATF was asked to extend this comment period for an additional 90 days. ATF partially granted this request. On October 1, 1992, Notice No. 758 (57 FR 45357) extended the comment period for Notice No. 748 by an additional 30 days, until October 30, 1992. The full 90-day extension (as requested) was not granted, because most of the same regulatory issues had been previously aired for public comment during a sufficient length of time. Subsequent to the official ending of the comment period, comments that were received while it was still practicable to consider them were given consideration.

In response to Notices No. 748 and 758, comments were received by letter, telephone, and personal visit from a total of twelve persons representing eleven entities (nine industry members and two industry groups). These comments are discussed carefully below, following the discussion of comments submitted previously under Notice No. 634.

Public Comments on Notice No. 634

Comments relating to Notice No. 634 were received from four correspondents:

1. One commenter proposed that § 17.183 be liberalized to allow manufacturers to sell or transport byproducts from which alcohol may be recovered, without removing the alcohol or adding an appropriate substance to prevent the recovery of residual alcohol. The commenter was concerned particularly about economic loss from an inability to process ''spent'' vanilla beans for food use applications.

ATF did not adopt this comment, because potable alcohol recovered from a nonbeverage manufacturer's byproduct would have been previously subject to drawback; thus less than 10% of the tax would remain paid. The possible recovery of such potable alcohol by unknown persons would present an unacceptable jeopardy to the revenue. Subject to formula approval and/or approval of an alternative procedure under § 17.3, ATF could allow byproducts containing recoverable alcohol to be subjected to additional processing, on the manufacturer's premises, for food use applications.

The basis for § 17.183 in this final rule is ATF Ruling 81–8, 1981–4 QB 24. That ruling provided a liberalized procedure for the disposition of spent vanilla beans, whereby they could be treated with any substance that the manufacturer deemed adequate to make

recovery of potable alcohol impractical. This procedure has been broadened in § 17.183 to apply to the disposition of any byproduct from which alcohol can be recovered. However, under the broadened rule, prior approval from ATF must be obtained for treatment with substances not previously authorized.

In § 17.183(c), certain substances are authorized for treatment of spent vanilla beans. No further authorization is needed for the use of these substances, when disposing of spent vanilla beans. Approval is required if other substances will be added to such beans, or if other byproducts from which alcohol can be recovered will be disposed of. Manufacturers who have already received approval for other methods of disposal, not mentioned in § 17.183, may continue to operate under such approval.

2. Another commenter expressed support for some of the proposals of Notice No. 634, but he had reservations about several others. He requested that ATF review the nonbeverage industry's ''historical compliance track record'' before imposing new recordkeeping requirements concerning usage of finished products (§ 17.166); he questioned the revised definition of ''distilled spirits'' in § 17.11 as being different from the definition of the same term in 27 CFR part 5; and he sought a ''transition period'' for the implementation of new language in § 17.161 (dealing with general requirements for records).

ATF reviewed the compliance record of the nonbeverage manufacturing industry and determined that the new records in § 17.166(b), concerning usage of nonbeverage products, are needed to verify that such products were manufactured in the amount claimed. The new records close a gap in the recordkeeping system of the former part 197. (However, see the further discussion of this issue below, in conjunction with a comment submitted pursuant to Notice No. 748.)

The revised definition of ''distilled spirits'' was also kept unchanged, because the revised definition is consistent with the definition of ''distilled spirits'' in the Internal Revenue Code (26 U.S.C. 5002(a)(8)). The nonbeverage drawback regulations are issued under the Internal Revenue Code, while 27 CFR part 5 is a regulation under the Federal Alcohol Administration Act. The revised definition in part 17 differs from the former definition in part 197 only by the deletion of the words ''fully taxpaid or tax determined at the distilled spirits rate.'' This change brings the definition closer both to 26 U.S.C. 5002(a)(8) and to the ordinary meaning of ''distilled spirits.'' Whenever taxpaid distilled spirits are specifically intended in part 17, the word ''taxpaid'' is stated. A new definition of ''taxpaid'' is provided in § 17.11.

Finally, ATF determined that there is no need for a transition period for implementation of new language in § 17.161, because the only substantive change brought about by that new language is liberalizing. That change makes it clear that normal business records, including invoices and cost accounting records, are adequate for regulatory purposes if they contain the required information. (ATF anticipates that ordinarily no records besides these normal business records need be maintained for purposes of compliance with the regulations.) Other new language in § 17.161 does not impose a substantive requirement, but simply spells out the purposes of records.

3. A third commenter pointed out what appeared to him to be contradictions in the proposed regulations. However, the apparent contradictions were actually the result of misunderstanding. In one instance, the commenter confused the terms ''eligible for drawback'' and ''subject to drawback.'' In order to prevent further confusion of this sort, definitions of both of these terms were included in Notice No. 748 and remain in this final rule (see § 17.11).

Another point of confusion concerned the difference between spirits *contained* in an intermediate product and spirits *consumed* in the manufacture of such a product. Spirits contained in an intermediate product are eligible for drawback, and become subject to drawback when the intermediate product is used in the manufacture of a nonbeverage product. However, spirits consumed in the manufacture of an intermediate product (which are not contained in that product when completed) never become subject to drawback. Drawback cannot be claimed on such spirits (see §§ 17.154 and 17.155). Nevertheless, under §§ 17.127 and 17.185, a manufacturer may treat the intermediate product as an unfinished nonbeverage product; then the consumed spirits may be included in a drawback claim.

4. A fourth commenter took issue with the standard used by ATF to determine whether to grant drawback of tax on spirits used in nonbeverage products. He questioned the requirement that products produced with spirits must be ''unfit for beverage use.'' The commenter asked that this be changed to ''sale and use for (non) beverage purposes.''

This commenter's requested change was not adopted, because the standard that must be met in order to receive drawback is expressly stated in the law (26 U.S.C. 5131(a)). Drawback may be granted only for ''distilled spirits on which the tax has been determined, (used) in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are *unfit for beverage purposes*'' (emphasis added).

Public Comments on Notice No. 748

The following paragraphs discuss the suggested changes that were submitted in response to Notice No. 748 (as amended by Notice No. 758). The comments are grouped topically, since in some cases several commenters proposed the same or similar recommendations.

1. Section 17.136 states that ''A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products.'' This reflects a longstanding ATF policy. See Rev. Rul. 58–350, 1958–2 CB 974; see also various regional industry memoranda in 1991 regarding FD&C Red No. 3, and the following Industry Circulars: 61–2, 62–33, 65–4, 70–12, 72–8, 72–28, 72–29, 73–6, and 76–17.

However, a group of commenters pointed out that the wording of § 17.136 could be interpreted to prevent manufacturers from receiving drawback on products intended for export to countries with different food and drug requirements. Further, certain products for domestic use, such as tobacco flavors and animal feed flavors, are not subject to the same requirements as products intended for internal human consumption. Products may legally be made for such uses even though banned for human consumption.

ATF appreciates this comment. Since the limitation of § 17.136 only applies to products that *violate* FDA bans or restrictions, it is not intended to prevent drawback in the situations mentioned by the commenters. In general, there would be no FDA violations in those situations. Therefore, language has been added to § 17.136 in this final rule to clarify this point.

2. Another suggestion pertained to § 17.166(b). This new regulation requires records of ''other disposition'' of nonbeverage products—that is, disposition other than by sale. Former regulations in 27 CFR 197.130 only

required disposition records for products disposed of by sale; § 17.166(b) closes this gap in the recordkeeping system.

However, a change in § 17.166(b)(1) introduced by Notice No. 748, adding some language which had not been present in Notice No. 634, was a cause of concern for several commenters. This change added a proposed requirement that would have applied whenever a nonbeverage product is disposed of by being used as an ingredient in other products. The new language would have required disposition records, in such instances, to show the formula number of every other product in which the first product was used as an ingredient. The commenters stated that a requirement to show such formula numbers would be onerous for many flavor companies who frequently use their flavors as ingredients in many other flavors.

The purpose of the proposed requirement added by Notice No. 748 was to enable an ATF inspector to follow the ''audit trail'' to the next product and compare its batch records, showing usage of the first product, with the first product's records of disposition. This inspection technique had been facilitated under the former regulations in part 197 by a requirement that supporting data (submitted with each claim) show, for each product manufactured, the formula number of each nonbeverage or intermediate product used as an ingredient. That requirement was eliminated from the simplified supporting data proposed by Notice No. 748 (and adopted by this final rule), but its absence would have been more than made up for by the proposed additional language in § 17.166(b)(1).

After carefully considering this public comment, ATF has decided that the benefits of the proposed additional requirement in § 17.166(b)(1) may not be commensurate with the added burden to industry. Therefore, in this final rule, § 17.166(b)(1) reads as it did in Notice No. 634, without the formula-number requirement added by Notice No. 748. However, ATF reserves the right to examine this issue further and possibly to propose another rulemaking, if experience shows that the formula-number requirement, or something similar, is needed for adequate administration of the law.

3. Two commenters requested permission to continue using the old supporting data, as prescribed under Rev. Proc. 64–32, 1964–2 CB 951, and former regulations (27 CFR 197.110–197.119). Even though the new supporting data prescribed by this final rule is much simpler, some companies have computerized their system, and it would actually be a hardship for them to have to change.

Section 17.147 allows modifications of the supporting data to be used without prior permission, if the modified form contains all of the required information. For the most part, the old supporting data contains all of the information required under this final rule. There are only a few new elements, which include: A certification that required physical inventories have been taken, separate data for different effective tax rates and for Puerto Rican and U.S. Virgin Islands spirits and imported rum, and certain explanatory information sometimes required in Part IV of the new form. Therefore, drawback claimants may continue to use the old supporting data as long as the new elements are included.

4. Another comment stated an objection to the requirement for physical inventories (§ 17.167). The commenter claimed that physical inventories were not required under part 197. However, that is not so. Physical inventories were mentioned in §§ 197.116–197.119, with the intent that they should be taken every claim period. Such inventories are necessary from time to time to ensure the accuracy of the book account. In line with the principles of the Administration's ''Reinventing Government'' regulatory initiative, ATF has determined that claimants with bond coverage need not be required to take a physical inventory every month (as proposed in Notices No. 634 and 748). Therefore, this final rule provides for quarterly physical inventories.

5. Some other suggested improvements were related to the proposed revision of the formula form (previously numbered ATF F 1678, now ATF F 5154.1). A draft version of this form was published in the same issue of the Federal Register as Notice No. 748 (see 57 FR 39564). First, the commenter requested additional space for addresses when a single form is filed for multiple plants; but this is not necessary, since adequate space is provided on the reverse of the form. (The reverse was not printed in the Federal Register, since it is virtually a blank page.) If the reverse is still not sufficient, a continuation on plain paper is acceptable.

Also, the commenter suggested that ATF F 5154.1 be redesigned for computer-generated insertion of data. However, he did not propose any specific changes. If a claimant has a specific proposal for a computer-generated form, it could be approved as an alternate procedure under § 17.3. In a separate project, ATF has developed a computer program to facilitate the preparation of nonbeverage product formulas, which is available for use by industry members. For more information on this project, please contact the ATF Laboratory or the person listed above under **FOR FURTHER INFORMATION CONTACT**.

6. Another suggestion proposed a simplified procedure for alternation of premises between a distilled spirits plant and a nonbeverage product manufacturing plant. This suggestion cannot be considered at this time, since it relates to other regulations that are not the subject of this rulemaking. This comment will be treated as a suggestion for future amendment of 27 CFR part 19.

7. Another comment pointed out that the last sentence of § 17.137 (requiring qualification as a distilled spirits plant) should be limited to products that are disapproved as ''fit for beverage use.'' This comment is well taken. Under § 19.58, as amended by this final rule, exemption from qualification requirements is provided to manufacturers of various products that are *unfit* for beverage use, which nevertheless would not be approved for drawback because they are not medicines, medicinal preparations, flavors, flavoring extracts, food products, or perfume. Therefore, the suggested change has been made.

8. Several comments addressed the procedure for determining whether products are fit or unfit for beverage use (§ 17.134). It was stated that the use of an organoleptic examination (taste test) performed by ATF is not sufficiently objective and ''can result in a very arbitrary tasting method with unpredictable results.''

As an alternative to the method currently used, one commenter suggested the use of an independent testing panel funded by industry. The commenter opined that such a panel might be more ''objective'' and might alleviate the problem of delays in formula approvals caused by a backlog of submissions at the ATF Laboratory.

Interestingly, this particular idea (absent the funding proposal) had been previously considered by ATF pursuant to a suggestion submitted by two ATF employees. At that time, ATF determined that the panel would have to be restricted to analysis of samples, since most industry members would be opposed to allowing an independent laboratory to see their formulas. Additionally, it was determined that training and certification by ATF would be necessary, thus minimizing any time and cost savings to the Government. These findings are still considered to be valid.

Furthermore, ATF disagrees that a panel funded by industry would be any more objective than the taxpayer-funded ATF Laboratory. On the contrary, industry funding would seem to introduce a possibility for bias not currently present. ATF has no interest to be served by approving or disapproving any particular formula. Our only interest is to administer the law on an impartial basis. An element of subjectivity (but not bias) is unavoidably present due to the legal requirement that products be ''unfit for beverage use.'' This cannot be eliminated merely by shifting the responsibility for decision-making to another entity. Therefore, ATF has decided not to adopt this suggestion.

Another commenter proposed a different alternative. This one suggested that ATF incorporate a ''standard reference method'' for organoleptic examination based on a method prescribed by the American Society for Testing and Materials (ASTM). The method recommended by the commenter is as follows:

Samples: (1) Non-Beverage Test (NBT) sample(s)—Formulate six or fewer samples over a range of dilution levels of the NBT component in 15% ethanol. (2) Non-Beverage Reference (NBR) and Beverage Reference (BR) samples—From the list of ingredients and amounts in Table 1 (i.e. a table listing ingredients and their quantities recognized by ATF as usually sufficient to make products unfit for beverage use), select and formulate one sample for a NBR at 15% ethanol. Reduce the amount of the respective ingredient in the NBR sample to formulate a BR sample that would be deemed potable.

Procedure: (1) Recruit a panel of at least 15 members previously screened as outlined below.

(2) Each panelist is presented the NBR and BR samples as examples of a nonpotable and potable beverage, respectively.

(3) Each panelist is then presented in random order each NBT sample for comparison in acceptablility to the NBR and BR sample.

(4) Each panelist responds to the question, ''Is this sample more like the NBR or BR sample in acceptability?''

(5) Count the number of panelists scoring each NBT sample as more like the BR sample in acceptability.

(6) Use the statistical tables for the duo-trio difference test (from ASTM ''Manual on Sensory Testing Methods, STP 434'') to conclude which NBT samples are potable. Determine significance at the 95% confidence level.

(7) Report the highest concentration of the nonbeverage component that is significant as an upper bound in concentration of the NBT component for potability.

Panelist Screening: (1) Present both the NBR and BR samples to a prospective panelist.

(2) Ask the question, ''Which sample is more acceptable to you?''

(3) Screen out any panelists which select the NBR sample.

ATF has reviewed this proposed method and finds it unacceptable for several reasons. First, the method does not test for the specific information needed for drawback determinations under 26 U.S.C. 5131. The proposal is, in effect, a test for determining what concentration of a single ''component'' is needed to render an ethanol solution nonpotable. However, in making drawback determinations, ATF is not just interested in the contribution to potability by a specific component; rather, ATF is interested in the resulting potability of a product, which may contain many components. Further, ATF is not interested in quantitating the level of concentration at which a solution becomes nonpotable; rather, ATF is just interested in determining, yes or no, whether a particular final product is fit for beverage use. In other words, the proposed method provides extraneous, unnecessary information while simultaneously failing to provide the particular information that ATF needs.

Secondly, the proposed method does not even provide a definitive determination whether a particular sample is beverage or nonbeverage. It only provides a determination whether the sample is ''more like'' the ''beverage reference'' or the ''nonbeverage reference.'' If one of the two reference samples is closer than the other to the border separating beverage from nonbeverage, the test sample may in fact be ''more like'' one of them even though it is on the opposite side of that border. For example, imagine that on a scale of 1–100, the separation between beverage and nonbeverage occurs at 50. If the beverage reference is at 40 and the nonbeverage reference is at 75, a test sample at 55 will taste ''more like'' the beverage reference even though the sample is in fact nonbeverage.

Thirdly, the composition of the proposed panel would not be appropriate. As the example just given shows, it is important for the panel to understand the real difference between beverage and nonbeverage, not merely whether a sample is ''more like'' one or the other. This implies a panel with expertise, not just a panel of random individuals. Though not explicitly stated, it is implied that the proposed method would utilize randomly selected individuals. By contrast, the panelists used by ATF are all university-trained chemists, who receive a minimum of 1 year of special training at the ATF Laboratory before their vote is given full weight in drawback approval determinations. This ensures maximum consistency and continuity over time in application of the ''unfit for beverage use'' standard.

Because ATF uses expert panelists, it is not necessary to empanel a minimum of 15. In most cases, a panel of two is sufficient for a definitive determination. If a sample is at all borderline, additional panelists are recruited up to a maximum of 12. At least ⅔ of them must agree that the sample is unfit for beverage use. By this method, the eight chemists of the ATF Laboratory's Nonbeverage Section (aided when necessary by the eight chemists of the Beverage Alcohol Section) are able to examine about 2,400 samples per year. This is in addition to their other work, which includes chemical analyses and examination of thousands of formulas submitted without samples.

Therefore, although ATF appreciates the effort put into devising the proposed new method, we have concluded that it is in no way superior to the method currently being used.

Accordingly, § 17.134 is adopted by this final rule without change from Notice No. 748. ATF hopes that the information in this section will be used by manufacturers to identify and ''weed out'' products that are clearly fit for beverage use.

9. Finally, a commenter requested that ATF publish, in § 17.137, a list of ingredients and their quantities that are recognized by the ATF Laboratory as usually sufficient to make products unfit for beverage use. The commenter was referring to the following *Guidelines,* which were distributed to attendees at an ATF-sponsored industry seminar:

Ingredient	Amount
Citric Acid	If ethanol less than 30%, acid = 0.1 × ethanol content (% v/v) + 0.5. If ethanol greater than 30%, acid = 0.1 × ethanol content (% v/v).
Salt	3.2 grams salt per 100 ml at 45% ethanol (more for greater ethanol).
Vanillin	1 oz. per gallon at 30% ethanol.
Ethyl Vanillin	0.4 oz. per gallon at 30% ethanol.

Ingredient	Amount
Propylene Glycol	Equal amounts by volume of propylene glycol and ethanol.
Ethyl Acetate	2.0% by volume at 90% ethanol.
Maltol	5% at 90% ethanol.
Essential Oils	Most are unfit at a level of 3% in 90% ethanol. An exception is anise oil which needs 4.2%. Many 1% solutions of essential oils are unfit.
Benzaldehyde	1.2 oz. benzaldehyde or bitter almond oil per gallon at 90% ethanol.

ATF agrees that this information should be widely distributed among nonbeverage industry members; however, the problem with publishing it in the regulations is that it can only be a guide, not applicable to all products. If it were contained in regulations, industry members would tend to assume that if their products met the guidelines, they would automatically be approved for drawback. No such guarantee can be provided. (For example, products meeting the citric acid guidelines may nonetheless be fit for beverage use if they contain sufficient sugar.) Therefore, ATF has decided to publish this information as a future Industry Circular, rather than as an amendment to the regulations.

Other Changes From Former Regulations

Other changes, proposed in Notice No. 748, were not the subject of public comment. Except as noted, they have been adopted substantially as proposed.

1. *Adoption of Rulings.* The holdings of certain Revenue Rulings and ATF Rulings are reflected in the final regulations, as follows: Rev. Rul. 55–689, 1955–2 CB 729 (§ 17.187); Rev. Rul. 56–239, 1956–1 CB 715 (§ 17.135); Rev. Rul. 56–314, 1956–2 CB 1023 (§ 17.137); Rev. Rul. 56–335, 1956–2 CB 1024 (§ 17.181); Rev Rul. 56–336, 1956–2 CB 1023 (§ 17.182); Rev. Rul. 56–367, 1956–2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56–394, 1956–2 CB 1021 (§ 17.152(c)); Rev. Rul. 56–395, 1956–2 CB 1025 (§ 17.186); Rev. Rul. 58–350, 1958–2 CB 974 (§ 17.136); Rev. Rul. 63–87, 1963–1 CB 384 (§§ 17.11: new definition of ''food products,'' and 17.133(d)); Rev. Rul. 69–138, 1969–1 CB 327 (§§ 17.126(b) and 17.152(a), (c), and (d)); ATF Rul. 73–1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74–2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76–17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76–19, 1976 ATF CB 86 (§§ 17.169 and 17.185(b)); ATF Rul. 77–27, 1977 ATF CB 165 (§ 17.122); and ATF Rul. 82–7, 1982–2 QB 46 (§ 17.11: new definition of ''medicines'').

Rev. Rul. 57–369, 1957–2 CB 948, has been adopted in the instructions to the revised ATF Form 5154.1 (formerly Form 1678). Rev. Rul. 58–317, 1958–1 CB 586, is not reflected in the regulations; it is obsolete since isoalcoholic elixir has been removed from the National Formulary. Rev. Rul. 58–428, 1958–2 CB 975, is also not reflected in the regulations, because the repeal of 26 U.S.C. 5082 has removed its authority. The holding of ATF Rul. 81–8, 1981–4 QB 24, has been modified in § 17.183 (see discussion above, under ''Public Comments on Notice No. 634''). Revenue Procedure 64–32, 1964–2 CB 951, has been replaced by the new supporting data form (ATF Form 5154.2), per § 17.147.

2. *Form number changes.* The prescribed form entitled ''Formula and Process for Nonbeverage Products'' has been revised and renumbered from 1678 to 5154.1. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the ''Bond for Drawback Under 26 U.S.C. 5131'' is being changed from 1730 to 5154.3, but this will not require resubmission of any bonds previously approved.

3. *Alternate methods or procedures.* A new section (§ 17.3) has been added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of the conditions stated in the regulation.

4. *Incorporation by reference.* Former § 197.3 is not included in this final rule, because consultation with the Office of the Federal Register indicated that the use of the National Formulary, United States Pharmacopeia, and Homeopathic Pharmacopoeia of the United States does not amount to an incorporation by reference. Although § 17.132 makes a ''reference'' to these books, there is no ''incorporation'' of them into the regulations. There is merely an authorization, for manufacturers who so choose, to utilize formulas from them as approved formulas without the necessity of submitting ATF Form 5154.1.

Incorporation by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a)(1) is intended to be a substitute for the reprinting of material required to be published in the Federal Register under § 552(a)(1)(A)–(E). However, the authorization for manufacturers to make use of the N.F., U.S.P., and H.P.U.S. on a voluntary basis does not entail a requirement for ATF to publish the contents of those books in the Federal Register. It is true that a manufacturer who has chosen to adopt a formula from the N.F., U.S.P., or H.P.U.S. may be subject to a $1,000 fine if he subsequently fails to follow it (§ 17.148). However, the enforcement of this requirement does not require publication of that formula, any more than similar enforcement of the manufacturer's own proprietary formulas requires their publication. The enforcement in each instance pertains to the manufacturer's choice of a formula, rather than to the contents of the N.F., U.S.P., and H.P.U.S. *per se.*

5. *Signature authority.* Section 17.6, generalized from certain provisions in former §§ 197.30 and 197.67(a), states the rule as to when evidence of signature authority is required.

6. *Delegations of authority.* Authorities vested in the Director by part 17 may be delegated, through delegation orders, to subordinate officials. This possibility is reflected in the definition of ''Director'' in § 17.11 by addition of the words ''or his or her delegate.'' ATF's Alcohol and Tobacco Laboratory is specified in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136 as the recipient of certain documents, such as formulas. Accordingly, a new definition of ''Alcohol and Tobacco Laboratory,'' giving its address, is provided in § 17.11.

7. *New and modified definitions.* For clarity, some new definitions are added in § 17.11. Besides those mentioned elsewhere in this preamble, there are new definitions of ''approved,'' ''CFR,'' ''month,'' ''person,'' ''proof gallon,'' ''quarter,'' ''recovered spirits,'' and ''this chapter.'' With respect to the definitions of ''month'' and ''quarter,'' claimants desiring to use slightly different time periods may apply under § 17.3. (Existing approvals remain in effect.) The definitions of ''director of the service center,'' ''district director'' (an I.R.S. official), ''total annual withdrawals,'' and ''year'' in former § 197.5 have been deleted as unnecessary. The definitions of ''used'' and ''time distilled spirits are used'' are in regulations §§ 17.151 and 17.152. The

definition of ''nonbeverage products'' in § 17.11 has been modified to reflect the addition of perfume to the list of products that may be approved for drawback. (Pub. L. 103–465, Sec. 136(a).) Elsewhere in this final rule, wherever the types of nonbeverage products are listed, this addition of perfume is reflected as well. ATF is in the process of delegating authority under its new organizational structure; however, this process is not yet complete; therefore, the definition of ''regional director (compliance)'' and the use of that term throughout this final rule are retained.

8. *Time for payment of special tax.* A sentence has been added in § 17.24 to clarify when a payment of special tax is considered late. Under 26 U.S.C. 5131, special tax is a prerequisite for drawback eligibility. Therefore, no penalty under 26 U.S.C. 5134(c) will be imposed as long as special tax is paid before completion of final action on the claim.

9. *Retention of special tax stamps.* Former regulations did not specify a retention period for special tax stamps. These final regulations (§ 17.55) make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which was 2 years under former § 197.28, has also been made the same as for other documents (§ 17.31).

10. *Reincorporation.* A new § 17.77 has been added, stating that when an existing corporation or corporations are reorganized into a new corporation, a new special tax must be paid. This new section is similar to regulations for liquor dealers in § 194.163. Although § 17.77 states the general rule, there may be exceptions. For instance, ATF has ruled that a reorganization under 26 U.S.C. 368(a)(1)(F), consisting of a mere change in identity, form, or place of organization of one corporation, however effected, does not require a new special tax. If there is a question as to whether a new special tax is required, the ATF Tax Processing Center, (513) 684–6580, should be consulted.

11. *Amount of bond for monthly claims.* The wording of former § 197.107 allowed for the possibility that the amount (or ''penal sum'') of a bond might be reduced due to frequent on-site inspections. This concept has become obsolete, since today no claimant is regularly inspected as frequently as quarterly. Therefore, under these final regulations (§ 17.102), bonds for monthly claims must cover the total drawback claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

12. *Time for filing formulas.* Language in former § 197.95, respecting time for filing formulas, has been revised in § 17.121(b) to express more clearly the statutory requirement of 26 U.S.C. 5131–5134. Both formula and claim must be filed within ''6 months next succeeding the quarter in which the distilled spirits covered by the claim were used'' (26 U.S.C. 5134(b)). However, if there is any doubt about a product's eligibility for drawback, it is *preferable* that the formula be filed and approved before commencement of manufacture.

13. *Formulas for use at multiple plants.* The revised formula form (ATF F 5154.1) permits a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula will be used are listed on the form. This change is reflected in § 17.121(c).

14. *Adoption of predecessor's formulas.* Former § 197.99 allowed the adoption of a predecessor's formulas (for continued use at the same plant, when its ownership changes) by filing a notice listing the formulas' serial numbers, names, and dates of approval. This final rule (§ 17.125(a)) only requires the notice of adoption to list the names and serial numbers. The notice must be filed with the regional director (compliance). Further, since copies of the articles of incorporation or other documents are necessary to prove the change of ownership, a sentence has been added to include this general requirement.

15. Adoption of manufacturer's own formulas from another plant. Adoption of a company's own formulas for use at another of its plants, including adoption by a parent company of formulas of its wholly owned subsidiary, and vice versa, is a new option provided by this final rule. (See § 17.125(b).) Previous regulations did not provide for this. The procedure for this type of adoption is to submit a letterhead notice to the ATF Laboratory, accompanied by two photocopies of the formula to be adopted and some evidence of the relationship between the plants. After verifying the formulas, the ATF Laboratory will forward the notice to the regional director (compliance). The adopting plant is also required to reference the notice in its first claim relating to the adopted formula(s).

16. *Formulas for intermediate products.* ATF needs to know all ingredients that will enter into the finished nonbeverage product. Therefore, these final regulations (§ 17.126) require the submission of formulas on ATF Form 5154.1 (formerly 1678) for intermediate products, *unless* the formula for an intermediate product is written as part of the approved formula for the nonbeverage product(s) in which the intermediate product will be used. (If the formula for the intermediate product is written as part of the nonbeverage product's formula, the intermediate product is treated as an unfinished nonbeverage product; see discussion below.)

17. *Self-manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products.* Spirits consumed in the manufacture of intermediate products are not subject to drawback, both under former regulations (§ 197.119) and this final rule (§ 17.155). If spirits are recovered in the manufacture of intermediate products, drawback may be claimed, but only if and when the spirits are subsequently reused in the manufacture of a nonbeverage product (§ 197.118 in former regulations and § 17.153(a) in this final rule). These restrictions are necessary for protection of the revenue, because when spirits are consumed or recovered in the manufacture of an intermediate product, it could be difficult or impossible to correlate the quantity of such spirits with the production of a batch of finished nonbeverage product in which the intermediate was used.

However, in some instances, the manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product. The inability to claim drawback on such spirits would be a hardship. Therefore, manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former intermediate product is regarded instead as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture are regarded as consumed (or recovered) in the manufacture of a nonbeverage product and are subject to drawback. This procedure protects the Federal revenue, because each batch of unfinished nonbeverage product is restricted to use in a specific batch of a predetermined finished product and must be so used within the time period specified in the approved nonbeverage product's formula.

Although this procedure was available under former regulations, many manufacturers were not aware of it, because it was not described in the

regulations. In order to inform manufacturers of this procedure, it is described in §§ 17.127 and 17.185 of these final regulations. Manufacturers are given the option to designate their self-manufactured alcoholic ingredients as either intermediate products or unfinished nonbeverage products. There are advantages and disadvantages that go with each choice.

The advantage of designating an ingredient as an unfinished nonbeverage product is that spirits recovered or consumed in the manufacture of the ingredient are subject to drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation are: (1) Each batch of the ingredient must be used within a limited time in a single batch of a predetermined nonbeverage product. (2) The ingredient cannot be transferred to another plant under § 17.185(b). (This restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an intermediate product are: (1) Several batches may be accumulated, stored indefinitely, and used in the manufacture of *any* nonbeverage product whose formula calls for their use. Less (or more) than a full batch of such a product may be used to produce a batch of a finished nonbeverage product. (2) Ingredients designated as intermediate products may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185. (3) For manufacturers who already have intermediate product formulas on file, another advantage of the ''intermediate product'' designation is that no new formula or procedural changes would be required. But the disadvantage of that designation is that spirits consumed or recovered in production of the intermediate product may not be claimed for drawback.

18. *Subpart U of 27 CFR part 170.* Subpart U of 27 CFR part 170, which provided exemptions from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use, is being revoked, but the material from that subpart has not been entirely eliminated. Material related exclusively to drawback manufacturers has been incorporated in the new part 17. Some material has been eliminated, either as unnecessary or as covered by other regulations. The remaining material has been relocated into subpart D of part 19 (see new § 19.58; this section is grouped under a new centerheading, ''Activities Not Subject to this Part,'' along with former § 19.69, which is redesignated as § 19.57). Conforming amendments have also been made in 27 CFR parts 70 and 194. Former § 170.613(a)(6) (''Salted wines'') was previously incorporated into 27 CFR 24.215 by T.D. ATF–299 (55 FR 24974). Sections in part 17 containing language from former subpart U of part 170 are: §§ 17.132, 17.133, and 17.168.

19. *Submission of quantitative formulas.* This change strengthens requirements respecting submission of formulas for nonbeverage drawback products. Regulations allow formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), and the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) to be used without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. At present, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas are not adequate for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, § 17.132 in this final rule is worded so that ATF may require submission of quantitative formulas on ATF Form 5154.1 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. It is expected that the list of preparations for which approval of quantitative formulas will be required under this regulation will be published as an ATF ruling in the ATF Bulletin.

20. *Drawback status of U.S.P., N.F., and H.P.U.S. preparations.* Preparations listed in the U.S.P., N.F., and H.P.U.S. are generally exempt from the requirement to file quantitative formulas (former § 197.96; § 17.132 in this final rule), but this exemption does not necessarily entail approval for drawback. The statutory standard of ''unfit for beverage purposes'' remains and must be enforced (26 U.S.C. 5131(a)).

Former regulations in part 197 were silent concerning the drawback status of U.S.P., N.F., and H.P.U.S. products. However, this issue should be addressed, so that manufacturers may properly plan. Therefore, § 17.132 in this final rule states that formulas listed in the U.S.P., N.F. and H.P.U.S. are approved for drawback *except* as otherwise provided by regulation or ATF ruling. Alcohol, U.S.P. (including dehydrated alcohol and dehydrated alcohol injection), alcohol and dextrose injection, U.S.P., and tincture of ginger, H.P.U.S., are specifically declared in this regulation to be fit for beverage use.

Similarly, H.P.U.S. preparations made at dilutions higher than ''4X'' (i.e. one part in 10,000) are presumed to be fit for beverage use. Manufacturers of such products may contest this presumption by submitting appropriate evidence that a specific product is unfit for beverage use. The reason for the initial presumption is that the ATF Laboratory has determined that even for H.P.U.S. products containing certain poisonous materials, dilutions of greater than ''4X'' are fit for beverage use. ATF neither confirms nor disputes the medicinal value of such products, but the dilution one part of active ingredients in 10,000 parts or more of alcohol and water has been found to result in a product that would be suitable for consumption as a beverage. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than ''4X.'' These final regulations reflect this position in § 17.132(b).

21. *Liquor-filled candies.* Paragraph (c) of § 17.133 states ATF's longstanding policy that candies with alcoholic fillings may be regarded as nonbeverage products only if the fillings meet the requirements for alcoholic sauces, as stated in § 17.133(a). Since some States may prohibit or restrict the manufacture or sale of liquor-filled candies, a sentence in the introductory text of § 17.133 cautions applicants that formula approval does not authorize violation of State law.

22. *Use or sale of products for beverage purposes.* The last sentence of § 17.134 (adapted from former §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

23. *Manufacturers who are also users of denatured alcohol.* Since no tax is paid on denatured spirits, it would be conducive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol

on which drawback may be claimed. Section 17.135(a) prohibits this practice.

24. *Claims for credit by manufacturers of nonbeverage products.* Drawback manufacturers who also operate a distilled spirits plant may find it more convenient to claim nonbeverage drawback in the form of a credit to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, § 17.142(b) permits such a procedure.

25. *Changes in supporting data requirements.* Under the regulations published in this document, the supporting data required to accompany claims has been simplified. The new supporting data is described by ATF Form 5154.2, which is authorized by these regulations. Use of this Government form is not mandatory; § 17.147 permits the use of any alternative format that clearly shows all the required information.

The new supporting data has eliminated material that is not necessary to the processing of drawback claims. Former Part II (''Distilled Spirits Received'') is gone. So is former Part V (''Intermediate Products Account'') except for the totals in column (i), which are incorporated into the Distilled Spirits Account. Part III has been shortened from 16 columns to 8, and is redesignated as ''Production of Nonbeverage Products.'' Most of the simplification in Part III results from elimination of detailed information on use of specific finished products. Use of eligible spirits will be reported in three columns (''Kind,'' ''Drawback Rate,'' and ''Amount''), and use of ineligible spirits will not be reported, except for recovered spirits.

Information no longer reported in the supporting data must still be recorded in the manufacturer's records, as prescribed in subpart H of part 17. The regional director (compliance) is authorized, under §§ 17.147(a) and 17.123, to require additional supporting data if necessary in a particular case.

Some new information has been added to the supporting data. Information about the place of origin of Puerto Rican and Virgin Islands spirits and other imported rum is required, because ATF needs this information in order to implement the Caribbean Basin Economic Recovery Act (Pub. L. 98–67, Title II). Separate reporting is required for spirits taxpaid at different effective tax rates through application of the wine and flavor tax credit of 26 U.S.C. 5010, because such spirits are subject to drawback at different rates. (The drawback rate is $1.00 less than the rate at which distilled spirits tax was paid, as provided in 26 U.S.C. 5134.)

26. *Public Law 98–369.* This document reflects certain changes made by Public Law 98–369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d), relating to obliteration of marks, and (2) imposition of a $1,000 penalty for nonfraudulent violations of drawback law and regulations, unless the manufacturer establishes reasonable cause for a violation. Sections affected are: §§ 17.148 and 17.184.

With respect to the $1,000 penalty, the statute requires that the penalty be imposed ''for each failure to comply'' with law or regulations. This means that a separate penalty can be imposed for each product listed on a claim. For example, if several products were not manufactured according to formula, but were still unfit for beverage use, a $1,000 penalty could be imposed for each nonconforming product. If the amount claimed on any such product is less than $1,000, the penalty is limited to the amount claimed.

Recordkeeping violations can also result in imposition of a penalty for each separate product. However, if the violations are so serious that they prevent the manufacturer from establishing either the unfitness of a product for beverage use or the quantity of the product that was made, then the penalty provision would not apply. Each claim must be considered on its own merits, and the burden of proving entitlement to drawback is always on the manufacturer. If this burden is not met with respect to any product, the claim for drawback relating to that product would be denied.

The preceding comments also apply to products manufactured without submission of a formula. If the manufacturer can sustain the burden of proof, the claim would be approved subject to the penalty. However, without a formula, it is unlikely that this burden could be sustained other than by examination of batch records. ATF is not obliged to send an inspector to examine batch records when a manufacturer refuses to comply with the requirement to submit a formula.

With respect to timely filing, a late-filed claim or formula counts as just one ''failure to comply.'' So if the only noncompliance is lateness in filing a claim, the maximum penalty would be $1,000. Late-filed formulas result in a separate penalty for each late formula. Special tax paid subsequent to final action on a claim also results in a $1,000 penalty. It should be noted that in no case will a claim be paid more than 6 years after the quarter in which the products were manufactured, due to the statute of limitations of 28 U.S.C. 2401.

Finally, the penalty provision does not apply in a case of fraud. Fraud is considered to be a deliberate violation with intent to deceive. If there is fraud, the entire claim will be denied, and the manufacturer may be subject to other civil and criminal penalties as well.

27. *Changes in recordkeeping requirements.* Items deleted from the supporting data have been incorporated into the records required by subpart H of part 17 to be maintained at each nonbeverage premises. Certain formerly required records that are duplicative of the information provided by the supporting data have been deleted from subpart H. The holding of Industry Circular 79–5 with respect to records of raw materials and finished products has been clarified and incorporated in the regulations (see §§ 17.164 and 17.165). An amendment to § 19.780, specifying that the record required by that section must show the contents of each container, will facilitate the use of that record by nonbeverage manufacturers in complying with § 17.162 in instances where a shipment consists of non-uniform containers.

28. *Gains in spirits received or on hand.* This final rule requires gains in spirits received, as disclosed by the receiving gauge, and gains in spirits on hand, as disclosed by physical inventory, to be deducted from the claim covering the period in which the gain occurs. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (untaxpaid) spirits or an excessive claim in a previous period. Regulations stating this requirement are in §§ 17.147(d), 17.162(d), and 17.167(a).

With respect to spirits received, § 17.162(d) sometimes allows a gain to be avoided by recording the shipping plant's taxpayment gauge as the quantity received. For spirits received in a tank car or tank truck, this is only allowed when the drawback manufacturer's receiving gauge is within 0.2% of the taxpayment gauge. (This duplicates § 197.130a(a) in former regulations.) If the taxpayment gauge was inaccurate within the 0.2% limitation, the discrepancy will tend to resolve itself as a gain or loss on the drawback manufacturer's next physical inventory.

If the gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by *more* than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received. This rule is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. Under § 17.162(d), any gain disclosed in such

circumstances must be immediately recorded as such and deducted from the manufacturer's next claim.

29. *Evidence of taxpayment.* A new provision in § 17.163 requires manufacturers to obtain commercial invoices or other documentation when spirits are purchased from wholesale and retail liquor dealers. This new requirement will help provide evidence of taxpayment of the spirits.

In addition, § 17.163 requires all manufacturers to obtain evidence of the effective tax rate paid on spirits other than alcohol, grain spirits, neutral spirits, distilled gin, and straight whisky. Spirits other than those kinds may contain wine and/or flavoring material that brings the effective tax rate below the normal distilled spirits rate ($13.50 per proof gallon). The effective tax rate is significant for nonbeverage drawback, because the drawback rate is $1 less than the rate at which tax was paid or determined (26 U.S.C. 5134(a)).

For shipments received from a distilled spirits plant, an effective tax rate below $13.50 per proof gallon must be noted on the record of shipment required by § 19.780 to be forwarded to the nonbeverage manufacturer. For spirits purchased from wholesale or retail liquor dealers, the drawback claimant must obtain the evidence of effective tax rate from the bottler, producer, or importer. If the required evidence is not obtained, drawback will only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

30. *Production (batch) records.* Under § 17.164, the production records for nonbeverage and intermediate products generally must be kept by batch. To enable an ATF officer to compare the ingredients used in each batch with the ingredients listed in the product's formula, the records must refer to ingredients by the same names as are used for them in the product's formula. Synonymous names may additionally be shown. Alcohol usage may be shown by weight or by volume, and the proof of the spirits must also be shown.

The alcohol content of nonbeverage products must be tested ''at representative intervals.'' This requirement is a variable, because the appropriate interval will vary to a great degree depending on the type of product and the frequency with which it is manufactured. The purpose of testing alcohol content is to verify the accuracy of the formula and to monitor compliance with it. If a manufacturer feels unsure of how frequently alcohol content should be tested to accomplish this purpose for a particular product, advice may be requested from ATF. Whenever the manufacturer does make a test, the results must be recorded in the production records.

31. *Specifications for physical inventories.* These final regulations (§ 17.167) specify that the ''on hand'' figures in the supporting data must be verified by physical inventories ''as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback.'' The words ''as of'' indicate that the inventory need not be taken exactly at the end of the quarter; but if it is taken at a slightly different time, the data must be worked backward or forward to the end of the quarterly period. The regulations also authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever such inventories are deemed necessary to ensure compliance with regulations.

32. *Recovered alcohol.* Recordkeeping requirements for recovered alcohol, formerly in § 170.617(c), are incorporated in new § 17.168. The regulations as proposed in Notice No. 748 did not provide for destruction of recovered alcohol, although permission for such destruction could be granted under § 17.3, subject to such recordkeeping and other conditions as the approving official might have deemed appropriate. Since the need for destruction of recovered alcohol is an eventuality that can be expected to occur from time to time, this final rule provides a standard procedure to replace the need for an application under § 17.3. Section 17.168 provides standard recordkeeping requirements and § 17.183 requires a notification, which will give ATF the option of witnessing the destruction.

33. *Records retention.* Section 17.170 (corresponding to former § 197.133) extends the records retention period from 2 years to 3 years, for consistency with other ATF regulations. This change will ensure the availability of records to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, § 17.170 contains a provision that permits the regional director (compliance) to require a longer records retention period, not to exceed an additional 3 years.

34. *Inspection of records.* In addition to the records specifically required by regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary of the Treasury) to inspect any records ''bearing upon the matters required to be alleged'' in drawback claims. This authority is reiterated in § 17.171.

In carrying out this authority, ATF will continue to protect proprietary information. For example, the production records in § 17.164 do not require greater detail as to ingredients than is shown on a product's formula. If some secret ingredients of a product are referred to in general terms, such as ''essential oils,'' on the formula, then the required production record for that product would only need to show the quantity of ''essential oils'' used in the production of each batch. The production record would not have to specify the secret ingredients. If unusual circumstances should require an ATF officer to examine other records, such as master formulas that do specify the secret ingredients, § 17.171 does not provide authority for copies of such formulas to be made without the consent of the proprietor. (However, such copies could be required by the Director or a regional director (compliance) under § 17.123.)

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information obtained in the course of his or her employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. ''Returns'' and ''return information'' in that section include drawback claims and the records and reports which support them.

35. *Discontinuance of business.* A requirement has been added, in § 17.187, for notification to ATF when a manufacturer permanently discontinues business. This will enable ATF to manage its files, and it is reasonable in view of the conditional exemption from basic permit and special (occupational) tax requirements for the sale of alcohol remaining on hand.

36. *Nonbeverage products from Puerto Rico and the Virgin Islands.* Amendments to 27 CFR 250.173 and 250.309 allow use of the new supporting data form (ATF F 5154.2) and specify that claims and bonds shall be filed with the Chief, Puerto Rico Operations, for nonbeverage products brought into the U.S. from Puerto Rico and the Virgin Islands. Although Notice No. 748 only proposed to amend the place for filing drawback claims, the place for filing bonds should be amended as well, since bonds and claims are filed at the same

place. Other changes in part 250 are miscellaneous technical and conforming changes.

Distribution Table for Part 197

Former section	New section
Subpart A	
§ 197.1	§ 17.1.
§ 197.2	§ 17.2.
§ 197.3	Deleted.
Subpart B	
§ 197.5: (generally)	§ 17.11.
''Director of the Service Center''.	Deleted.
''District Director''	Deleted.
''Time distilled spirits used''.	§ 17.152(a).
''Total annual withdrawals''.	Deleted.
''Used''	§ 17.151.
''Year''	Deleted.
Subpart C	
§ 197.25	§ 17.21 & § 17.22.
§ 197.25a	§ 17.22.
§ 197.26	§ 17.23.
§ 197.27	§ 17.24.
§ 197.28	§ 17.31.
§ 197.29	§ 17.32.
§ 197.29a(a)	§ 17.41.
§ 197.29a(b)	§ 17.42.
§ 197.29a(c)	§ 17.43.
§ 197.30 (except last sentence).	§ 17.33.
§ 197.30 (last sentence).	Covered by § 17.6.
§ 197.31	§ 17.34.
Subpart D	
§ 197.40	§ 17.51.
§ 197.40a	§ 17.52.
§ 197.41	§ 17.54.
§ 197.42	§ 17.53.
§ 197.43	§ 17.61.
§ 197.46	§ 17.62.
§ 197.47	§ 17.63.
§ 197.47a	§ 17.55.
§ 197.48	§ 17.71.
§ 197.49	§ 17.72.
§ 197.50	§ 17.73.
§ 197.51	§ 17.74.
§ 197.52	§ 17.81.
§ 197.53	§ 17.82.
§ 197.54	§ 17.83.
§ 197.57	§ 17.91.
§ 197.58	§ 17.92.
§ 197.59	§ 17.93.
Subpart E	
§ 197.65	§ 17.101 (up to last sentence).
§ 197.66	§ 17.103.
§ 197.67	§§ 17.105, 17.6.
§ 197.68	§ 17.104.
§ 197.69	§ 17.106.
§ 197.70	§ 17.144 (2nd sentence).
§ 197.71	§ 17.101 (last sentence).
§ 197.72	§ 17.107.
§ 197.73	§ 17.108.
§ 197.75	§ 17.111.
§ 197.76	§ 17.112.
§ 197.77 (except last sentence).	§ 17.113.
§ 197.77 (last sentence).	Covered by § 17.108 (last sentence).
§ 197.79	Covered by § 17.111.
§ 197.80	§ 17.114.
Subpart F	
§ 197.95 (sentences 1–2, 6, 8–9).	§ 17.121.
§ 197.95 (sentences 3 & 4).	§ 17.131.
§ 197.95 (5th sentence).	§ 17.137.
§ 197.95 (7th sentence).	§ 17.122.
§ 197.95 (last sentence).	Deleted.
§ 197.96	§ 17.132(a).
§ 197.97	§ 17.123.
§ 197.98	§ 17.124.
§ 197.99	§ 17.125(a).
Subpart G	
§ 197.105	§ 17.141.
§ 197.106 (up to proviso).	§ 17.142(a).
§ 197.106 (proviso, except next-to-last sentence).	§ 17.143.
§ 197.106 (next-to-last sentence).	§ 17.146(b).
§ 197.107 (except first & last sentences).	§ 17.102.
§ 197.107 (first & last sentences).	§ 17.144 (first & last sentences).
§ 197.108	§ 17.145.
§ 197.109	§ 17.146(a).
§ 197.110	§ 17.147.
§ 197.111	New supporting data form.
§ 197.112–113	§ 17.162(a).
§ 197.114	§ 17.162(b).
§ 197.115	§ 17.147 & new supporting data form.
§ 197.116 (except last sentence).	New supporting data form.
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), & § 197.119 (2nd sentence).	§ 17.167(a).
§ 197.117 (first sentence).	New supporting data form.
§ 197.117 (3rd & 4th sentences).	§ 17.153(b).
§ 197.117 (last sentence).	§ 17.153(c).
§ 197.118 (first sentence).	New supporting data form.
§ 197.118 (last sentence).	§ 17.153(a).
§ 197.119 (first sentence).	Deleted; covered by new supporting data form and § 17.164(b).
§ 197.119 (last sentence).	§ 17.155.
Subpart H	
§ 197.130 (introduction).	§ 17.161 (first sentence).
§ 197.130(a)–(d)	Covered by § 17.162(a)–(c).
§ 197.130(e)–(g)	§ 17.164(b).
§ 197.130(h)–(j)	§ 17.166(a).
§ 197.130a(a)	§ 17.162(d).
§ 197.130a(b)	§ 17.164(d).
§ 197.130b	§ 17.163 (a) & (c).
§ 197.131	§ 17.166(c).
§ 197.132 (except last clause).	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause).	Covered by § 17.171.
§ 197.133 (except last sentence).	§ 17.170.
§ 197.133 (last sentence).	§ 17.171.

Derivation Table for Part 17

New section	Source
Subpart A	
§ 17.1	§ 197.1.
§ 17.2	§ 197.2.
§ 17.3	NEW.
§ 17.4	NEW.
§ 17.5	NEW.
§ 17.6	NEW (cf. §§ 197.30 and 197.67(a)).
Subpart B	
§ 17.11: (generally)	§ 197.5.
''Alcohol & Tobacco Laboratory''.	NEW.
''Approved''	NEW.
''CFR''	NEW.
''Eligible''	NEW.
''Food products''	Rev. Rul. 63–87.
''Medicines''	ATF Rul. 82–7.
''Month''	NEW.
''Person''	NEW.
''Proof gallon''	NEW.
''Quarter''	NEW.
''Recovered spirits''.	NEW.
''Subject to drawback''.	NEW.
''Taxpaid''	NEW.
''This chapter''	NEW.
Subpart C	
§ 17.21	§ 197.25.
§ 17.22	§ 197.25a.
§ 17.23	§ 197.26.
§ 17.24	§ 197.27.
§ 17.31	§ 197.28.
§ 17.32	§ 197.29.
§ 17.33	§ 197.30.
§ 17.34	§ 197.31.
§ 17.41	§ 197.29a(a).
§ 17.42	§ 197.29a(b).
§ 17.43	§ 197.29a(c).
Subpart D	
§ 17.51	§ 197.40.
§ 17.52	§ 197.40a.

Derivation Table for Part 17— Continued

New section	Source
§ 17.53	§ 197.42.
§ 17.54	§ 197.41.
§ 17.55	§ 197.47a.
§ 17.61	§ 197.43.
§ 17.62	§ 197.46.
§ 17.63	§ 197.47.
§ 17.71	§ 197.48.
§ 17.72	§ 197.49.
§ 17.73	§ 197.50.
§ 17.74	§ 197.51.
§ 17.75	NEW.
§ 17.76	ATF Rul. 74–2.
§ 17.77	NEW.
§ 17.81	§ 197.52.
§ 17.82	§ 197.53.
§ 17.83	§ 197.54.
§ 17.91	§ 197.57.
§ 17.92	§ 197.58.
§ 17.93	§ 197.59.
Subpart E	
§ 17.101	§§ 197.65 & 197.71.
§ 17.102	§ 197.107 (except first & last sentences).
§ 17.103	§ 197.66.
§ 17.104	§ 197.68.
§ 17.105	§ 197.67.
§ 17.106	§ 197.69.
§ 17.107	§ 197.72.
§ 17.108	§ 197.73.
§ 17.111	§§ 197.75 & 197.79.
§ 17.112	§ 197.76.
§ 17.113	§ 197.77.
§ 17.114	§ 197.80.
Subpart F	
§ 17.121	§ 197.95 (sentences 1–2, 6, 8–9).
§ 17.122	§ 197.95 (7th sentence) & ATF Rul. 77–27.
§ 17.123	§ 197.97.
§ 17.124	§ 197.98.
§ 17.125(a)	§ 197.99.
§ 17.125(b)	NEW.
§ 17.126(a)	NEW.
§ 17.126(b)	Rev. Rul. 69–138.
§ 17.127	NEW.
§ 17.131	§ 197.95 (3rd & 4th sentences).
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a) (7)–(9), Rev. Rul. 63–87 & ATF Rul. 73–1.
§ 17.134	NEW.
§ 17.135	Rev. Ruls. 56–239 & 56–367.
§ 17.136	Rev. Rul. 58–350.
§ 17.137	§ 197.95 (5th sentence) & Rev. Rul. 56–314.
Subpart G	
§ 17.141	§ 197.105.
§ 17.142(a)	§ 197.106 (up to proviso) & ATF Order 1100.95A.
§ 17.142(b)	NEW.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence).

Derivation Table for Part 17— Continued

New section	Source
§ 17.144	§§ 197.70 & 197.107 (first & last sentence).
§ 17.145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) & 197.109.
§ 17.147(a)	§ 197.110.
§ 17.147(b)	§ 197.115 (last sentence).
§ 17.147 (c) & (d)	NEW.
§ 17.148	NEW.
§ 17.151	§ 197.11 (“Used”).
§ 17.152(a)	§ 197.11 (“Time distilled spirits are used”).
§ 17.152(b)	ATF Rul. 76–17.
§ 17.152(c)	Rev. Ruls. 56–394 & 69–138.
§ 17.152(d)	Rev. Rul. 69–138.
§ 17.153	§§ 197.117 (last three sentences) & 197.118 (last sentence).
§ 17.154	§ 197.11 (“Intermediate products”).
§ 17.155	§ 197.119 (last sentence).
Subpart H	
§ 17.161	§§ 197.130 (introduction) & 197.132 (except last clause).
§ 17.162(a)	§§ 197.112–113 & 197.130 (a)–(d).
§ 17.162(b)	§§ 197.114 & 197.130 (a)–(d).
§ 17.162(c)	NEW.
§ 17.162(d)	§ 197.130a(a).
§ 17.163 (a) & (c)	§ 197.130b.
§ 17.163(b)	NEW.
§ 17.164	§§ 197.130 (e)–(g) & 197.130a(b).
§ 17.165	Industry Circular 79–5.
§ 17.166(a)	§ 197.130 (h)–(j).
§ 17.166(b)	NEW.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116–119.
§ 17.167(b)	Industry Circular 79–5.
§ 17.168	§ 170.617(c).
§ 17.169	NEW.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197.133 (last sentence) & Industry Circular 79–5.
Subpart I	
§ 17.181	Rev. Rul. 56–335.
§ 17.182	Rev. Rul. 56–336.
§ 17.183	ATF Rul. 81–8 (modified).
§ 17.184	NEW.
§ 17.185 (a) & (c)	NEW.
§ 17.185(b)	ATF Rul. 76–19.
§ 17.186	Rev. Rul. 56–395.

Derivation Table for Part 17— Continued

New section	Source
§ 17.187	Rev. Rul. 55–689.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this final regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and approved under control numbers 1512–0078, 1512–0079, 1512–0095, 1512–0141, 1512–0188, 1512–0378, 1512–0379, 1512–0472, 1512–0492, 1512–0500, and 1512–0514. The likely respondents and recordkeepers are businesses or other for-profit institutions, including small businesses or organizations.

The collection of information under control number 1512–0078 is in § 17.106. This information is required by ATF to obtain the surety’s agreement to any changes in the terms of bonds. The collections of information under control number 1512–0079 are in §§ 17.6 and 17.105. This information is required when agents obtain authority to sign official documents on behalf of the principal.

The collections of information under control number 1512–0095 are in §§ 17.121, 17.126, 17.127, 17.132, and 17.136. This information is required by ATF to describe the formulas for nonbeverage and intermediate products. The information is used to ensure that drawback products meet the statutory requirements for approval as being medicines, medicinal preparations, food

products, flavors, flavoring extracts, or perfume that are unfit for beverage use.

The collections of information under control number 1512–0141 are in §§ 17.92, 17.93, 17.142, 17.145, and 17.146. The information on this claim form must be submitted to ATF by manufacturers claiming nonbeverage drawback or refund of special (occupational) tax. The information is used to determine whether the claim is valid.

The collection of information under control number 1512–0188 is in § 17.6. The information on this form provides ATF with notification of corporate officials authorized to sign documents on behalf of the corporation.

The collections of information under control number 1512–0378 are in §§ 17.3, 17.54, 17.111, 17.112, 17.122–17.125, 17.143, 17.168(a), 17.183, and 17.187. This control number covers miscellaneous information required by ATF on an irregular basis to ensure compliance with law and regulations or to grant permission for the use of optional procedures.

The collections of information under control number 1512–0379 are in §§ 17.161–17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186. This information is required to support claims for drawback. The records kept by manufacturers at their plants are used by ATF inspectors conducting on-site inspections.

The collections of information under control number 1512–0472 are in §§ 17.31–17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74. The information on this special tax return is required when paying special (occupational) tax. The collections of information under control number 1512–0492 are in §§ 17.42, 17.43, 17.52, and 17.55. This control number pertains to records associated with the preparation and filing of the special tax return. The collections of information under control number 1512–0500 are in §§ 17.31–17.34, 17.41, and 17.53. This requirement is the same special tax return covered by control number 1512–0472, except that the form is modified (simplified) for use by renewal taxpayers.

The collection of information under control number 1512–0514 is in §§ 17.147 and 17.182. This collection of information consists of supporting data required to accompany claims for drawback. The supporting data submitted to ATF is used to make a preliminary verification of claims before they are paid.

The estimated total number of respondents and recordkeepers affected by these collections of information is 611. The estimated average annual burden is approximately 36 hours per respondent or recordkeeper. (This figure represents the additional time that would be required, beyond what a manufacturer would customarily spend on recordkeeping in the ordinary course of his business.) Comments on these collections of information, including comments relating to the accuracy of the burden estimate and suggestions for reducing this burden, were requested by Notices No. 634 and 748. Public comments pertaining to the collections of information prescribed by this final rule are discussed above, under the headings ''Public Comments on Notice No. 634'' and ''Public Comments on Notice No. 748.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this final rule. A final regulatory flexibility analysis has been prepared and reads as follows:

I. Rationale for Agency Action

The law (26 U.S.C. 5131–5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (A) Was actually used, (B) was used in the manufacture of the particular products for which drawback is authorized, and (C) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: to require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF), only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

II. Objective and Legal Basis for the Rule

A. *Objective basis.* The objective basis of these regulations is that a dual control system is used to verify the propriety of claims: Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report is checked every time; however, a sufficient number are checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. *Legal basis.* The legal basis of these regulations is found in 26 U.S.C. 5131–5134 and 7805. These laws give the Secretary of the Treasury broad discretion to promulgate regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120–01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. *Estimate of number of small entities affected and types.* It is estimated that this document will affect about 611 small entities which use taxpaid alcohol to manufacture nonbeverage products.

III. Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements

A. *Reporting requirements.* The most significant reporting requirements of this document pertain to the supporting data that is required to accompany each claim. The supporting data must include information regarding: the amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the

product in which used, the amount of alcohol recovered (if any), the amount of tax claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies disclosed by physical inventory. Other reports which are required less frequently include: Statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (as required by law in 26 U.S.C. 5131–5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry is helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping is needed to maintain the required accounts for submission.

B. *Recordkeeping requirements.* The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; otherwise, a claimant under investigation might falsely deny keeping the records, and if there were no requirement that the records be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: Copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and batch records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An elementary knowledge of bookkeeping is needed to prepare and record the prescribed accounts.

C. *Compliance requirements.* The compliance requirements of this regulation are: To retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restrictions for filing of claims (six months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered, except as provided by regulation. All classes of nonbeverage drawback manufacturers are affected by these requirements. No special skills are needed for compliance.

IV. Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service (IRS). The reason for this is that the IRS requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There is no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration (FDA) may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records will also satisfy the ATF requirement, due to the fact that these regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

V. Alternatives

A. *Multitiering.* This concept is not used, because the large majority of manufacturers of nonbeverage products are small entities. Consequently, the regulatory requirements have been specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. *Simplification of requirements.* The requirements as they are established are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5132.

C. *Performance standards.* This concept was utilized as much as possible. For example, an ATF form for ''supporting data'' reports is provided—but the format presented on that form is not required. (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and tax payments, mandate prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. *Exemption of small entities.* The law does not authorize exemption of any entity from the requirements.

VI. Issues Raised by Comments

No comments directed to the issues addressed in the Initial Regulatory Flexibility Analyses of Notices No. 634 and 748 have been received from the public or the Chief Counsel for Advocacy of the Small Business Administration.

Drafting Information

The principal drafter of this document was Steven C. Simon of the Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Parts 17 and 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Issuance

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

Paragraph A. Title 27 CFR part 17 is added to read as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

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Authority: 26 U.S.C. 5010, 5131-5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950.

§ 17.3 Alternate methods or procedures.

(a) *General.* The Director may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96–511.

(b) *OMB control number 1512–0078.* OMB control number 1512–0078 is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512–0095.* OMB control number 1512–0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512–0188.* OMB control number 1512–0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512–0378.* OMB control number 1512–0378 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1512–0379.* OMB control number 1512–0379 is assigned to the following sections in this part: §§ 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512–0492.* OMB control number 1512–0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512–0500.* OMB control number 1512–0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

(l) *OMB control number 1512–0514.* OMB control number 1512–0514 is assigned to the following sections in this part: §§ 17.147 and 17.182.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see part 250, subparts I and Ob, of this chapter.

§ 17.6 Signature authority.

No claim, bond, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office where the required document must be filed. The ATF officer with whom the claim or other required document is filed may, when he or she considers it necessary, require additional evidence of the authority of the agent or representative to execute the document. Except as otherwise provided by this part, powers of

attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, ATF Form 5100.1, Signing Authority for Corporate Officials, may be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms ''includes'' and ''including'' do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or *approved for drawback.* When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his or her delegate.

Distilled spirits, or *spirits.* That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Effective tax rate. The net tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or *eligible for drawback.* When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been ''filed'' when it is received by the office of the proper Government official; but if an item is mailed timely with postage prepaid, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products to which all three of the following conditions apply: they are made with taxpaid distilled spirits, they have been disapproved for drawback, and they are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. However, ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part, or his or her delegate.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become ''subject to drawback'' when they are used in the manufacture of a nonbeverage product. When spirits have become ''subject to drawback,'' they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

Tax year. The period from July l of one calendar year through June 30 of the following year.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.2l Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rate of special tax.

Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the claim.

Special Tax Returns

§ 17.31 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 609l, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 17.41–43).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class of special tax to which the taxpayer is subject.

(6) Ownership and control information: The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. ''Owner of the business'' shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as ''individual owner,'' ''member of partnership,'' or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

§ 17.34 Verification of returns.

ATF Forms 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

Employer Identification Number

§ 17.41 Requirement for employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS–4, Application for Employer Identification Number, filed by the taxpayer. Form SS–4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS–4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS–4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS–4.

The taxpayer shall prepare and file the application on IRS Form SS–4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated ''Manufacturer of Nonbeverage Products.'' This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by § 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall

examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated ''Amended Return,'' disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a ''Certificate in Lieu of Lost or Destroyed Special Tax Stamp.'' The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as ''Amended Return.'' This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Refund of Special Tax

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the Chief, Tax Processing Center, PO Box 145433, Cincinnati, OH 45203. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the Federal Register annually on the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR part 225.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, any consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, ''Superseding Bond.'' When

such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

(a) Bonds on ATF Form 5154.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(1) Pursuant to a notice by the surety as provided in § 17.112.

(2) Following approval of a superseding bond, as provided in § 17.108.

(3) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis.

(b) However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond ''canceled,'' followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in §§ 17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing.* Formulas shall be filed with the Alcohol and Tobacco Laboratory on ATF Form 5154.1, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering.* The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas.* One copy of each approved Form 5154.1 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Except as provided in this section, amended or revised formulas are considered to be new formulas and shall be numbered accordingly. Minor changes may be made to a current formula on ATF Form 5154.1 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5154.1 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

Any person claiming drawback under the regulations in this part may be required, at any time, to file a statement of process, in addition to that required by ATF Form 5154.1, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

Any person claiming drawback or submitting a formula for approval under the regulations in this part may be required, at any time, to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of

adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the regional director (compliance). The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5154.2) filed with the first claim relating to the adopted formula(s).

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5154.1 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5154.1 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from ''intermediate product'' to ''unfinished nonbeverage product'' (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5154.1. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5154.1.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5154.1 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by paragraph (b) of this section or by ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5154.1.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 (''4×'') are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5154.1 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces or syrups.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the

ingredients as shown on ATF Form 5154.1, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5154.1 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479–A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, provided—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; recovered S.D.A., with or without its original denaturants, shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5154.1 to the Alcohol and Tobacco Laboratory. This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved because it is fit for beverage use, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place of business. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file with the regional director (compliance) an executed bond on ATF Form 5154.3, conforming to the provisions of subpart E of this part. A

monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

(a) Whether the special tax has been paid.

(b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.

(c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under subpart F of this part. (If not, attach explanation.)

(e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5154.2 may be used without prior authorization, if the modified format clearly shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the regional director (compliance) may require additional supporting data when needed to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown, with separate totals for each effective tax rate. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains shall not be offset by known losses.

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of $1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause exists where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case is individually evaluated.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(b) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to the production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage

product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of each tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) *Distilled spirits received in bottles.* For distilled spirits received in bottles, the manufacturer shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the U.S. Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained with the commercial invoice (if

the latter is a separate document) as evidence of taxpayment of the spirits. The record shall show the effective tax rate(s) (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whisky (as defined in the standards of identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* The production record shall refer to ingredients by the same names as are used for them in the product's formula. This includes formulas submitted to ATF and formulas contained in the publications listed in § 17.132. Other names for the ingredients may be added in the production record, if necessary for the manufacturer's operations. Usage of ingredients (including spirits) may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the ''Gauging Manual,'' is available. See subpart E of part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

(1) The type of disposition;

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either contains less than 3 percent of distilled spirits by volume, or is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The ''on hand'' figures reported in Part II of ATF Form 5154.2 shall be verified by physical inventories taken as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback. Spirits taxpaid at different effective tax rates shall be inventoried separately. The inventory record shall show the date inventory was taken, the person(s) by whom it was taken, subtotals for each product inventoried, and any gains or losses disclosed; and shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5154.2) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by known losses. If no claim is filed for a quarter (nor for any monthly period therein), then no physical inventory is required for that quarter.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients

intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the regional director (compliance). Any apparatus used to separate alcohol is subject to the registration requirements of 26 U.S.C. 5179 and subpart C of part 170 of this chapter. Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(1) The date of recovery;

(2) The commodity or process from which the spirits were recovered;

(3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;

(4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;

(5) The commodity in which the recovered distilled spirits were reused; and

(6) The date of reuse.

(c) Whenever recovered spirits are destroyed (see § 17.183), the record shall further show—

(1) The reason for the destruction;

(2) The date, time, location, and manner of destruction;

(3) The number of proof gallons destroyed; and

(4) The name of the individual who accomplished or supervised the destruction.

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5154.1 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous claim period, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *Recovered alcohol.* Manufacturers of nonbeverage products shall not sell or transfer recovered spirits to any other premises without ATF authorization under § 17.3. If recovered spirits are stored pending reuse, storage facilities shall be adequate to protect the revenue. If recovered spirits are destroyed, the record required by § 17.168(c) must be kept. Spirits recovered from intermediate products may be destroyed without notice to ATF. Spirits recovered from nonbeverage products may be destroyed pursuant to a notice filed with the regional director (compliance) at least 12 days prior to the date of destruction. The notice shall state the reason for the destruction, the intended date of destruction, and the approximate quantity involved. The regional director (compliance) may impose specific conditions, including requiring that the destruction be witnessed by an ATF officer. Unless the manufacturer is otherwise advised by the regional director (compliance) before the date specified in the notice, the destruction may proceed as planned.

(b) *By-product material (general).* By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (c) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed

to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(c) *Spent vanilla beans.* Specific approval from the regional director (compliance) is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by Part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase ''separate and distinct entities'' includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5154.1. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as ''in process'' in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as an integral part of the production records for the related nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 19—[AMENDED]

Paragraph B. The regulations in 27 CFR part 19 are amended as follows:

1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Part 19, subpart D, is amended to add §§ 19.57–19.58 grouped under an undesignated center heading, to read as follows:

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Sec.

Activities Not Subject to This Part

19.57 Recovery and reuse of denatured spirits in manufacturing processes.

19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Activities Not Subject to This Part

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is

actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Exceptions; products classed as beverages.* Products specified under part 17 of this chapter as being fit for beverage use are alcoholic beverages. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also alcoholic beverages. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under paragraph (a) of this section is being used for beverage purposes, or for mixing with beverage spirits other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. (However, the provisions of this paragraph shall not prohibit such products, which are unfit for beverage use, from being used in small quantities for flavoring drinks at the time of serving for immediate consumption.) Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96–39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

3. Section 19.69 is removed.

4. Section 19.780(c) (4) and (5) are revised to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

* * * * *

(c) * * *

(4) Kind, proof, and quantity of distilled spirits in each container;

(5) Number of containers of each size;

* * * * *

PART 70—[AMENDED]

Paragraph C. The regulations in 27 CFR part 70 are amended as follows:

1. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

2. The concluding text of § 70.321(a) is amended to read as follows:

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register.* * * *

* * * * *

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 (Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

* * * * *

§ 70.411 [Amended]

3. Section 70.411 is amended by removing paragraphs (c)(2)(v) and (c)(2)(vii), redesignating existing paragraph (c)(2)(vi) as paragraph (c)(2)(v), and by adding a new paragraph (c)(2)(vi) to read as follows:

* * * * *

(c) * * *

(2) * * *

(vi) Floor stocks tax on alcoholic beverages and imported perfumes held for sale on January 1, 1991.

* * * * *

4. Section 70.411(c)(17) is amended by replacing the words ''Part 197'' with the words ''part 17''.

5. Section 70.414(j) is revised to read as follows:

§ 70.414 Preparation and filing of claims.

* * * * *

(j) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims for drawback of excise tax and claims for refund of special (occupational) tax, submitted by persons using distilled spirits in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes, are contained in part 17 of title 27 CFR.

* * * * *

PART 170—[AMENDED]

Paragraph D. The regulations in 27 CFR part 170 are amended as follows:

1. The authority citation for part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5101, 5102, 5179, 5291, 5301, 5362, 5601, 5615, 5687, 7805; 31 U.S.C. 9304, 9306.

§§ 170.611–170.618 Subpart U [Removed and reserved]

2. Subpart U is removed and reserved.

PART 194—[AMENDED]

Paragraph E. The regulations in 27 CFR part 194 are amended as follows:

1. The authority citation for part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

2. Section 194.33(b) is revised to read as follows:

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

* * * * *

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 194.191 [Amended]

3. Section 194.191(a) is amended by replacing the words ''Part 170'' with the words ''§ 19.58''.

PART 197—[REMOVED]

Paragraph F. Title 27 CFR part 197 is removed.

PART 250—[AMENDED]

Paragraph G. The regulations in 27 CFR part 250 are amended as follows:

1. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.11 [Amended]

2. The definition of ''Chief, Puerto Rico Operations'' in § 250.11 is amended by replacing the words ''Room 329'' with the words ''Room 659''.

3. The definition of ''Eligible article'' in § 250.11 is amended by replacing the words ''flavor or flavoring extract'' with the words ''flavor, flavoring extract or perfume''.

§ 250.51 [Amended]

4. Paragraph (a) of § 250.51 is amended by replacing the words ''part 197'' with the words ''part 17''.

5. Paragraph (c) of § 250.51 is amended by replacing the words ''5530.5 (1678)'' with the words ''5154.1 (formerly 1678)''.

§ 250.171 [Amended]

6. The second sentence of § 250.171 is amended by replacing the words ''part 197'' with the words ''part 17''.

7. Section 250.172 is revised to read as follows:

§ 250.172 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

8. In § 250.173, the first sentence of paragraph (a), the introductory text of paragraph (c), and the first sentence of paragraph (d) are revised to read as follows:

§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. * * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

§ 250.221 [Amended]

9. Paragraph (a) of § 250.221 is amended by replacing the words ''part 197'' with the words ''part 17''.

10. Paragraph (c) of § 250.221 is amended by replacing the words ''5530.5 (1678)'' with the words ''5154.1 (formerly 1678)''.

§ 250.307 [Amended]

11. The second sentence of § 250.307 is amended by replacing the words ''Part 197'', wherever they occur, with the words ''part 17''.

12. Section 250.308 is revised to read as follows:

§ 250.308 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

13. In § 250.309, the first sentence of paragraph (a), the introductory text of paragraph (c), paragraph (c)(1) in its entirety, and the first sentence of paragraph (d) are revised to read as follows:

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. * * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

Signed: April 5, 1996.

Bradley A. Buckles,

Acting Director.

Approved: May 9, 1996.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–14881 Filed 6–19–96; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

RIN 1218–AB53

Consolidation of Repetitive Provisions; Technical Amendments

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; technical amendments and recodifications.

SUMMARY: As part of a line-by-line review of its standards, the Occupational Safety and Health Administration (OSHA) is consolidating

repetitious provisions, removing duplicative pages, making corrections, and clarifying and reorganizing various sections of its standards in the Code of Federal Regulations (CFR). This action is being taken in response to a Presidential initiative begun in March 1995 to streamline Federal regulatory efforts. In addition, OSHA is removing certain fire protection standards from the Safety and Health Regulations for Construction that had inadvertently been identified as applicable to construction work. The document being published today does not make any changes to the substantive requirements of the standards.

EFFECTIVE DATE: June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1995, the President directed Federal agencies to undertake a line-by-line review of their rules and regulations to determine where they could be simplified or clarified. OSHA initiated such a review and, as a result, completed a document on May 31, 1995, entitled ''OSHA's Regulatory Reform Initiatives.'' That document delineated those rules and regulations that could be deleted or revised to improve compliance by employers and, consequently, provide enhanced occupational safety and health protection to employees. This regulatory improvement process involves revocation of outdated and obsolete provisions, consolidation of repetitious provisions, and clarification of ambiguous requirements.

The Agency began the process by issuing a final rule in the Federal Register on March 7, 1996 (61 FR 9228), which addressed minor clarifications, corrections, and technical amendments to OSHA standards. This notice is the second in a series of actions and is directed at consolidating repetitious provisions. More specifically, instead of repeating identical regulatory text in all three parts of the OSHA standards—general industry, shipyard employment, and construction standards (parts 1910, 1915, and 1926, respectively), OSHA will print the regulatory text that is common to all industries in its part 1910 volumes. OSHA has already accomplished this for its agricultural standards, which are codified in 29 CFR Part 1928, by publishing a Federal Register notice [61 FR 9228; March 7, 1996]. Appropriate references will be made in the construction and shipyard employment parts of the CFR to direct employers to the appropriate section of the part 1910 volumes.

To assist employers and employees in the construction industry who prefer to have a single source that includes all of the standards that apply to their work, OSHA will publish a booklet in the near future that will contain all of the standards applicable to the construction industry.

The Agency plans to undertake a number of additional regulatory reform initiatives. For example, OSHA is developing a proposed rule, which will be subject to public notice and comment, to make substantive changes in various standards to diminish regulatory burdens without reducing worker protections. OSHA also intends to take actions to reduce paperwork burdens, rewrite standards in ''plain English,'' and simplify its standards.

II. Summary and Explanation of the Changes

In 1993, OSHA revised its part 1915 (shipyard) and part 1926 (construction) standards in the Code of Federal Regulations (CFR) by adding to part 1915 and part 1926, respectively, those standards applicable to shipyards or construction that had formerly only been printed in part 1910 of the CFR. The added standards included their own part 1915 and part 1926 designations and duplicated all of the regulatory text. This nearly doubled the number of CFR pages in part 1926 and added many CFR pages to part 1915 (see 58 FR 35076; June 30, 1993, and 58 FR 35512; July 1, 1993). The majority of the standards that were duplicated were standards relating to occupational health hazards. Most of the general industry standards incorporated through this action had long been applied to construction and shipyard employments, with only a few exceptions.

OSHA has found that printing the identical rules in three separate parts of its rules and regulations unnecessarily lengthens the CFR. As it eliminates these duplications, OSHA will provide taxpayers with a cost savings by reducing the number of pages in its CFR parts.

Most of the changes being made occur in subpart Z of parts 1910, 1915 and 1926. For example, many of the occupational health standards in subpart Z of the general industry standards (part 1910) apply to both shipyard employment (part 1915) and the construction industry (part 1926). Rather than printing subpart Z standards that applied to more than one industry in one place, OSHA printed the same standards in each of the three parts of its CFR. This has caused confusion when, for example, a construction employer who has projects in construction and general industry has employees who are exposed to a given air contaminant that is regulated both in subpart Z of the construction standards (part 1926) and in subpart Z of the general industry standards (part 1910). In such a case, an employer could mistakenly believe that two different permissible exposure limits apply to the same contaminant, since subpart Z of the construction standards and subpart Z of the general industry standards (part 1910) both have a limit for the contaminant. In this document, OSHA is eliminating such duplicative standards and replacing them with cross references to eliminate any possible confusion and to reduce the volume of the rules.

OSHA is eliminating duplicate health standards from the shipyard (part 1915) and construction (part 1926) parts of the CFR and is replacing them with cross references to the identical text in subpart Z of part 1910. This action does not in any way change the burden on employers or lessen employee protection because the same standards will continue to apply to shipyard employment and the construction industry.

For example, the requirements to protect workers from arsenic exposure in shipyards and construction are identical to those applying to general industry. Consequently, the regulatory text in § 1915.1018, the arsenic standard applying to shipyards, and the requirements in § 1926.1118, the arsenic standard applying to construction, are identical to the regulatory text in § 1910.1018, the arsenic standard in general industry.

The technical amendments issued today will retain the section number and heading for the arsenic standard in the shipyard standards (§ 1915.1018, Inorganic arsenic) and in the construction standards (§ 1926.1118, Inorganic arsenic) to remind employers searching for them of their new location, but will replace the duplicated regulatory text with a simple cross reference stating, ''Note: The requirements applicable to construction work under this section are identical to those set forth at 29 CFR 1910.1018.''

Where a health standard in subpart Z of the general industry standards (1910) differs from the standard addressing the same hazard in shipyard employment or in the construction industry, the entire text of that health standard will remain

in the shipyard and construction standards. In other words, where OSHA has developed a health standard for shipyards or construction that differs substantially from the general industry standard for the same hazard, the industry-specific standard will remain in the part of the CFR devoted to that industry. For example, in the case of cadmium, the regulatory text differs for general industry and construction; therefore, the complete regulatory text is printed both at § 1910.1017 and at 1926.1127, i.e., in the general industry and construction parts, respectively. However, the shipyard standard for cadmium, § 1915.1017, is identical to the general industry cadmium standard, § 1910.1017. The duplicative regulatory text is being deleted from part 1915 and replaced with an appropriate cross reference to § 1910.1017. Similarly, appendices A to F of the standard are identical for all three parts. Therefore, the duplicative appendices are being deleted from part 1915 (shipyards) and part 1926 (construction). These actions avoid the need to reprint 185 duplicative CFR pages.

Another change being made involves moving two standards currently in subpart C of the general industry standards (part 1910) to subpart Z of those standards in an effort to locate virtually all of OSHA's health standards in one subpart and in one volume of the CFR. OSHA is redesignating § 1910.20 (Access to employee exposure and medical records) as § 1910.1020 and § 1910.96 (Ionizing radiation) as § 1910.1096. This will place virtually all of OSHA's general industry health standards in subpart Z of part 1910.

Another change applies to OSHA's Commercial Diving Standard, which is currently codified both in the general industry and the construction standards. OSHA has received requests from industry representatives to locate the diving standard in one location, preferably in part 1910 (general industry). Most diving contractors operate in all three industry areas (i.e., general industry, construction, and maritime), moving from one industry to another to perform their work. The Association of Diving Contractors (ADC) members and others, such as Seaward Marine Services, Inc., one of the largest diving companies in the Nation, have asked OSHA to maintain the requirements for commercial diving in part 1910 only. The diving industry reports that multiple diving standards are causing confusion in the issuance of diving contract specifications. The Diving Standards in Subpart Y of the construction standards are identical to the Diving Standards in Subpart T of the general industry standards. Rather than repeating the standards in both parts, OSHA is removing the regulatory text in its entirety from the construction standards and replacing that text with a cross reference to the Diving Standard in Subpart T of the general industry standards.

Also, in the shipyard employment standards, OSHA is redesignating § 1915.1120—Access to employee exposure and medical records, as § 1915.1020. The purpose of this change is, as much as possible, to keep the section number designations—in this case .1020—the same for each part if a standard addressing the same topic and having the same name is codified both in the general industry and shipyard standards. OSHA is unable to follow this numbering scheme in the case of the construction standards, however, because vacant section numbers are not available in the construction industry CFR volume.

In addition, in the 1993 recodification process described earlier, OSHA identified some provisions from its standards in Subpart L of Part 1910 *Fire Protection and Prevention* (§ 1910.156 to 1910.165) as applicable to the construction industry. However, on further examination, this was an incorrect identification because OSHA's general industry standards for Subpart L state at § 1910.155 *Scope, application and definitions applicable to this subpart:*

(b) Application. This subpart applies to all employments except for maritime, construction, and agriculture.

This final rule corrects this misidentification by removing the text of §§ 1926.97, 1926.98; 1926.150(c)(1)(xi) to (c)(1)(xiv); and 1926.156 through 1926.159, all of which were based on requirements in §§ 1910.156 to 1910.165.

Finally, as stated in the 1993 recodification, OSHA has made every effort to identify those standards published in part 1910, General Industry, which are most likely to be applicable to shipyard employment and construction work. OSHA notes, however, that other standards published in part 1910 may, under some circumstances, also be applicable.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended, requires that the Agency examine regulatory actions to determine if they would have a significant economic impact on a substantial number of small entities. The modifications being made in this final rule do not increase or reduce the regulatory burden on any employer, large or small. For that reason, the Agency hereby certifies that these changes will not have a significant economic impact on a substantial number of small entities.

IV. Exemption From Notice and Comment Procedures

OSHA finds that there is good cause not to follow procedures for public notice and comment set forth in section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655 (b)) or under section 4 of the Administrative Procedure Act (5 U.S.C. 553). Notice is unnecessary pursuant to 5 U.S.C. 553 (b)(3)(B) because these actions are technical amendments that do not affect the substantive requirements or coverage of the standards themselves. This removal of duplicative provisions and reorganization of standards within the CFR does not modify or revoke existing rights or obligations, nor does it establish new ones.

For the same reasons, OSHA also finds that, in accordance with 29 CFR 1911.5, good cause exists for dispensing with the public notice and comment procedures prescribed in section 6(b) of the Occupational Safety and Health Act.

OSHA also finds for the same reasons that there is good cause for an effective date of less than 30 days after publication pursuant to 5 U.S.C. 553(d) and because the June 30, 1996, effective date will permit these changes to be reflected in the 1996 volumes of 29 CFR.

List of Subjects

29 CFR Part 1910

Occupational safety and health.

29 CFR Part 1915

Longshore and harbor workers, Occupational safety and health, Vessels.

29 CFR Part 1926

Construction industry, Occupational safety and health.

Signed at Washington, DC, this 10th day of June 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 and 657); section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order 1–90 (55 FR 9033); and 29 CFR part 1911, 29 CFR parts 1910, 1915 and 1926 are amended as set forth below.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

§ 1910.20 [Redesignated as § 1910.1020]

1. Section 1910.20 is redesignated as new § 1910.1020.

Subpart C—[Removed and Reserved]

2. Subpart C is removed and reserved.

Subpart G—Occupational Health and Environmental Control

3. The authority citation for subpart G of part 1910 continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1910.96 [Redesignated as § 1910.1096]

4. Section 1910.96 is redesignated as new § 1910.1096.

Subpart Z—Toxic and Hazardous Substances

5. The authority citation for subpart Z of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), of 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, or Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1200 also issued under 5 U.S.C. 553.

6. In § 1910.1003, the heading is revised to read ''13 Carcinogens (4-Nitrobiphenyl, etc.).''

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation of part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

Subpart Z—Toxic and Hazardous Substances

2. Section 1915.1002 is revised to read as follows:

§ 1915.1002 Coal tar pitch volatiles; interpretation of term.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1002 of this chapter.

3. Section 1915.1003 is revised to read as follows:

§ 1915.1003 13 carcinogens (4–Nitrobiphenyl, etc.).

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

4. Section 1915.1004 is revised to read as follows:

§ 1915.1004 alpha-Naphthylamine.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

5. Section 1915.1006 is revised to read as follows:

§ 1915.1006 Methyl chloromethyl ether.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

6. Section 1915.1007 is revised to read as follows:

§ 1915.1007 3,3′-Dichlorobenzidiene (and its salts).

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

7. Section 1915.1008 is revised to read as follows:

§ 1915.1008 bis-Chloromethyl ether.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

8. Section 1915.1009 is revised to read as follows:

§ 1915.1009 beta-Naphthylamine.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

9. Section 1915.1010 is revised to read as follows:

§ 1915.1010 Benzidine.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

10. Section 1915.1011 is revised to read as follows:

§ 1915.1011 4-Aminodiphenyl.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

11. Section 1915.1012 is revised to read as follows:

§ 1915.1012 Ethyleneimine.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

12. Section 1915.1013 is revised to read as follows:

§ 1915.1013 beta-Propiolactone.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

13. Section 1915.1014 is revised to read as follows:

§ 1915.1014 2-Acetylaminofluorene.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

14. Section 1915.1015 is revised to read as follows:

§ 1915.1015 4-Dimethylaminoazobenzene.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

15. Section 1915.1016 is revised to read as follows:

§ 1915.1016 N-Nitrosodimethylamine.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1003 of this chapter.

16. Section 1915.1017 is revised to read as follows:

§ 1915.1017 Vinyl chloride.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1017 of this chapter.

17. Section 1915.1018 is revised to read as follows:

§ 1915.1018 Inorganic arsenic.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1018 of this chapter.

18. Section 1915.1025 is revised to read as follows:

§ 1915.1025 Lead.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1025 of this chapter.

19. Section 1915.1027 is revised to read as follows:

§ 1915.1027 Cadmium.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1027 of this chapter.

20. Section 1915.1028 is revised to read as follows:

§ 1915.1028 Benzene.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1028 of this chapter.

21. Section 1915.1030 is revised to read as follows:

§ 1915.1030 Bloodborne pathogens.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1030 of this chapter.

22. Section 1915.1044 is revised to read as follows:

§ 1915.1044 1,2-dibromo-3-chloropropane.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1044 of this chapter.

23. Section 1915.1045 is revised to read as follows:

§ 1915.1045 Acrylonitrile.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1045 of this chapter.

24. Section 1915.1047 is revised to read as follows:

§ 1915.1047 Ethylene oxide.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1047 of this chapter.

25. Section 1915.1048 is revised to read as follows:

§ 1915.1048 Formaldehyde.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1048 of this chapter.

26. Section 1915.1050 is revised to read as follows:

§ 1915.1050 Methylenedianiline.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1050 of this chapter.

§ 1915.1120 [Redesignated as § 1915.1020]

27. Section 1915.1120 is redesignated as § 1915.1020 and revised to read as follows:

§ 1915.1020 Access to employee exposure and medical records.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1020 of this chapter.

28. Section 1915.1200 is revised to read as follows:

§ 1915.1200 Hazard communication.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1200 of this chapter.

29. Section 1915.1450 is revised to read as follows:

§ 1915.1450 Occupational exposure to hazardous chemicals in laboratories.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.1450 of this chapter.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart C—General Safety and Health Provisions

1. The authority citation for Subpart C of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. Section 1926.33 is revised to read as follows:

§ 1926.33 Access to employee exposure and medical records.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1020 of this chapter.

Subpart D—Occupational Health and Environmental Controls

3. The general authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

* * * * *

4. In § 1926.53, paragraphs (c) through (r) are removed and reserved and a note is added at the end of the section to read as follows:

§ 1926.53 Ionizing radiation.

* * * * *

(c) through (r) [Reserved]

Note: The requirements applicable to construction work under paragraphs (c) through (r) of this section are identical to those set forth at paragraphs (a) through (p) of § 1910.1096 of this chapter.

5. Section 1926.59 is revised to read as follows:

§ 1926.59 Hazard communication.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1200 of this chapter.

6. In § 1926.60, Appendix A is revised to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

Appendix A to § 1926.60—Substance Data Sheet, for 4-4' Methylenedianiline

Note: The requirements applicable to construction work under this Appendix A are identical to those set forth in Appendix A to § 1910.1050 of this chapter.

* * * * *

7. In § 1926.60, Appendix B is revised to read as follows:

* * * * *

Appendix B to § 1926.60—Substance Technical Guidelines, MDA

Note: The requirements applicable to construction work under this Appendix B are identical to those set forth in Appendix B to § 1910.1050 of this chapter.

* * * * *

8. In § 1926.60, Appendix C is revised to read as follows:

* * * * *

Appendix C to § 1926.60—Medical Surveillance Guidelines for MDA

Note: The requirements applicable to construction work under this Appendix C are identical to those set forth in Appendix C to § 1910.1050 of this chapter.

* * * * *

9. In § 1926.60, Appendix D is revised to read as follows:

* * * * *

Appendix D to § 1926.60—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Note: The requirements applicable to construction work under this Appendix D are identical to those set forth in Appendix D to § 1910.1050 of this chapter.

* * * * *

10. In § 1926.60, Appendix E is revised to read as follows:

* * * * *

Appendix E to § 1926.60—Qualitative and Quantitative Fit Testing Procedures

Note: The requirements applicable to construction work under this Appendix E are identical to those set forth in Appendix E to § 1910.1050 of this chapter.

11. Section 1926.61 is revised to read as follows:

§ 1926.61 Retention of DOT markings, placards and labels.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1201 of this chapter.

Subpart E—Personal Protective and Lifesaving Equipment

12. The authority citation for subpart E of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

§ 1926.97 and 1926.98 [Removed and Reserved]

14. Sections 1926.97 and 1926.98 are removed and reserved.

Subpart F—Fire Protection and Prevention

15. The authority citation for subpart F of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§ 1926.150 [Amended]

16. In § 1926.150, paragraphs (c)(1)(xi) through (c)(1)(xiv) are removed.

§§ 1926.156 through 1926.159 [Removed]

17. The undesignated centerheadings preceding §§ 1926.156 and 1926.158 and §§ 1926.156 through 1926.159 are removed.

Subpart Y—Diving

18. The authority citation of subpart Y of part 1926 continues to read as follows:

Authority: Sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

19. Section 1926.1071 is revised to read as follows:

§ 1926.1071 Scope and application.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.401 of this chapter.

20. Section 1926.1072 is revised to read as follows:

§ 1926.1072 Definitions.

Note: The provisions applicable to construction work under this section are identical to those set forth at § 1910.402 of this chapter.

21. Section 1926.1076 is revised to read as follows:

§ 1926.1076 Qualifications of dive team.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.410 of this chapter.

22. Section 1926.1080 is revised to read as follows:

§ 1926.1080 Safe practices manual.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.420 of this chapter.

23. Section 1926.1081 is revised to read as follows:

§ 1926.1081 Pre-dive procedures.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.421 of this chapter.

24. Section 1926.1082 is revised to read as follows:

§ 1926.1082 Procedures during dive.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.422 of this chapter.

25. Section 1926.1083 is revised to read as follows:

§ 1926.1083 Post-dive procedures.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.423 of this chapter.

26. Section 1926.1084 is revised to read as follows:

§ 1926.1084 SCUBA diving.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.424 of this chapter.

27. Section 1926.1085 is revised to read as follows:

§ 1926.1085 Surface-supplied air diving.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.425 of this chapter.

28. Section 1926.1086 is revised to read as follows:

§ 1926.1086 Mixed-gas diving.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.426 of this chapter.

29. Section 1926.1087 is revised to read as follows:

§ 1926.1087 Liveboating.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.427 of this chapter.

30. Section 1926.1090 is revised to read as follows:

§ 1926.1090 Equipment.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.430 of this chapter.

31. Section 1926.1091 is revised to read as follows:

§ 1926.1091 Recordkeeping requirements.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.440 of this chapter.

32. Section 1926.1092 is revised to read as follows:

§ 1926.1092 Effective date.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.441 of this chapter.

33. Appendix A to Subpart Y is revised to read as follows:

Appendix A to Subpart Y—Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions

Note: The requirements applicable to construction work under this appendix A are identical to those set forth at Appendix A to Subpart T of part 1910 of this chapter.

34. Appendix B to Subpart Y is revised to read as follows:

Appendix B to Subpart Y—Guidelines for Scientific Diving

Note: The requirements applicable to construction work under this appendix B are identical to those set forth at Appendix B to Subpart T of part 1910 of this chapter.

Subpart Z—Toxic and Hazardous Substances

35. The authority citation for subpart Z of part 1926 is revised to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 1–90 (55 FR 9033), as applicable, 29 CFR Part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

36. Section 1926.1102 is revised to read as follows:

§ 1926.1102 Coal tar pitch volatiles; interpretation of term.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1002 of this chapter.

37. Section 1926.1103 is revised to read as follows:

§ 1926.1103 13 carcinogens (4-Nitrobiphenyl, etc.).

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

38. Section 1926.1104 is revised to read as follows:

§ 1926.1104 alpha-Naphthylamine.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

39. Section 1926.1106 is revised to read as follows:

§ 1926.1106 Methyl chloromethyl ether.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

40. Section 1926.1107 is revised to read as follows:

§ 1926.1107 3,3'-Dichlorobenzidiene (and its salts).

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

41. Section 1926.1108 is revised to read as follows:

§ 1926.1108 bis-Chloromethyl ether.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

42. Section 1926.1109 is revised to read as follows:

§ 1926.1109 beta-Naphthylamine.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

43. Section 1926.1110 is revised to read as follows:

§ 1926.1110 Benzidine.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

44. Section 1926.1111 is revised to read as follows:

§ 1926.1111 4-Aminodiphenyl.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

45. Section 1926.1112 is revised to read as follows:

§ 1926.1112 Ethyleneimine.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

46. Section 1926.1113 is revised to read as follows:

§ 1926.1113 beta-Propiolactone.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

47. Section 1926.1114 is revised to read as follows:

§ 1926.1114 2-Acetylaminofluorene.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

48. Section 1926.1115 is revised to read as follows:

§ 1926.1115 4-Dimethylaminoazobenzene.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

49. Section 1926.1116 is revised to read as follows:

§ 1926.1116 N-Nitrosodimethylamine.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1003 of this chapter.

50. Section 1926.1117 is revised to read as follows:

§ 1926.1117 Vinyl chloride.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1017 of this chapter.

51. Section 1926.1118 is revised to read as follows:

§ 1926.1118 Inorganic arsenic.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1018 of this chapter.

52. In § 1926.1127, Appendix A is revised to read as follows:

§ 1926.1127 Cadmium.

* * * * *

Appendix A to § 1926.1127—Substance Safety Data Sheet

Note: The requirements applicable to construction work under this Appendix A are identical to those set forth in Appendix A to § 1910.1027 of this chapter.

* * * * *

53. In § 1926.1127, Appendix B is revised to read as follows:

* * * * *

Appendix B to § 1926.1127—Substance Technical Guidelines for Cadmium

Note: The requirements applicable to construction work under this Appendix B are identical to those set forth in Appendix B to § 1910.1027 of this chapter.

* * * * *

54. In § 1926.1127, Appendix C is revised to read as follows:

* * * * *

Appendix C to § 1926.1127—Qualitative and Quantitative Fit Testing Procedures

Note: The requirements applicable to construction work under this Appendix C are identical to those set forth in Appendix C to § 1910.1027 of this chapter.

* * * * *

55. In § 1926.1127, Appendix D is revised to read as follows:

* * * * *

Appendix D to § 1926.1127—Occupational Health History Interview With Reference to Cadmium Exposure

Note: The requirements applicable to construction work under this Appendix D are identical to those set forth in Appendix D to § 1910.1027 of this chapter.

* * * * *

56. In § 1926.1127, Appendix E is revised to read as follows:

* * * * *

Appendix E to § 1926.1127—Cadmium in Workplace Atmospheres

Note: The requirements applicable to construction work under this Appendix E are identical to those set forth in Appendix E to § 1910.1027 of this chapter.

* * * * *

57. In § 1926.1127, Appendix F is revised to read as follows:

* * * * *

Appendix F to § 1926.1127—Nonmandatory Protocol for Biological Monitoring

Note: The requirements applicable to construction work under this Appendix F are identical to those set forth in Appendix F to § 1910.1027 of this chapter.

58. Section 1926.1128 is revised to read as follows:

§ 1926.1128 Benzene.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1028 of this chapter.

59. Section 1926.1129 is revised to read as follows:

§ 1926.1129 Coke oven emissions.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1029 of this chapter.

60. Section 1926.1144 is revised to read as follows:

§ 1926.1144 1,2-dibromo-3-chloropropane.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1044 of this chapter.

61. Section 1926.1145 is revised to read as follows:

§ 1926.1145 Acrylonitrile.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1045 of this chapter.

62. Section 1926.1147 is revised to read as follows:

§ 1926.1147 Ethylene oxide.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1047 of this chapter.

63. Section 1926.1148 is revised to read as follows:

§ 1926.1148 Formaldehyde.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1048 of this chapter.

[FR Doc. 96–15051 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–95–084]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Atlantic Intracoastal Waterway, mile 337.9, at Sunset Beach, North Carolina, by extending the hours on weekends and holidays during the summer months during which the bridge may open only on the hour. This rule is intended to provide regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 23, 1996, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, North Carolina'' in the Federal Register (61 FR 1725). In addition to publishing the NPRM, the Coast Guard also announced the proposed changes in Public Notice 5–881. The comment period ended March 8, 1996. One comment was received. A public hearing was not requested and one was not held.

Background and Purpose

The Sunset Beach drawbridge crosses the Atlantic Intracoastal Waterway at mile 337.9. The proposed changes were requested by the North Carolina Department of Transportation on behalf of the Town of Sunset Beach in order to alleviate delays to vehicle traffic caused by opening of the draw for passage of recreational vessels after 7 p.m. on the weekends and holidays.

Discussion of Comments and Changes

The NPRM proposed changes to 33 CFR 117.821(b)(6), regulations governing operation of a drawbridge across the Atlantic Intrascoastal Waterway at Sunset Beach, North Carolina. The proposed changes include extending the hours on weekends and holidays to include 7 p.m. to 9 p.m. during the summer months when the bridge may open only on the hour.

One comment was received on the proposed change to 33 CFR 117.821(b)(6) from a recreational boater opposing the extension of the hourly openings during the weekends and holidays. The recreational boater stated that extending the hourly openings was an unreasonable burden to pleasure boaters and was particularly bad for those who are out on the water returning late in the day. He also stated that the present hourly openings of the bridge during weekends was an unreasonable burden to pleasure boats, and that North Carolina should consider increasing the number of openings for all its regulated bridges. The Coast Guard does not agree. All presently regulated bridges in North Carolina crossing the Atlantic Intracoastal Waterway have schedules which take into consideration the highway traffic volumes at those particular locations, keeping in mind the steady flow of vessel traffic on this waterway during the summer months. With respect to Sunset Beach, the North Carolina Department of Transportation has advised the Coast Guard that maintaining the existing hourly opening restrictions and extending them by hours in the evenings on the weekends and Federal holidays is critical in order to avoid severe traffic congestion to and from the island. Vehicular traffic is at its highest peak on the island during the summer season, and, in particular, on weekends and holidays. This increase in vehicular traffic is due to vacationers and residents of surrounding communities coming to Sunset Beach to enjoy the ocean and beaches. Those from the surrounding communities usually do not leave the island until sunset which extends the evening hours that SR 1172 is congested with cars. The increase in traffic also places a strain on the local streets in the Town of Sunset Beach. The need to free up traffic congestion coming from the island supports the request to extend hourly openings on weekends and holidays. Recreational boaters can plan their transits around the hourly schedule, as they do now. After 9 p.m., the drawbridge will revert back to opening on demand, so boasters may plan to

come and go as early or late as they desire, with minimal delays. The purpose of the proposed change is to establish a schedule that balances the reasonable needs of waterway and vehicular traffic. The Coast Guard believes this schedule will help alleviate seasonal highway traffic congestion on weekends and holidays at this bridge without placing any undue hardship on waterway users since the change is minimal.

This final rule adopts the changes proposed in the NPRM. It extends the hourly opening of the drawbridge from 7 p.m. to 9 p.m. on Saturdays, Sundays, and Federal holidays from June 1 to September 30. The draw will continue to open on signal for commercial vessels. It will also continue to open on signal for passage of vessels in emergencies involving danger to life or property. The Coast Guard believes this final rule will not unduly restrict navigation by pleasure vessels, which may plan their transits to coincide with scheduled hourly openings.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(1)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

Collection of Information

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

Federalism Assessment

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.821, paragraph (b)(6) is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

* * * * *

(b) * * *

(6) S.R. 1172 bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. and 7 p.m., April 1 through November 30, except that on Saturdays, Sundays and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

* * * * *

Dated: May 15, 1996.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 96–15680 Filed 6–19–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5521–7]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Amendments.

SUMMARY: On April 10, 1995, the EPA proposed amendments to certain portions of the ''National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks'' (collectively known as the ''hazardous organic NESHAP'' or the ''HON''). This action announces the EPA's final decisions on those proposed amendments.

The rule is being revised to remove three compounds (glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol) from the list of chemical production processes regulated by the HON. The production of these compounds is also included in the source category ''Polyether Polyols Production'' and will be regulated by that national emission standards for hazardous air pollutants (NESHAP). The equipment leak requirements in the rule are also being revised to clarify the intent of certain provisions, to correct oversights, and to simplify demonstration of compliance with the regulation. These changes are being made to ensure that the rule is implemented as intended.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units—e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR Part 63, subpart F. Styrene-butadiene rubber producers. Polybutadiene rubber production. Producers of Captafol®; Captan®; Chlorothalonil; Dacthal; and Tordon™ acid. Producers of Hypalon®; Oxybisphenoxarsine/1,3-diisocyanate (OBPA®); Polycarbonates; Polysulfide rubber; Chlorinated paraffins; and Symmetrical tetrachloropyridine. Pharmaceutical producers. Producers of Methylmethacrylate-butadiene-styrene resins (MBS); Butadiene-furfural cotrimer; Methylmethacrylate-acrylonitrile-butadiene-styrene (MABS) resins; and Ethylidene norbornene.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in Table 1 of 40 CFR Part 63, subpart F and are located at facilities that are major sources as defined in Section 112 of the Clean Air Act (CAA). Processes subject to the negotiated regulation for equipment leaks are also potentially affected by this action. Processes subject to 40 CFR Part 63, subpart I are producers of any of the products listed in 40 CFR Part 63, subpart I that are located at facilities that are major sources as defined by Section 112 of the CAA. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR § 63.100 and 40 CFR § 63.190. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA promulgated in the Federal Register the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR Part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following Federal Register notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); and February 29, 1996 (61 FR 7716).

On April 10, 1995 (60 FR 18071–18078), the EPA also proposed to remove three compounds from the list of chemical production processes regulated by the rule as well as proposed clarifying changes and corrections to certain provisions in subparts H and I. This action announces the EPA's final decisions on those proposed amendments.

II. Public Comment on the April 10, 1995 Proposal

Nine comment letters were received on the April 10, 1995 notice of proposed changes to the rule. All comment letters received were from industry representatives, and were supportive of the proposed changes to subparts H and I. A few comment letters also included recommendations for further clarification of some of the proposed amendments or expansion of compliance options. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. A memorandum containing the EPA's responses to all comments can be found in Docket A–90–20, subcategory VI–B. The response to comments may also be obtained from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

III. Summary of Amendments to Rule

A. Removal of Polyols From Table 1 of Subpart F

The EPA is removing three chemicals—glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol—from the list of SOCMI chemicals, located in Table 1 of 40 CFR Part 63, subpart F. These production processes will be addressed under the NESHAP for the polyether polyols production source category.

B. Changes to Subpart H

1. Consolidation of Equipment Leak Programs

The EPA is amending subpart H by adding a new paragraph § 63.160(c), which will allow an owner or operator to elect to comply with subpart H for all volatile organic compounds (VOC) containing process equipment in the process unit in lieu of compliance with other Federal equipment leak regulations. This option is available for equipment subject to 40 CFR Part 60 subparts VV, GGG, or KKK, to 40 CFR Part 61 subparts F or J, or to 40 CFR Part 264 subpart BB or Part 265 subpart BB.

2. Sampling Connection Systems

Section 63.166 is amended to allow treatment of collected purge material: (1) At permitted treatment, storage, or disposal facilities (TSDF); (2) at solid waste treatment facilities; or (3) using waste management units complying with §§ 63.133 through 63.138 of subpart G of Part 63 when the purge material contains any of the chemicals listed in Table 9 of 40 CFR Part 63, subpart G. The final § 63.166 also clarifies that if the purge material does not contain any of the compounds listed in Table 9 of subpart G, then the owner or operator may use any waste management unit regardless of whether the unit is in compliance with the requirements of §§ 63.133 through 63.138 as long as the facility has a national pollution discharge elimination system (NPDES) permit or sends the wastewater to a NPDES permitted facility. The EPA is also adding to § 63.161 a definition for the term ''sampling connection system.''

3. Less Frequent Monitoring of Valves in Phase III

The proposed provisions to allow use of data collected before April 22, 1994 are being added to § 63.168 and § 63.174. The final amendments also

add a new paragraph § 63.180(b)(6) that allows use of data collected before April 22, 1994 and clarifies that this data may have minor deviations from the requirements in § 63.180 (b)(1) through (b)(5). The conditions for allowance of data that do not meet the criteria of § 63.180 (b)(1) through (b)(5) are specified in § 63.180 (b)(6)(i) and (b)(6)(ii).

4. Flow Indicators

The EPA is amending subpart H by adding a definition for ''flow indicator'' and by revising paragraph (j)(1) of § 63.172. These revisions expand the definition of flow indicator to include reference to devices that do not measure flow and remove the reference to the presence of flow from the by-pass monitoring requirement.

5. Safety Issues With § 63.163 and § 63.167

The proposed exemptions are being added to the final rule without change. Pumps in unsafe locations will be exempt from routine monitoring requirements, but are required to be monitored during safe-to-monitor periods. Pumps that are unsafe-to-monitor are pumps that are located in an area that presents an imminent danger to personnel due to the presence of toxic materials, explosive process conditions, or high pressure. Open-ended lines or valves containing materials that represented a safety or explosion hazard are exempt from the requirement to equip the line with a cap or plug.

6. Inaccessible and Difficult-to-Monitor Agitators

Provisions are being added to subpart H to exempt inaccessible and unsafe-to-monitor agitators from monitoring requirements and to provide consideration for difficult-to-monitor agitators. Recordkeeping requirements for difficult-to-monitor and unsafe-to-monitor equipment are added to § 63.181(b)(7).

7. Porcelain Connectors

Section 63.174(h)(1) is revised to refer to the more generic terminology ''ceramic or ceramic-lined'' connectors instead of glass or glass-lined connectors.

8. Pressure Test for Batch Process Equipment

The EPA is revising § 63.180(f)(1) to allow pressurization of equipment to less than the set pressure of any pressure relief device or to within the safety limits of the operating equipment. The EPA is also adding provisions to § 63.180(f)(4) to allow alternative procedures for cases where a pressure gauge with a precision of ± 2.5 milimeters mercury in the range of the test pressure is not reasonably available. For those cases, the new provision in § 63.180 (f)(4) allows the use of a pressure gauge with a precision of ± 10 percent of the test pressure and extends the duration of the test for the time necessary to detect a pressure loss (or rise) that equals a rate of one pressure per square inch gauge per hour (psig/hr).

9. Clarification of Calibration Requirements for Instrument Monitoring

Several editorial revisions were proposed to clarify the instrument calibration requirements specified in §§ 63.180 (b)(2) and (b)(4)(iii). In addition to the proposed changes, these revisions also clarify that an owner or operator need only calibrate those instrument scales that will be used in the monitoring.

C. Changes to Subpart I

1. Notification and Compliance Dates for Process Changes

The EPA is amending subpart I to specify procedures to establish compliance dates for additions of equipment to units subject to subpart I as well as to specify compliance dates for process units or equipment affected by operational changes. These provisions are being added as §§ 63.190 (g)(3), (g)(4), and (j).

2. Definitions

The EPA is adding definitions for the terms ''process unit'', ''source'', and ''bench-scale batch process.'' The definition for ''pharmaceutical production process'' is revised to clarify that solvent recovery operations and waste treatment operations are not subject to the provisions of subpart I.

The EPA is also adding a new provision to § 63.192, as paragraph (a)(2), to allow owners or operators of pharmaceutical production processes the option to designate all equipment in a building or structure as a process unit or to designate all equipment at the source as the process unit. The owner or operator may still define a process unit as the equipment used to produce a specific set of pharmaceutical intermediate or final products.

3. Bench-Scale Batch Process Equipment

The EPA is revising § 63.190(f) of subpart I to clarify that bench-scale batch processes are not subject to the provisions of subparts I or H. This exemption is also being added to subpart H in § 63.160 (f).

III. Summary of Major Comments and Changes to the Proposed Amendments

A. Consolidation of Equipment Leak Programs

One commenter suggested that the EPA allow consolidation of equipment leak programs promulgated under the Resource Conservation and Recovery Act (RCRA) air standards (40 CFR Part 264 subparts AA, BB, and CC and 40 CFR Part 265 subparts AA, BB, and CC) with the equipment leak programs required under the CAA in addition to Part 60, subparts VV, GGG, and KKK, and Part 61 subparts F and J as proposed. The commenter stated that at their facilities the same personnel conduct the leak detection and repair programs, regardless of whether the program is required by RCRA or the CAA. Consolidating those regulatory programs would reduce the compliance burden without reducing protection of the environment.

The EPA revised proposed § 63.160 (c) to allow an owner or operator to elect to comply with subpart H for all VOC containing equipment in lieu of compliance with 40 CFR Part 264 subpart BB or 40 CFR Part 265 subpart BB in addition to the proposed subparts in Parts 60 and 61. The RCRA equipment leak standards were based on the equipment leak standards developed under Sections 111 and 112 of the CAA. The two RCRA equipment leak standards were drafted to incorporate the provisions in 40 CFR Part 60 subpart VV. This was done to eliminate cross-referencing and to consolidate the RCRA requirements in Parts 264 and 265. Thus, there is no substantive difference between the RCRA and CAA equipment leak standards, and allowing compliance with subpart H reduces burden and complexity without reducing environmental protection.

B. Sampling Connection Systems

Two commenters suggested clarification of the proposed provisions to expand the compliance options for sampling connection systems. One commenter requested clarification of whether purged material had to be sent directly to a treatment facility or if temporary storage at an accumulation site subject to 40 CFR Part 262 would be permissible. Another commenter was concerned that purges of certain materials would have to be treated as if they were process wastewater, yet if these purges were evaluated as process wastewater there would be no requirement to control them. This

commenter noted that requiring control of materials not regulated in the wastewater provisions appears to go beyond the intent of the rule.

The EPA revised the wording in § 63.166 (b)(4) to clarify that material may be stored before it is transferred to a permitted TSDF. The EPA agrees that, as drafted, the proposed language could have been misconstrued to forbid temporary storage of the purged material. The EPA also agrees with the second commenter's concern that, for some chemicals, it is not appropriate to require that the purged material be managed in waste management units subject to the requirements in §§ 63.133 through 63.138. The provisions in § 63.166(b)(4)(i) were revised to clarify that purge materials that do not contain any of the chemicals listed in Table 9 of subpart G are not required to be managed and treated in units in compliance with §§ 63.133 through 63.138 as long as the facility has an NPDES permit or sends the wastewater to an NPDES permitted facility. The requirement that the wastewater go to an NPDES permitted facility is being imposed to ensure that this provision does not result in increased pollution in another media and is therefore consistent with the requirement of Section 112(d)(2) that standards be set taking nonair quality effects into account.

C. Process Unit Definition for Subpart I

One commenter expressed concerns with the proposed definition of the term ''process unit'' as applied to pharmaceutical processes subject to subpart I. The commenter stated that the concept of process unit is not particularly appropriate for the pharmaceutical industry because most pharmaceutical operations do not fit the conceptual design. This commenter identified three areas where the concept was unclear and presented implementation problems. The first source of ambiguity cited by the commenter was that the term ''process unit'' is defined as a fixed set of equipment used to manufacture a product. The commenter noted that a flexible pharmaceutical operation may produce numerous products in a year and that the boundaries of the process unit could vary from week to week depending on what product is being made. The commenter suggested that the EPA address this problem by revising the definition of pharmaceutical process unit to be a set of equipment that manufactures one or more pharmaceutical intermediates or final products. The second ambiguity noted by the commenter was that equipment in pharmaceutical production may not be connected by pipes or ducts; materials may be transferred in closed containers. The commenter suggested that the EPA revise the definition of process unit to include all equipment collocated in the same building or structure, regardless of whether the equipment is connected by pipes or ducts. The third ambiguity cited by the commenter occurs in application of the proposed definition of ''process unit'' to a plant site with several buildings all served by a single solvent storage facility. The commenter questioned whether multiple process units served by a common solvent distribution system would be considered to be a single process unit. The commenter requested that the EPA clarify the relationship between the solvent distribution system and the process unit.

Since publication of the April 10, 1995 proposal, the EPA has received additional information, through the public comment process, on the diversity of operations and equipment used in pharmaceutical production. Considering this information, the EPA believes that additional options for definition of a process unit are necessary to permit efficient management of equipment leak programs at pharamceutical processes and to reflect actual design of facilities. Therefore, several changes were made to the proposed provisions. First, the definition of ''process unit'' was revised to eliminate the reference to pipes and ducts as the means for connecting equipment. Second, a new provision was added to § 63.192 (as paragraph (a)(2)) that will allow an owner or operator of a pharmaceutical production process several alternatives for defining a process unit for purposes of compliance with subpart I. The new provisions allow a pharmaceutical production process owner or operator to define the process unit as the equipment dedicated to the production of one or more products, as all operations located within a building or structure, or as all operations within a source. This change does not revise any control requirements for pharmaceutical processes. This change will provide the flexibility necessary for development of workable equipment leak programs for pharmaceutical processes. Third, the definition for pharmaceutical production process was revised to clarify that the process may make one or more pharmaceutical intermediate or final products. This additional flexibility was limited to pharmaceutical processes because that was the only category where the EPA has information that indicates this flexibility is necessary.

V. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions, alternative test procedures, and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''not significant'' and therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

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

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

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

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

The HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. Therefore, this regulatory action is considered not significant.

C. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980, EPA considers

the potentially adverse impacts of its regulations upon small business entities. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 11, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, part 63, subparts F, H and I, of the Code of Federal Regulations are amended as follows:

PART 63—[AMENDED]

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

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

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

Table 1 of Subpart F—[Amended]

2. Table 1 of subpart F is amended by removing the entries for ''Glycerol tri-(polyoxypro-pylene)ether,'' ''Polyethylene glycol,'' and ''Polypropylene glycol'' and their associated chemical abstract service number and group number.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

3. Section 63.160 is amended by adding paragraphs (c) and (f) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(c) If a process unit subject to the provisions of this subpart has equipment to which this subpart does not apply, but which is subject to a standard identified in paragraph (c)(1), (c)(2), or (c)(3) of this section, the owner or operator may elect to apply this subpart to all such equipment in the process unit. If the owner or operator elects this method of compliance, all VOC in such equipment shall be considered, for purposes of applicability and compliance with this subpart, as if it were organic hazardous air pollutant (HAP). Compliance with the provisions of this subpart, in the manner described in this paragraph, shall be deemed to constitute compliance with the standard identified in paragraph (c)(1), (c)(2), or (c)(3) of this section.

(1) 40 CFR part 60, subpart VV, GGG, or KKK; (2) 40 CFR part 61, subpart F or J; or (3) 40 CFR part 264, subpart BB or 40 CFR part 265, subpart BB.

* * * * *

(f) The provisions of this subpart do not apply to research and development facilities or to bench-scale batch processes, regardless of whether the facilities or processes are located at the same plant site as a process subject to the provisions of this subpart.

4. Section 63.161 is amended by adding in alphabetical order the definitions ''bench-scale batch process,'' ''flow indicator,'' and ''sampling connection system'' to read as follows:

§ 63.161 Definitions.

* * * * *

Bench-scale batch process means a batch process (other than a research and development facility) that is operated on a small scale, such as one capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

* * * * *

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

5. Section 63.163 is amended by adding paragraph (j) to read as follows:

§ 63.163 Standards: Pumps in light liquid service.

* * * * *

(j) Any pump that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor pump is exempt from the requirements of paragraphs (b) through (e) of this section if:

(1) The owner or operator of the pump determines that the pump is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

6. Section 63.166 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.166 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § 63.162(b) of this subpart. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport the purged process fluid to a control device that complies with the requirements of § 63.172 of this subpart; or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) A waste management unit as defined in § 63.111 of subpart G of this part, if the waste management unit is subject to, and operated in compliance with the provisions of subpart G of this part applicable to group 1 wastewater streams. If the purged process fluid does not contain any organic HAP listed in Table 9 of subpart G of part 63, the waste management unit need not be subject to, and operated in compliance with the requirements of 40 CFR part 63, subpart G applicable to group 1 wastewater streams provided the facility has an NPDES permit or sends the wastewater to an NPDES permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

7. Section 63.167 is amended by revising paragraph (a)(1) and by adding paragraph (e) to read as follows:

§ 63.167 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.162(b) of this subpart and paragraphs (d) and (e) of this section.

* * * * *

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraph (a) through (c) of this section.

8. Section 63.168 is amended by adding a new paragraph (a)(3) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

(a) * * *

(3) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6) of this subpart.

* * * * *

9. Section 63.172 is amended by revising the first sentence of paragraph (j)(1) to read as follows:

§ 63.172 Standards: Closed-vent systems and control devices.

* * * * *

(j) * * *

(1) Install, set or adjust, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. * * *

* * * * *

10. Section 63.173 is amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.

* * * * *

(h) Any agitator that is difficult-to-monitor is exempt from the requirements of paragraphs (a) through (d) of this section if:

(1) The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than two meters above a support surface or it is not accessible at anytime in a safe manner;

(2) The process unit within which the agitator is located is an existing source or the owner or operator designates less than three percent of the total number of agitators in a new source as difficult-to-monitor; and

(3) The owner or operator follows a written plan that requires monitoring of the agitator at least once per calendar year.

(i) Any agitator that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraphs (a) through (d) of this section.

(j) Any agitator that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor agitator is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the agitator determines that the agitator is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (a) through (d) of this section; and

(2) The owner or operator of the agitator has a written plan that requires monitoring of the agitator as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

11. Section 63.174 is revised by adding a new paragraph (b)(4) and by revising the first sentence of paragraph (h)(1) introductory text to read as follows:

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

* * * * *

(b) * * *

(4) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6).

* * * * *

(h)(1) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (c) of this section and from the recordkeeping and reporting requirements of § 63.181 and § 63.182 of this subpart. * * *

* * * * *

12. Section 63.180 is amended by redesignating paragraph (b)(2) as (b)(2)(i) and revising the first sentence of newly designated paragraph (b)(2)(i), by adding a paragraph (b)(2)(ii), by revising paragraph (b)(4)(iii), by revising paragraph (b)(6), by revising paragraph (f)(1), and by adding a sentence to the end of paragraph (f)(4) to read as follows:

§ 63.180 Test methods and procedures.

* * * * *

(b) * * *

(2)(i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in Section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. * * *

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

* * * * *

(4) * * *

(iii) The instrument may be calibrated at a higher methane concentration than the concentration specified for that piece of equipment. The concentration

of the calibration gas may exceed the concentration specified as a leak by no more than 2,000 parts per million. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

* * * * *

(6) Monitoring data that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may be used to qualify for less frequent monitoring under the provisions in § 63.168(d)(2) and (d)(3) or § 63.174(b)(3)(ii) or (b)(3)(iii) of this subpart provided the data meet the conditions specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) The data were obtained before April 22, 1994.

(ii) The departures from the criteria specified in paragraphs (b)(1) through (b)(5) of this section or from the specified monitoring frequency of § 63.168(c) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every six weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring at a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

* * * * *

(f) * * *

(1) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively, the equipment shall be placed under a vacuum.

* * * * *

(4) * * * If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least +10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of one psig per hour.

* * * * *

13. Section 63.181 is amended by revising the introductory text in paragraph (b)(7) and by revising paragraph (b)(7)(ii) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(b) * * *

(7) The following information pertaining to all pumps subject to the provisions of § 63.163(j), valves subject to the provisions of § 63.168(h) and (i) of this subpart, agitators subject to the provisions of § 63.173(h) through (j), and connectors subject to the provisions of § 63.174(f) through (h) of this subpart shall be recorded:

* * * * *

(ii) A list of identification numbers for the equipment that is designated as difficult to monitor, an explanation of why the equipment is difficult to monitor, and the planned schedule for monitoring this equipment.

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

14. Section 63.190 is amended by revising paragraph (f), paragraphs (g)(1) introductory text and (g)(2) introductory text, by adding paragraphs (g)(3) and (g)(4), and by adding a new paragraph (j) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(f) The provisions of subparts I and H of this part do not apply to research and development facilities or to bench-scale batch processes, regardless of whether the facilities or processes are located at the same plant site as a process subject to the provisions of subpart I and H of this part.

(g)(1) If an additional process unit specified in paragraph (b) of this section is added to a plant site that is a major source as defined in Section 112(a) of the CAA, the addition shall be subject to the requirements for a new source in subparts H and I of this part if:

* * * * *

(2) If any change is made to a process subject to this subpart, the change shall be subject to the requirements for a new source in subparts H and I of this part if:

* * * * *

(3) If an additional process unit is added to a plant site or a change is made to a process unit and the addition or change is determined to be subject to the new source requirements according to paragraphs (g)(1) or (g)(2) of this section:

(i) The new or reconstructed source shall be in compliance with the new source requirements of subparts H and I of this part upon initial start-up of the new or reconstructed source or by April 22, 1994, whichever is later; and

(ii) The owner or operator of the new or reconstructed source shall comply with the reporting and recordkeeping requirements in subparts H and I of this part that are applicable to new sources. The applicable reports include, but are not limited to:

(A) Reports required by § 63.182(b), if not previously submitted, § 63.182 (c) and (d) of subpart H of this part; and

(B) Reports and notifications required by sections of subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

(4) If an additional process unit is added to a plant site, if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, and if the addition or change is not subject to the new source requirements as determined according to paragraphs (g)(1) or (g)(2) of this section, the requirements in paragraphs (g)(4)(i) through (g)(4)(iii) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status required by § 63.182(c) of subpart H of this part.

(i) The added emission point(s) and any emission point(s) within the added or changed process unit are subject to the requirements of subparts H and I of this part for an existing source;

(ii) The added emission point(s) and any emission point(s) within the added or changed process unit shall be in compliance with subparts H and I of this part by the dates specified in paragraphs (g)(4)(ii)(A) or (g)(4)(ii)(B) of this section, as applicable.

(A) If a process unit is added to a plant site or an emission point(s) is added to an existing process unit, the

added process unit or emission point(s) shall be in compliance upon initial start-up of the added process unit or emission point(s) or by April 22, 1997, whichever is later.

(B) If a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, if a compressor becomes subject to § 63.164 of subpart H, or if a deliberate operational process change causes equipment to become subject to subpart H of this part, the owner or operator shall be in compliance upon initial start-up or by April 22, 1997, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule. The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(iii) The owner or operator of a process unit or emission point that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements of subparts H and I of this part that are applicable to existing sources, including, but not limited to, the reports listed in paragraphs (g)(4)(iii)(A) and (g)(4)(iii)(B) of this section.

(A) Reports required by § 63.182 of subpart H of this part; and

(B) Reports and notifications required by sections of subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

* * * * *

(j) If a change that does not meet the criteria in paragraph (g)(4) of this section is made to a process unit subject to subparts H and I of this part, and the change causes equipment to become subject to the provisions of subpart H of this part, then the owner or operator shall comply with the requirements of subpart H of this part for the equipment as expeditiously as practical, but in no event later than three years after the equipment becomes subject.

(1) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(2) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

15. Section 63.191(b) is amended by adding in alphabetical order definitions for ''bench-scale batch process,'' ''process unit,'' and ''source'' to paragraph (b) and revising the definition of ''pharmaceutical production process'' to read as follows:

§ 63.191 Definitions.

(b) * * *

Bench-scale batch process means a batch process (other than a research and development facility) that is operated on a small scale, such as one capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

* * * * *

Pharmaceutical production process means a process that synthesizes one or more pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent. Pharmaceutical production process does not mean process operations involving formulation activities, such as tablet coating or spray coating of drug particles, or solvent recovery or waste management operations.

* * * * *

Process Unit means the group of equipment items used to process raw materials and to manufacture a product. For the purposes of this subpart, process unit includes all unit operations and associated equipment (e.g., reactors and associated product separators and recovery devices), associated unit operations (e.g., extraction columns), any feed and product storage vessels, and any transfer racks for distribution of final product.

* * * * *

Source means the collection of equipment listed in § 63.190(d) to which this subpart applies as determined by the criteria in § 63.190. For purposes of subparts H and I of this part, the term *affected source* as used in subpart A of this part has the same meaning as the term *source* defined here.

* * * * *

16. Section 63.192 is amended by redesignating paragraph (a) as (a)(1) and by adding paragraph (a)(2) to read as follows:

§ 63.192 Standard.

(a)(1) * * *

(2) The owner or operator of a pharmaceutical production process subject to this subpart may define a process unit as a set of operations, within a source, producing a product, as all operations collocated within a building or structure or as all affected operations at the source.

* * * * *

[FR Doc. 96–15616 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5522–9]

Clean Air Act Final Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Massachusetts; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval; Correction.

SUMMARY: On May 15, 1996 (61 FR 24460), EPA promulgated interim approval of the 40 CFR Part 70 Operating Permits Program for the Commonwealth of Massachusetts. The document correctly identified the effective date as May 15, 1996. However, the language to amend 40 CFR Part 70 listed an incorrect effective date and an incorrect expiration date for the interim approval of this program.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION: In the document published on May 15, 1996 at 61 FR 24461, column 3, the effective date and expiration date were incorrect. This final rule corrects the language to amend 40 CFR Part 70 in a manner which is consistent with the May 15, 1996 rule. The correct effective date of this interim approval is May 15, 1996, and the correct expiration date of this interim approval is May 15, 1998.

The EPA regrets any inconvenience the earlier information has caused.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental Protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 30, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising the entry for Massachusetts to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Massachusetts

(a) Department of Environmental Protection: submitted on April 28, 1995; interim approval effective on May 15, 1996; interim approval expires May 15, 1998.

(b) (Reserved).

* * * * *

[FR Doc. 96–15621 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[FRL–5521–4]

RIN 2060–AF70

Operating Permits Program Interim Approval Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating revisions to the interim approval criteria within the regulations in part 70, chapter I, title 40, of the Code of Federal Regulations (CFR). Part 70 contains regulations requiring States to develop, and submit to EPA for approval, programs for issuing operating permits to major, and certain other, stationary sources of air pollution as required by title V of the Clean Air Act (Act). Two changes to the interim approval criteria were proposed on August 29, 1994 to address difficulties in program development that have occurred since promulgation of part 70. Today's action finalizes one of those changes; the other will be finalized in a subsequent action.

As a result of today's revision to part 70, certain State operating permit programs will become eligible for interim program approval. Without today's changes, these programs would not have been eligible for interim program approval under the part 70 regulations. Specifically, interim approval may now be granted for programs which do not provide for the incorporation of terms contained in permits issued under EPA-approved minor source preconstruction permit programs into corresponding part 70 permits.

To be eligible for this interim approval, such programs would have to show compelling reasons for the interim approval and meet certain other requirements regarding the content of part 70 permits that exclude these applicable preconstruction permit terms during the 2-year interim period. After 2 years, interim approval expires and the State must have revised its program to address the exclusion of these terms, and any other deficiencies, in order to receive full approval.

EFFECTIVE DATE: July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Ling (telephone number 919–541–4729), U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those State, local, or tribal governments who seek approval of their part 70 operating permit programs, but whose programs do not include minor preconstruction permit terms in their part 70 permits. Regulated categories include:

Category	Examples of regulated entities
State/Local/Tribal Government.	Governments who have developed operating permit programs that exclude minor NSR terms from title V permits and who seek EPA approval of such programs under the part 70 regulations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket

Supporting information used in developing the part 70 rules, including today's promulgated change, is contained in docket number A–93–50. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act Amendments of 1990 (1990 Amendments), Public Law 101–549, requires EPA to promulgate regulations establishing the requirements for development and submittal of State operating permit programs and the minimum elements these programs must contain to be approvable. On July 21, 1992, EPA published regulations meeting these requirements in the Federal Register (57 FR 32250).

Title V and the part 70 regulations require States and local agencies to submit operating permit programs to EPA within 3 years of enactment of the 1990 Amendments, and require EPA to take action within 1 year of program submittal to approve or disapprove these programs. Section 502(g) of the Act allows EPA to grant interim approval to a program if it ''substantially meets'' the requirements of title V but is not fully approvable. Interim approval may be granted for a period of up to 2 years and may not be renewed. The interim approval provision allows permitting authorities time to correct the program deficiencies preventing full approval. The minimum elements that a program must contain to be eligible for interim approval are contained in § 70.4(d).

The EPA proposed two changes to the interim approval criteria on August 29, 1994 (59 FR 44571). The first change would allow interim approval for part 70 programs which allow permits to be revised through the minor permit modification procedure to reflect those changes at a facility which is subject to EPA-approved minor source preconstruction permit requirements, commonly referred to as ''minor new source review'' (minor NSR) changes. Because this proposal is linked to proposed changes to the permit revision system, which EPA is not yet ready to finalize, and because current EPA policy already allows for approval of programs which allow changes established through minor NSR to be addressed using minor permit modification procedures, EPA is not taking final action on this proposed change in today's rulemaking.

The second proposed change to the interim approval criteria addresses programs that do not incorporate terms and conditions into a source's part 70 permit which are established through an EPA-approved minor NSR program.

Title V and part 70 require a permit to contain provisions which assure compliance with all applicable requirements (section 502(b)(5)(A) of the Act, 40 CFR 70.6(a)). The definition of the term ''applicable requirement'' in part 70 includes requirements established through minor NSR permitting procedures (§ 70.2). The proposed change to part 70 would, for the period of interim approval, allow part 70 permits to be issued and revised without incorporating those terms and conditions that are applicable requirements solely because they are established through minor NSR. These minor NSR terms and conditions would still remain federally enforceable through the provisions of the minor NSR program. In today's notice, EPA is taking final action on this proposed rule change.

B. Summary of Proposed Changes Addressing Applicable Requirements

The August 29, 1994 proposal noted that, in order to be eligible for interim approval, a program must contain adequate authority to issue permits that assure compliance with all applicable requirements including all applicable requirements under title I of the Act [see § 70.4(d)(3)(ii) and § 70.4(c)(1)]. The proposal explained that EPA believes the term ''applicable requirements'' clearly includes all terms and conditions of minor NSR permits. Therefore, a part 70 program that would not provide for incorporating into permits those requirements established through the EPA-approved minor NSR program would be prohibited by § 70.4(d)(3)(ii) from receiving interim approval.

One State, Texas, argued that there are compelling reasons supporting its exclusion of minor NSR requirements as title V applicable requirements, and that its submitted part 70 program should thus be eligible for approval. Although EPA reads § 70.2 and § 70.6(a)(1) to unequivocally require minor NSR terms to be applicable requirements (meaning that the submitted Texas program could not obtain full approval), the Agency proposed that Texas' demonstration of compelling reasons warranted further consideration of the submitted program for interim approval on the basis that it substantially meets the requirements of title V. Texas' demonstration of compelling reasons included the following arguments: (1) Texas' existing minor NSR program is so stringent that the integration of all its minor NSR terms would be infeasible and unnecessary for environmental protection; (2) Texas has an exceptionally large number of part 70 sources which are candidates for minor NSR, making part 70 permitting difficult and time-consuming; and (3) Texas believes that its system of cross-referencing minor NSR permits in part 70 permits will serve essentially the same program purposes as inclusion of the minor NSR requirements themselves, rendering direct inclusion of these requirements unnecessary from Texas' viewpoint.

On the basis of this type of showing, EPA proposed to consider interim approval for programs facing significant minor NSR/part 70 integration difficulties. The proposal further provided that, for a program operating under this type of interim approval: (1) Each part 70 permit issued during the interim approval must (if applicable) state that applicable minor NSR requirements are not included; (2) each minor NSR permit containing requirements applicable to the source must be cross-referenced in the source's part 70 permit so that citizens may access and review those requirements; (3) excluded minor NSR requirements would not be eligible for the permit shield under § 70.6(f); and (4) upon conversion to full approval, all permits issued during the interim approval period that excluded minor NSR terms would have to be reopened to include these terms.

Although the exclusion of minor NSR means that important title V compliance measures (e.g., compliance certification, public review, etc.) will be deferred for 2 years for minor NSR terms, the proposed provisions would limit the scope and duration of the effects of this deferral, and would assure that the public could examine, in federally-enforceable NSR permits, any terms which are not subject to title V's compliance measures during the interim period. This helps strengthen the proposal's position that programs which exclude minor NSR terms could ''substantially meet'' the requirements of part 70 and receive interim approval. However, EPA reiterates that all compliance measures contained in title V must be applied to all applicable requirements, including minor NSR terms, before a part 70 program can receive full approval.

II. Discussion of Today's Action

A. Summary of Changes Since Proposal

In response to comments, EPA is making three minor rule changes to clarify the requirements discussed in the proposal preamble. These include: (1) Adding rule language clarifying that any excluded NSR permits must be cross-referenced in the applicable part 70 permit; (2) adding rule language clarifying that excluded NSR requirements would not be eligible for the permit shield under § 70.6(f); and (3) adding rule language clarifying that, upon conversion to full approval, permits issued during the interim period would have to be revised or reopened to include any excluded minor NSR terms. Regarding reopening, today's rule also provides for a streamlined reopening process for excluded minor NSR terms that does not require the full permit issuance process. The rule provisions are also being rearranged into separate paragraphs in the final rule for clarity. In addition to these rule clarifications, the EPA also reiterates in today's preamble its position that minor NSR is an applicable requirement for part 70 purposes. Additional discussion is also provided on the proposed ''compelling reasons'' demonstration requirement being promulgated today.

B. Significant Comments and Responses

The August 29, 1994 proposal concerning interim approval criteria was grouped with a larger proposal revising the part 70 permit revision system (published separately at 59 FR 44459). The EPA received a total of 246 comment letters on these two proposals, some of which addressed each action separately and some of which addressed both actions together. This section addresses only the major comments received on the proposed revision to the interim approval criteria regarding minor NSR as an applicable requirement. Discussion of additional issues raised by the commenters related to today's action is contained in the technical support document for this rule, which is included in the docket for today's rulemaking. Comments on other proposed changes to the interim approval criteria not addressed by today's rule change, including comments on other aspects of the August 1994 proposals (as well as the August 31, 1995 proposal which supplemented the August 1994 notice on permit revisions), will be addressed in a future rulemaking.

1. Minor NSR as an Applicable Requirement

Several commenters asserted that revisions to the interim approval criteria are unnecessary because minor NSR is not an ''applicable requirement'' under part 70. The EPA notes that it has the authority to promulgate this revision to the interim approval criteria regardless of the correctness of the assertion that minor NSR is not an applicable requirement. However, EPA also

disagrees with the commenters' assertion, and stands by the position and the rationale articulated in the proposal, that minor NSR is an applicable requirement. Key points of this rationale are reiterated below in response to comments received, and are discussed further in the technical support document found in the docket.

One commenter disagreed with EPA's reading of the part 70 definition of ''applicable requirement,'' noting that something is not necessarily an ''applicable requirement'' simply because it is a requirement of the Act. The EPA agrees with this broad statement, noting—for example—that requirements of title II are not ''applicable requirements.'' However, EPA sees no basis for concluding that minor NSR permits issued under a State implementation plan (SIP) approved program are not applicable requirements. Furthermore, as explained in the proposal preamble, EPA believes the part 70 rule is clear in defining ''applicable requirements'' to include minor NSR. A challenge to this point should have been raised in the context of the July 21, 1992 promulgation of part 70.

Another commenter argued more broadly that the intent of the Act is to regulate major sources while allowing States to regulate minor sources through minor NSR programs. The EPA disagrees. Section 110(a)(2)(c) of the Act and EPA's regulations at 51.161 clearly establish Federal requirements for preconstruction review of activities below the NSR major source applicability thresholds. The EPA further disagrees with this commenter's assertion that its argument is supported by EPA's proposed resolution of the ''title I modifications'' issue. A determination by EPA that ''title I modifications'' do not include minor NSR actions does not mean that minor NSR programs are optional under the Act.

A commenter also noted that many State minor NSR programs go beyond the Federal minimum, and that a detailed analysis would be necessary to determine the precise extent to which a minor NSR program is necessary to attain and maintain the national ambient air quality standards (NAAQS). The EPA disagrees that any such analysis is necessary or appropriate. A State that submitted a minor NSR program for approval into the SIP presumably did so because it believed that the submitted program was necessary to attain and maintain the NAAQS. The EPA believes this is the only reasonable presumption that can be made in retrospect.

Although EPA reiterates that minor NSR terms are applicable requirements, EPA also recognizes that certain terms found in existing NSR permits (including minor NSR permits) may be obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Inclusion of these terms in a part 70 permit could present program implementation difficulties and is not needed to fulfill the purposes of the Act. Noting this, EPA issued a policy addressing incorporation of these permit terms into part 70 permits. This policy is described in ''White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995'' (White Paper). The White Paper states that, although minor NSR permit terms are applicable requirements, the permitting authority may use a joint title V/NSR ''parallel process'' to make appropriate revisions to an NSR permit to exclude NSR terms which are obsolete, unrelated to attainment and maintenance of a NAAQS, extraneous, or otherwise environmentally insignificant. By revising the underlying NSR permit to delete, revise, or designate as State-only these unnecessary minor NSR permit terms, the permit authority has discretion to exclude these terms from the set of federally-enforceable minor NSR conditions, and thus from the definition of ''applicable requirement'' for part 70 purposes.

The EPA notes that programs which exclude minor NSR as an applicable requirement under today's approach to interim approval, and which seek to streamline minor NSR permits using a White Paper approach, would not need to have revised existing minor NSR permits in this way until conversion to full approval, because these programs will not include minor NSR terms in part 70 permits until that time. However, programs considering this type of parallel processing are encouraged to consult the White Paper and begin this permit revision process, so that the task of streamlining minor NSR permits does not conflict with other permit authority responsibilities at the time full approval is received.

2. Demonstration of ''Compelling Reasons''

The proposal allows EPA to grant interim approval to part 70 programs that do not include minor NSR as an applicable requirement upon a showing by the permitting authority of ''compelling reasons'' which support the interim approval. One commenter stated that the requirement for compelling reasons is unworkable and should be deleted, and that EPA does not provide guidance on what constitutes compelling reasons. The EPA disagrees that the compelling reasons requirement should be deleted, and does not believe that additional guidance on compelling reasons is necessary for reasons explained below.

The EPA believes it is important to include a requirement that a State demonstrate compelling reasons to grant interim approval if a part 70 program excludes minor NSR from the definition of ''applicable requirement.'' The EPA believes, in general, that an interim approval on this basis is undesirable because it delays the implementation of title V for a large number of Act requirements at a large number of sources, and is a significant departure from the part 70 regulations. The Agency believes that this type of departure should be made only for those programs that demonstrate a strong need for the interim exclusion of minor NSR. Therefore, the Agency is requiring that such programs demonstrate compelling reasons for granting the interim approval.

Two commenters also asserted that EPA has no basis under the Act to require States to show compelling reasons for granting interim approval; EPA disagrees. Section 502(g) of the Act gives EPA broad discretion as to when and how it grants interim approval. This discretion includes requiring that a State show compelling reasons before making significant departures from part 70. The commenters presented no basis, nor does EPA see any reason, to remove the ''compelling reasons'' requirement.

The ''compelling reasons'' demonstration should be based primarily on a showing that extraordinary difficulties would be encountered in incorporating minor NSR terms into initial title V permits. It is also appropriate to include in the demonstration any measures the State is taking in its interim part 70 program to support the implementation of the excluded minor NSR program. The EPA reserves its discretion to evaluate demonstrations of compelling reasons on a case-by-case basis, with consideration given to the degree of the minor NSR/title V integration difficulties and the extent to which the State part 70 program addresses minor NSR implementation in the interim. Because of the case-by-case nature of such decisions, EPA cannot provide prescriptive criteria for the compelling reasons demonstration.

The Texas demonstration of compelling reasons, described in the August 1994 proposal, is an example of

the type of demonstration that could be considered for interim approval under today's rule. Texas argued that: (1) Its minor NSR program is so stringent that integration of all minor NSR terms would be infeasible; (2) it has an exceptionally large number of part 70 sources which receive minor NSR; and (3) its part 70 program would cross-reference minor NSR permits in part 70 permits (i.e., identifies in each part 70 permit the applicable minor NSR permits, but does not incorporate by reference the requirements of minor NSR into the part 70 permit).

Although EPA does not believe that the existence of a stringent minor NSR program justifies exclusion of minor NSR from a title V program, the Agency acknowledges that a program such as Texas' does produce an extremely large number of minor NSR permits, because of both its inclusive applicability provisions and because of the large number of facilities statewide. Thus, integration of minor NSR permits into initial title V permits presents significant difficulty in Texas. Similarly, although EPA does not believe that simply cross-referencing minor NSR permits satisfies title V, EPA acknowledges that the cross-referencing requirement in Texas' part 70 program serves to provide additional notice in part 70 permits when minor NSR applies to a facility. Although this measure falls short of the permit content requirements of a fully-approvable title V program, EPA believes it is appropriate for a State to reference such measures in its compelling reasons demonstration. Therefore, because of the combination of integration difficulties and program measures, EPA would consider such a program for interim approval. The EPA notes that today's notice is not intended to present the Agency's position as to whether Texas' compelling reasons demonstration (together with the rest of its program) warrants interim approval under the revised criteria. Rather, today's rule simply provides for the possibility that such a program could be considered for interim approval in light of the fact that it excludes minor NSR terms from part 70 permits.

In addition to requiring a showing of compelling reasons, the proposal preamble noted that EPA will consider the following as factors against this type of interim approval: (1) Whether a program's exclusion of minor NSR terms will diminish the effectiveness of the State's minor NSR program during the interim period; and (2) whether the State has already submitted a part 70 program that included minor NSR as an applicable requirement. It is recommended that States considering excluding minor NSR as an applicable requirement carefully consider whether, in light of these factors, its reasons for the exclusion truly constitute a compelling need. Such States should also consider whether the time delays in program approval associated with necessary program changes and the development of a case-by-case analysis of compelling reasons are worth the interim relief that may be achieved through the temporary exclusion of minor NSR from title V permitting.

3. Incorporation of Minor NSR on Transition to Full Approval

The proposal preamble noted that a part 70 program which does not incorporate minor NSR as an applicable requirement must, upon conversion from interim to full approval, provide for the reopening of permits issued during the interim period in order to include the excluded minor NSR requirements in each part 70 permit. Three commenters stated that such a reopening would be unnecessary and impractical. The commenters were concerned about the timing and impact of the resource burden imposed on sources and on permitting authorities by the reopening process, which, in accordance with § 70.7(f)(2), must follow the same procedural requirements as permit issuance. They felt that reopening was an unnecessary procedural burden with little environmental benefit and believed that minor NSR terms could be included at renewal, rather than reopening, with little adverse impact.

While EPA is sensitive to resource concerns, the Agency does not agree that these concerns should result in exclusion of minor NSR terms from title V permits until renewal. The EPA, in proposing to allow this type of interim approval, did not contemplate that minor NSR applicable requirements could be excluded until renewal, which could be up to 5 years after full program approval. Furthermore, part of the rationale for granting interim approval is that the excluded minor NSR terms are subject to other safeguards in the part 70 regulations. One such safeguard is the reopening of permits when interim approval expires to incorporate excluded applicable requirements. Without such a safeguard, minor NSR terms would not be subject to key provisions of title V, such as annual compliance certification, recordkeeping and reporting, and other similar requirements, for up to 5 years.

The EPA does agree that, if reopenings to incorporate excluded minor NSR permits must follow the same procedural requirements as full permit issuance, the process of reopening each permit issued during the interim approval period could impose considerable administrative burden at a time when the permitting authority is still also processing initial permit applications. This burden is greatly mitigated in Texas where the earliest permits, and hence the ones requiring reopening, are for the simplest sources and source categories. The EPA believes that remaining concerns over the resource burden associated with reopenings will be reasonably addressed by the provisions discussed below.

The EPA reiterates that any permit issued during the interim period must, upon transition to full approval, assure compliance with the permit content requirements of title V (i.e., §§ 70.6 (a) and (c)) for all applicable requirements, including the previously excluded minor NSR terms. However, the Act does not specifically require a full reopening when interim approval expires as the only means to achieve this end. The EPA believes that excluded minor NSR applicable requirements may be brought on to the title V permit prior to or upon full program approval using procedures more streamlined than full reopening. This is because some of the excluded minor NSR requirements have already been subjected to some title V procedural requirements (e.g., public review) during issuance of the NSR permit. The EPA recognizes that under this approach, other excluded minor NSR terms will be incorporated into part 70 permits without an opportunity for public comment, EPA objection, or citizen petition until renewal. However, EPA believes that deferral of these title V requirements until renewal is appropriate for excluded minor NSR applicable requirements. A minor NSR permit that is newly issued during the permit term would be incorporated into the permit through procedures that are less than those required for permit issuance. The EPA believes it is reasonable to allow for equitable treatment of pre-existing minor NSR permits that were initially excluded from the permit in the same manner, particularly since the permit shield will not apply until the minor NSR permit undergoes full title V procedures at renewal.

The EPA is adding language at § 70.3(d)(3)(ii)(D) allowing this streamlined reopening approach for excluded minor NSR terms. The EPA notes that any such process should at least meet the part 70 permit revision requirements for changes subject to minor NSR. This would include any

minimum requirements for public notice and access to records contained in the part 70 regulations in effect at the time of program transition to full approval. The EPA is further allowing permitting authorities to dispense with the need to give each source a 30-day notice of its intent to revise the permit to incorporate previously-excluded minor NSR permits. The EPA believes this individual notice is unnecessary because sources, by virtue of this action and actions taken by the State to implement this approach, will have ample notice of the fact that permits excluding minor NSR permits will need to be reopened.

As an alternative to the streamlined reopening described above, EPA believes that an interim program that does not include minor NSR terms in title V permits can be designed in such a way that it provides in advance for the inclusion of minor NSR terms upon transition to full approval. This can be accomplished by providing that each part 70 permit issued during the interim period contains a condition that automatically incorporates, at the date of transition to full approval, the terms and conditions of any minor NSR permits referenced in the facility's title V permit. This would not simply be cross-referencing, but would be advance incorporation of the NSR requirements by reference, which would subject them to title V requirements such as the requirement for an annual compliance certification. This approach would provide in advance for a streamlined transition to full approval without any need for reopening.

The EPA believes that the allowance for more streamlined procedures for incorporating excluded applicable requirements, together with the advance incorporation approach described above, provide less burdensome alternatives to full reopening. Interim programs that exclude minor NSR are encouraged to adopt one, or a combination, of these streamlined approaches to assure that title V is met for excluded minor NSR terms prior to or upon conversion to full approval, thus avoiding the need for full reopening. However, EPA notes that, in the absence of any other assurance that §§ 70.6 (a) and (c) are met for any applicable requirements, including minor NSR terms, the reopening provisions under §§ 70.7 (f) and (g), including full issuance process, would apply if and when EPA grants full approval, as noted in the preamble to the proposal.

4. Cross-Referencing of Minor NSR Permits Under Interim Program

The preamble to the proposed revision provided that each part 70 permit issued by an interim program that does not include minor NSR as an applicable requirement must state that applicable minor NSR requirements are not included in the permit, and must cross-reference any excluded minor NSR permits so that citizens may access and review those permits. One commenter noted that, while the preamble asserts that such cross-referencing is required, the corresponding rule language is ambiguous with respect to this requirement. Another commenter felt that if EPA does require such cross-referencing, specific criteria regarding what constitutes adequate cross-referencing should also be provided.

The EPA agrees that there is a need to clarify the rule language regarding cross-referencing. Therefore, EPA is adding a sentence to the proposed rule language in § 70.4(d)(3)(ii) to clarify that a facility's part 70 permit must contain a list of all minor NSR permits that contain excluded applicable requirements for that facility. Most States have a numbering system for minor NSR permits, so a listing in the part 70 permit of the permit numbers for each minor NSR permit applicable to that facility would fulfill the cross-referencing requirement.

For similar reasons, EPA is adding language clarifying the proposal preamble discussion of the permit shield. The preamble stated that the permit shield would not apply to the excluded minor NSR terms. Rule language is being added to codify this requirement in parallel with the other requirements for the interim program.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is number A–93–50. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in docket number A–93–50.

B. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is ''significant,'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this rule is not a ''significant'' regulatory action because it does not substantially change the existing part 70 requirements for States or sources—requirements which have already undergone OMB review. Rather than impose any new requirements, this rule removes an obstruction to part 70 program approval for a small number of State programs, allowing them to implement their own part 70 programs. In the absence of today's rule, EPA would implement its part 71 program in such States, which, as noted in the Information Collection Request (ICR) for the part 71 rule, would be more burdensome in a given State than a part 70 program for both the sources and the applicable permitting authority. Thus, not only does the rule avoid new direct costs, it leads indirectly to a savings. As such, this action was exempted from OMB review.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the Federal Register, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). The EPA has established guidelines which require an RFA if the proposed rule will have any economic impact, however small, on any small entities that are subject to the rule, even though the Agency may not be legally required to develop such an analysis.

The original part 70 rule was determined to not have a significant and disproportionate adverse impact on small entities. Similarly, a regulatory flexibility screening analysis of the

impacts of the proposed part 70 revisions determined that the proposed revisions (a subset of which constitutes today's action) would likewise not have a significant and disproportionate adverse impact on small entities. Consequently, the Administrator certified that the part 70 regulations would not have a significant and disproportionate impact on small entities. Because today's rule does not substantially alter the part 70 regulations as they pertain to small entities, and does not necessitate changes to the part 70 RFA, these changes to part 70 will not have a significant and disproportionate impact on small entities, and a new RFA is not needed for this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0243. The ICR prepared for the part 70 rule is not affected by today's action because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. Today's rule, which simply provides for the interim approval of certain programs which would have otherwise not been eligible for such approval, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, today's action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to:

Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Include the ICR number in any correspondence.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

The EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any 1 year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, today's action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

List of Subjects in 40 CFR Part 70

Environmental protection, Air pollution control, Carbon monoxide, Fugitive emissions, Hydrocarbons, Lead, New source review, Nitrogen dioxide, Operating permits, Particulate matter, Prevention of significant deterioration, Volatile organic.

Dated: June 11, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 70 is amended as follows.

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Section 70.4 is amended by revising paragraphs (d)(3) introductory text and (d)(3)(ii) to read as follows:

§ 70.4 State program submittals and transition.

* * * * *

(d) * * *

(3) The EPA may grant interim approval to any program if it meets each of the following minimum requirements and otherwise substantially meets the requirements of this part:

* * * * *

(ii) *Applicable requirements.*

(A) The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(B) Notwithstanding paragraph (d)(3)(ii)(A) of this section, where a State or local permitting authority lacks adequate authority to issue or revise permits that assure compliance with applicable requirements established exclusively through an EPA-approved minor NSR program, EPA may grant interim approval to the program upon a showing by the permitting authority of compelling reasons which support the interim approval.

(C) Any part 70 permit issued during an interim approval granted under paragraph (d)(3)(ii)(B) of this section that does not incorporate minor NSR requirements shall:

(*1*) Note this fact in the permit;

(*2*) Indicate how citizens may obtain access to excluded minor NSR permits;

(*3*) Provide a cross reference, such as a listing of the permit number, for each minor NSR permit containing an excluded minor NSR term; and

(*4*) State that the minor NSR requirements which are excluded are not eligible for the permit shield under § 70.6(f).

(D) A program receiving interim approval for the reason specified in (d)(3)(ii)(B) of this section must, upon or before granting of full approval, institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits as terms of the part 70 permits, as required by § 70.7(f)(1)(iv). Such reopening need not follow full permit issuance procedures nor the notice requirement of § 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's

approved part 70 program for incorporation of minor NSR permits.

* * * * *

[FR Doc. 96–15617 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–314; RM–8396]

Radio Broadcasting Services; Cadiz and Oak Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Chief, Policy and Rules Division, denied the petition for reconsideration filed by Southern Broadcasting Corporation of the Chief, Allocations Branch's Report and Order, 60 FR 52105, October 5, 1995, substituting Channel 293C3 for Channel 292A at Cadiz, reallotting Channel 293C3 from Cadiz to Oak Grove, Kentucky, and modifying Station WKDZ-FM's license accordingly. The Commission denied the petition because it failed to present new facts or arguments that were not considered in the Report and Order that would warrant a contrary decision. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–314, adopted May 24, 1996 and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–15671 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Amendment 192–79]

RIN 2137–AB97

Excess Flow Valve—Performance Standards

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In the process of routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. Excess flow valves (EFVs) restrict the flow of gas by closing automatically when a line is severed, thus mitigating the consequences of service line failures. In this final rule, RSPA has developed standards for the performance of EFVs used to protect single-residence service lines. If an EFV is installed on such a line, it must meet these performance standards.

DATES: This final rule takes effect July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, regarding the subject matter of this final rule, or the Dockets Unit, (202) 366–4453, regarding copies of this final rule or other material in the docket that is referenced in this rule.

SUPPLEMENTARY INFORMATION:

Statutory Mandate

In 49 U.S.C. 60110 Congress directs the Department of Transportation to issue regulations prescribing the circumstances under which operators of natural gas distribution systems must install EFVs. If the Department determines that there are no circumstances under which EFVs should be installed, the Department is to report this determination, and the reasons for the decision, to Congress. RSPA, on behalf of the Department, has determined that there are no circumstances under which the Department should require the installation of EFVs, primarily because the costs far exceed the benefits of such installation. RSPA has sent the report of its reasons for this determination to Congress. The report to Congress (April 4, 1995) and the cost/benefit analysis of mandatory EFV installation are available in the docket. Costs and benefits are also discussed later in this document under ''Cost/Benefit Analysis.''

49 U.S.C. 60110 further requires the Department to develop standards for the performance of EFVs used to protect service lines in a natural gas distribution system. The development of these standards is the subject of this rulemaking.

The statute also requires the Department to issue a rule requiring operators to notify customers about EFV availability and to offer to install EFVs that meet the performance standards, if the customer pays for the installation. RSPA will initiate a separate notice of proposed rulemaking for customer notification.

The Problem

Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas distribution service lines, such incidents persist and continue to result in death, injury, fire, or explosion. During the period from March 1991 through February 1994, 30 incidents with consequences that might have been mitigated by an EFV were reported to RSPA. These incidents, mostly excavation-related, resulted in 2 fatalities, 16 injuries, and an estimated $3,249,595 in property damage. Incident history is explained in the November 1991 and January 1995 cost/benefit studies evaluating mandatory EFV installation. Because damage prevention measures are not foolproof, RSPA has sought to identify ways to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have proposed EFVs as a means of mitigation.

NTSB Recommendations

NTSB has recommended EFVs as a means of reducing or preventing injury or death from incidents resulting from service line breaks or ruptures. Since 1971, NTSB has issued seven recommendations regarding the use of EFVs in service lines. NTSB's recommendations are summarized and discussed in the Notice of Proposed Rulemaking on this rulemaking (58 FR 21524; April 21, 1993).

The Advance Notice of Proposed Rulemaking (ANPRM)

RSPA issued an ANPRM (55 FR 52188; December 20, 1990) seeking information on the desirability of requiring the installation of EFVs on gas distribution service lines to reduce the damage from service line ruptures. The ANPRM also contained a questionnaire to collect current operational data on the use of EFVs by natural gas distribution operators. The results of the

ANPRM were summarized in the NPRM and are available in the docket.

The Notice of Proposed Rulemaking (NPRM)

In 1993, RSPA published an NPRM (Notice 2: 58 FR 21524; April 21, 1993), titled ''Excess Flow Valve Installation on Service Lines,'' that proposed to amend 49 CFR Part 192 to require installation of EFVs on new and replaced single residence service lines operating at a pressure of 10 psig or more. This NPRM also proposed performance standards for EFVs and conditions under which EFVs must be installed. The initial comment period for this NPRM closed June 21, 1993. The NPRM is available in the docket.

RSPA received 140 written comments in response to the NPRM: 14 from industry associations, 1 from an EFV manufacturer, 102 from local distribution companies, 2 from consultants, 17 from Congress, state agencies, and regulatory associations, 3 from transmission companies, and 1 from a group of commenters, designated hereafter as the Joint Commenters (see below).

The Public Meeting

RSPA held a public meeting on June 18, 1993 (58 FR 33064; June 15, 1993) to enable interested parties to present additional comments on several of the issues presented in the NPRM. In the notice announcing the public meeting, RSPA also extended the comment period to July 6, 1993, to allow those not able to attend the meeting to have access to the transcript. Representatives of the American Gas Association (AGA), UMAC (an EFV manufacturer), the Gas Safety Action Council (GASAC), the National Association of Pipeline Safety Representatives (NAPSR), and NTSB spoke at the meeting. The AGA representative objected to the proposed rule, especially to the expected benefits estimated in the cost/benefit study. GASAC, NTSB, and UMAC supported an EFV rule, but not as proposed. The NAPSR representative noted that in NAPSR's experience EFVs have not been cost beneficial.

The Joint Commenters

On December 20, 1993, a group, designating itself as the Joint Commenters, filed comments that recommended language to include in an EFV rule. The Joint Commenters included GASAC, EFV manufacturers, and two gas pipeline distribution associations. Although not a signatory to the comments, NTSB sent two letters to a pipeline association supporting the Joint Commenters' recommendations. The NTSB letters are available in the docket.

The Joint Commenters did not include representatives from the two major state pipeline safety associations, NAPSR, and the National Association of Regulatory Utility Commissioners (NARUC). NAPSR originally participated in discussions with the Joint Commenters but later dropped out because NAPSR members oppose a federal requirement to install EFVs. The comments from NAPSR are available in the docket.

The Joint Commenters recommended regulatory language that their signatories would support if RSPA were to adopt this recommendation as a final rule. In a Notice of Reopening Comment Period, RSPA reopened the comment period to solicit comment on the safety merits of the Joint Commenters' recommended language (59 FR 39319; August 2, 1994). The reopened comment period closed October 3, 1994. In addition to seeking comments on the safety merits of the recommendation, RSPA also sought comment on: whether to allow EFVs with a bypass feature; whether, and to what extent, the presence of contaminants in the gas stream should preclude installation of an EFV; and whether RSPA should delay issuing a rule until industry performance standards for EFVs are developed.

An additional 70 comments were received in response to the Notice of Reopening Comment Period: 7 from industry associations, 1 from an EFV manufacturer, 56 from local distribution companies, 5 from Congress, state agencies, and regulatory associations, and 1 from a transmission company. A discussion of the 140 comments to the NPRM and 70 comments to the Notice of Reopening Comment Period and RSPA disposition of these comments is found below.

Advisory Committee Review

The Technical Pipeline Safety Standards Committee (TPSSC) was established by statute to evaluate the technical feasibility, reasonableness, and practicability of proposed regulations. The TPSSC met on August 3, 1993, in Washington, DC, to consider the EFV standards proposed in the April 1993 NPRM. The TPSSC voted 11 to 0 against adopting the proposed rule as written. In addition, the TPSSC voted 10 to 1 against RSPA issuing any rule on EFVs. However, the TPSSC voted 10 to 1 to respect the wishes of Congress and to provide support for the Congressional mandate as implemented by RSPA. RSPA addresses each of the TPSSC's recommendations in the discussion of comments below.

Petition for Rulemaking

On July 14, 1995, AGA submitted a petition for rulemaking on EFV performance standards and customer notification requirements. In this petition, AGA urged OPS to adopt industry performance and manufacturing standards as soon as they are available and, in the interim, to adopt the performance standards recommended by the Joint Commenters. RSPA is not required to consider those comments in the petition pertaining to performance standards since the comments were received well after the close of the re-opened comment period. However, RSPA notes that those comments do not raise any issues not already raised in prior comments and addressed in this rule.

RSPA will consider the bulk of AGA's petition dealing with customer notification requirements in the customer notification rulemaking.

Cost/Benefit Analysis (Mandating EFV installation)

RSPA recognizes the beneficial safety effects of EFVs. However, after extensive study and rulemaking, RSPA has decided not to require the installation of EFVs, primarily because the costs far exceed the benefits of such installation.

Many comments to the NPRM and Notice of Reopening Comment Period cited the need for RSPA to redo the cost/benefit study that had been prepared to accompany the NPRM. Commenters said incident frequency, fire and police response costs, and property damage costs were overstated. The most frequent objection was that RSPA overestimated property loss and fire fighting costs for incidents with less than $5,000 in property damage. Commenters pointed out that leaks occur with greater frequency than incidents and that, by equating leak repair reports with incident reports, RSPA overstated the benefits to be gained. Many commenters also said that the $20 estimated cost to install an EFV was too low.

In light of the commenters' criticisms, RSPA thoroughly reexamined the cost/benefit study. The revised study included updated data regarding service line incidents and revised information on related costs and anticipated benefits. In the most significant benefit change, RSPA reduced its estimate of the number of nonreportable incidents that could have benefitted from an EFV installation. Criticisms of its estimates on nonreportable incidents led RSPA to conclude that the original estimate, over

143 thousand per year, significantly overstated the number of nonreportable incidents whose consequences might be mitigated by EFVs. RSPA used a different approach to develop a more reasonable estimate, approximately 13 thousand per year, for the final study. This revised number of nonreportable incidents is largely responsible for the decrease in the present value of the benefits from $21.02-$35.00 per service in the draft study to $7.42 per service in the final study.

In other changes, RSPA revised its cost estimate by using the mid-point of the cost-range in EFVs. The original estimate looked only at the EFV cost to the largest current installers of EFVs, whereas the revised estimate considered the EFV cost to all current installers of EFVs. RSPA also used newer incident data to develop better estimates of the consequences of incidents before and after an EFV installation.

As a result of RSPA's reexamination of the cost/benefit study, the present value of costs changed from the draft study figure of $20.20 per installed EFV with a bypass to a final study figure of $30.29. In addition, in the final study, the present value of costs for an EFV with positive shutoff was estimated to be $37.09 per installed EFV.

The final cost/benefit study found the cost of installing an EFV to exceed the benefits by a 4.5:1 ratio. This result, along with consideration of other criticisms of a rule requiring installation, discussed in more detail below, led RSPA to determine that it would not require installation but would require that any EFV installed meet certain performance criteria. The final cost/benefit study explains in detail how each cost and benefit was calculated. Both the draft and final cost/benefit studies examining EFV installation are available in the docket.

The Final Rule

The final rule establishes a new section in the pipeline safety regulations, § 192.381, ''Service lines: Excess flow valve performance standards.'' For the reasons previously explained, the final rule does not require installation of EFVs. In accordance with 49 U.S.C. 60110, the rule sets performance standards for any EFV that will be used in a single-residence gas service line operating continuously at not less than 10 psig. The final rule incorporates almost all the performance standards that the Joint Commenters recommended, rather than those RSPA proposed in the NPRM.

An EFV will have to be manufactured and tested by the manufacturer according to an industry specification or a manufacturer's written specification to ensure that the EFV will function properly up to its rated maximum operating pressure and at all temperatures expected in the service line's operating environment. An EFV, like any other valve, will have to comply with subparts B and D of Part 192. The required tolerance has been raised so that an EFV will be required to close at, or not more than 50 percent above the rated flow, instead of at the proposed 10 percent. As commenters requested, an operator will have the choice of using an EFV with either a positive shutoff or bypass feature. Upon closure an EFV must reduce the gas flow to no more than 5 percent of the manufacturer's specified minimum flow rate, up to a maximum of 20 cubic feet per hour for a bypass-type EFV or 0.4 cubic feet per hour for a positive shut off-type EFV. An operator will have to mark or otherwise identify the presence of an EFV in the service line.

Several proposed performance requirements have not been adopted. An EFV will not have to comply with the requirements of §§ 192.363 and 192.365 that apply to other service line valves. Service line capacity will not have to exceed the manufacturer's EFV flow rating by 50 percent. An EFV will not be required to be tested upon installation and each time a customer's meter is removed or replaced, or to close automatically if the customer's meter, regulator or service valve is sheared off. Furthermore, an operator will not be required to verify the rated flow or replace an EFV that does not close automatically.

The final rule recommends that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply to ensure that the EFV protects the maximum length of service line and to assist in locating the EFV. The final rule also recommends that to augment performance reliability, an operator not install an EFV where the contaminants in the gas stream will cause the valve to malfunction or interfere with necessary operation and maintenance activities on the service line, such as blowing liquids from the line.

Discussion of Comments

Although comments were submitted in response to the proposal to require installation of EFVs, these comments were also relevant to developing a performance standards rule. Many of the comments focussed on the performance criteria RSPA included in the proposal.

General Comments—Except for NTSB, valve manufacturers, and GASAC, virtually all of the 140 commenters to the NPRM objected to the proposed rule on installation. The major objections were that EFV installation should not be federally mandated, that each state pipeline authority should be allowed to establish the rules for its state; that a positive shutoff EFV should not be required; that testing an EFV while in service is unnecessary and overly expensive; that EFV installation should be delayed until industry standards are developed; and, that the cost/benefit study supporting the proposed rule is flawed. The majority of commenters also maintained that EFV installation should not be required where contaminants could cause the EFV to malfunction and inadvertently shutoff service to the customer.

Nearly all of the 70 commenters responding to the Notice of Reopening Comment Period proposed that RSPA adopt the Joint Commenters' recommendations on performance language because the recommended language was less objectionable than the NPRM's proposed language. The commenters also favored giving an operator the option to install either a bypass or positive shutoff EFV. Overall, because of concerns about EFV reliability, gas distribution operators favored waiting until industry standards are developed and accepted before requiring installation of EFVs. Many commenters restated their objection to the findings of the cost/benefit study.

Six large operators operating at least 9 million service lines (18 percent of all U.S. service lines) opposed both the NPRM's proposal and the Joint Commenters' recommendations. The operators' major objections were that the cost/benefit study grossly overstated benefits, that industry standards are needed because EFVs do not operate reliably, and that costs to remove EFVs after a malfunction are high.

Comments about the cost/benefit study have previously been discussed. Other general comments are discussed below, as well as specific comments about each RSPA-proposed performance standard and the associated Joint Commenters' recommendation. To avoid repetition, similar comments are discussed in only one section.

Discussion on State vs. Federal Mandate

Comments—NAPSR expressed opposition to any federal mandate to install EFVs, arguing that any such regulatory requirements should be at the state level. On two occasions NARUC passed resolutions proposing that any requirement for EFVs be determined by

the individual state pipeline safety agencies. The NARUC Subcommittee for Pipeline Safety polled the state regulatory agencies, gathered data, and prepared a report of its findings. NARUC found that only two states, Massachusetts and New York, favored a federal mandate to install EFVs.

Six major operators (three operating in California) opposed any federal requirement to install EFVs, arguing that states should be allowed to determine the need for EFVs based on state-developed criteria.

Response—Because of RSPA's decision not to issue a rule requiring the installation of EFVs, each state will be able to determine if it should require such installation based on circumstances unique to that state.

Industry Standards

In the absence of standards by an industry-sponsored safety standards committee, RSPA proposed several requirements for the manufacture and operation of any EFV that would be installed in a single-residence gas service line. The Joint Commenters' recommendation also included performance standards for single-residence gas service lines.

Comments on NPRM—Many commenters said RSPA should not issue a final rule until industry manufacturing and performance safety standards are prepared and adopted. The TPSSC recommended that RSPA initiate the development of standards by The American National Standards Institute (ANSI), American Society of Testing Materials (ASTM), or other nationally recognized and accredited organization for the manufacture, testing, and operation of EFVs. The TPSSC further recommended that when such standards are enacted, RSPA should issue an NPRM for EFVs incorporating such standards for TPSSC review. The Gas Piping Technology Committee (GPTC) commented that its ANSI/GPTC Z380 committee was developing performance, operating, and installation guidelines for EFVs. GPTC said guidance will be offered on choosing operating pressure ranges, flow rates, bleed-by, and reset characteristics, length and diameter of service piping, inline contaminants, purging procedures, joining methods, and service line locations.

Comments to Notice of Reopening Comment Period—Many commenters said RSPA should take no final action until industry standards are available because standards would assure EFV reliability. Many others said RSPA should issue a final rule but grant a one year delay in implementation to give the industry committees time to complete manufacturing and operational standards. Several commenters said the ASTM F17 committee is preparing testing standards and the ANSI/GPTC Z380 committee is preparing guidelines that should be completed in 1995.

Response—RSPA agrees that to achieve performance reliability and the desired safety benefits, specifications are necessary to ensure uniformity among EFVs installed in service lines. Because the NPRM proposing required installation only sought comment on performance standards applicable to EFVs installed in single-residence service lines, this final rule limits EFV performance standards to that application. Once industry standards are developed for EFVs used in other applications, such as multiple residences and commercial enterprises, RSPA will consider seeking comment on proposed performance standards for those applications.

The final rule requires that when an EFV is installed in a single residence service line, the EFV must be manufactured and tested by the manufacturer according to an industry specification, or to a manufacturer's written specification to ensure the EFV performs specified minimum functions. These specifications will ensure that an EFV functions properly up to the maximum operating pressure at which it is rated and at all temperatures reasonably expected in the service line's operating environment. These specifications will further ensure that an EFV is sized to close within 50 percent of the rated closure rate, to reduce gas flow upon closure to specified rates, and to not close when the pressure and flow rates are less than the manufacturer's specified minimums.

In addition, an EFV must comply with the general requirements of Subparts B and D of part 192. While subparts B and D do not include operational requirements specific to an EFV, they do include general material and design standards applicable to any valve in a pipeline system.

Many commenters, including several industry committees, indicated that EFV standards are forthcoming. However, until industry finalizes EFV standards, the requirement that an EFV perform specified functions according to a manufacturer's written specifications will ensure that an EFV performs reliably and safely. Moreover, final industry performance specifications are likely to be similar to manufacturers' specifications, because valve manufacturers are often members of the industry organizations that develop such specifications.

Proposed Section 192.381(a)—(regarding §§ 192.363 and 192.365 gas pipeline valve requirements)—RSPA proposed in the NPRM that EFVs must comply with the requirements of §§ 192.363 and 192.365. These existing sections establish requirements for all valves in gas service lines.

Comments—Several commenters stated that §§ 192.363 and 192.365 should not apply to EFVs. Commenters pointed out that these requirements apply to the design of service line manual shut-off valves and would conflict with the proposed EFV requirements. For example, commenters noted that the § 192.365(c) requirement to locate valves in a covered durable box or standpipe is intended to allow for ready operation of a service line manual shut-off valve. Therefore, it would be unnecessary and costly to apply this requirement to an EFV, which is an automatic valve not requiring access for manual operation.

Response—After further study, RSPA agrees that valve requirements concerning the use of a durable box or standpipe do not apply to EFVs, and the other requirements of §§ 192.363 and 192.365 apply only to manual shut-off type valves, not EFVs. Accordingly, the proposed requirement that EFVs comply with §§ 192.363 and 192.365 has not been adopted.

Proposed Section 192.381(a)—(10 psig requirement)-RSPA proposed that an EFV be installed on each newly installed or replaced single residence service line that operates at a pressure not less than 10 psig.

Comments—Many commenters to both the NPRM and the Notice of Reopening Comment Period requested clarification of the 10 psig threshold. Many commenters asked if the requirement would apply if pressure in the pipeline system drops below 10 psig at any time during the year.

Response—RSPA is not requiring operators to install EFVs on any single-residence service line, whatever its operating pressure. However, RSPA does not want an EFV, if installed, to cause a loss in service, especially at a time when the service is most needed by the consumer, such as during the winter heating season. Thus, the performance standards have been established for EFVs that are installed on a service line that operates at or above 10 psig continuously during the year. Setting the performance standards at this threshold is influenced by two of the largest users of EFVs who, as standard practice, limit EFV installation to service lines in systems where service line inlet pressure does not drop below 10 psig during the year.

Because service line pressure will most likely be at its lowest level during the coldest weather, especially in colder climates, an operator should consider the pressure drop in the service line due to the restriction of gas flow caused by an EFV. If pressure drop is considered, an EFV should not cause a reduction in safety or loss of service in any service line.

Proposed Section 192.381(a)—(replaced service lines)—RSPA proposed that EFVs be installed on certain new and replaced service lines.

Response—This proposal is no longer relevant since EFV installation is not being required.

Proposed Section 192.381(b)(1)—(installation)—RSPA proposed in the NPRM that an EFV be installed as close to the main or transmission line as practicable. The Joint Commenters recommended installation in or as near as practicable to the service line fitting connecting the service line to its gas supply.

Comments—Many commenters suggested RSPA remove any reference to transmission lines in the rule. Several commenters said EFVs are not available that will withstand transmission line pressures. Others stated that the statutory mandate was intended to apply only to distribution systems. The TPSSC voted 7 to 4 that all references to transmission lines be dropped from the proposed rule.

A few commenters objected to what they thought was the proposed requirement to install EFVs immediately downstream of the service-to-main connection when the line serves more than one residence (branch service). Other commenters were concerned that the proposed rule would require EFV installation below hard surfaces such as asphalt or concrete, making installation very costly.

Response—In the NPRM, RSPA intended that all new and replaced service lines, whether from a main or transmission line, where the source of gas supply consistently operates above 10 psig, be required to have an EFV installed. The reference to ''main'' and ''transmission'' lines was intended to cover farm taps, as farm taps are also subject to the type of incident that could benefit from an EFV. The final rule deletes the reference to ''main'' and ''transmission'' and sets performance standards for EFVs installed on single-residence gas service lines. By referring to ''service'' line, RSPA intends for the standards to apply if an EFV is installed on a farm tap. A farm tap operates as a service line when a local distribution company operates a metered farm tap on a transmission line delivering gas to a farmer or other landowner. Accordingly, although the rule does not require installation on any single-residence service line, an EFV that meets the required performance standards can be installed on a service line from a main or a branch off a transmission line.

RSPA never intended that an EFV serve more than one family residence. RSPA recognizes that an EFV would be difficult to size when the gas supply is serving multiple residences because of widely varying gas volume through the EFV. Because of this difficulty, the performance standards in this final rule are limited to EFVs that are installed on single-residence service lines.

RSPA agrees that removing an EFV under a hard surface would be overly expensive if an EFV failed to function. Therefore, RSPA recommends that an EFV be located beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply.

Proposed Section 192.381(b)(2)—(Section 192 Subparts B & D)—As noted above, the NPRM proposed and the Joint Commenters recommended that EFVs meet the applicable requirements of subparts B and D of part 192.

Comments—No substantive comments were received on this proposal.

Response—Subpart B establishes minimum requirements for selection and qualification of materials to be used in pipelines. Subpart D prescribes minimum requirements for the design and installation of pipeline components and facilities. Since these requirements are general performance requirements that apply to all valves, they are included in the performance requirements applicable to EFVs.

Proposed Section 192.381(b)(3)—(bypass)—RSPA proposed that an EFV be designed to prevent pressure equalization across the EFV after the EFV closes, thereby prohibiting an operator from installing an EFV with a bypass feature. The bypass feature allows pressure to equalize and the EFV to automatically reopen after closure because it allows a small amount of gas to pass through the EFV. In contrast, a positive shutoff feature allows only minute amounts of gas to pass through the EFV after it closes, and requires backpressuring downstream to reset the EFV. The Joint Commenters' recommendation would allow either type of EFV.

In the Notice of Reopening Comment Period, RSPA sought comment on the safety of using EFVs with or without the bypass feature and gave two examples, provided by two large local distribution operators, of potential dangers that might be caused by the bypass feature. RSPA also asked for comments on the conditions under which automatically resetting EFVs should or should not be required in residential service lines and on the linkage between the bypass feature and unauthorized repairs to damaged service lines.

Comments to NPRM—Many commented on the proposal prohibiting the use of EFVs with a bypass feature. Commenters, including several at the public meeting, were virtually unanimous in favor of an operator having the option to select an EFV with either the bypass or positive shutoff feature. Similarly, the TPSSC voted 9 to 2 in favor of an operator having this option.

Various reasons were given for not prohibiting the installation of bypass EFVs. Several commenters, including an industry association, complained that RSPA proposed the positive shutoff requirement without sufficient justification in the cost/benefit study. One commenter said that additional costs of at least $250 per utility crew would be incurred to provide backpressure downstream of the EFV to equalize the pressure and reset the valve. This commenter said these services would necessitate extra equipment, including a compressed natural gas tank or portable natural gas compressor, and additional piping, fittings, and hoses. Other commenters mentioned additional hazards to personnel in hauling and connecting compressed natural gas. Another commenter was concerned with customer inconvenience because a service call would be necessary to backpressure the EFV, delaying restoration of service.

Many commenters argued that bypass-type EFVs do not pose a significant safety risk. Commenters maintained that operators that regularly install EFVs have had no incidents resulting from use of bypass-type EFVs. Three of the largest voluntary users of EFVs (with over 300,000 EFVs in service) commented that their data did not show an incident having occurred due to a bypass- type EFV. An EFV manufacturer commented that it has no knowledge of bypass gas ever contributing to a natural gas incident. NTSB and many operators echoed these assurances.

Several commenters, including EFV users, said RSPA's concern that the bypass feature would allow irresponsible excavators to make repairs is unfounded. A few commenters said that positive shutoff EFVs would cause more safety problems than bypass-type EFVs because an excavator could sever a service line unknowingly if the

positive shutoff were to completely stop the gas flow and any released odor from reaching the atmosphere. Conversely, these commenters argued that a failed service line with a bypass would continuously release gas and leave a readily detectable odor. Commenters noted other potential problems with positive shutoff EFVs. For example, a commenter in Alaska pointed out that an earthquake in the winter could cause EFVs to engage and, if positive shutoff EFVs were used, each would have to be backpressured and each customer's appliance re-lighted. During an Alaskan winter this could take days.

The Gas Research Institute (GRI) stated that its tests of EFV models showed all the tested models were affected by pressure surges of 5 psi or more and that opening, closing, or throttling a main line valve could activate an EFV, causing a false closure. The research organization said RSPA could infer from these results that the use of EFVs without the bypass could cause extended distribution service outages. GRI further stated that it knows of no reports of bypass flow in an EFV having led to or increased the severity of an accident.

GASAC commented that RSPA should allow each operator to determine the type of valves for its system. Other commenters echoed this statement. Even among those operators opposed to a mandatary rule, most said that if a rule were issued, the choice of which type of EFV to use should be left to the operator.

Comments on the Joint Commenters' Recommendation - Many commenters supported the Joint Commenters' recommendation to allow the use of a bypass-type EFV. Many commenters said it is not appropriate to depend on an EFV's design to prevent unauthorized repairs. Rather, unauthorized repairs should be controlled by stiffer penalties and better enforcement of damage prevention laws. These commenters maintained that EFVs are used to provide safety when a service line is severed, and should not be expected to perform functions beyond their intended purpose.

Many commenters said excavators who damage service lines may make unauthorized repairs regardless of whether a bypass-type EFV, a positive shutoff EFV, or no EFV is installed. RSPA recognizes the validity of this statement and that EFVs with either feature are not likely to have a substantial effect in either reducing or increasing the frequency of unauthorized repairs on a broken service line.

To dispel RSPA's concern about the potential danger of bypass- type EFVs and gas discharge into a residence, an operator explained that since natural gas is only about 0.6 times the density of air, any raw gas passing through a vented appliance would exhaust to the atmosphere through the chimney. The operator concluded that household gas ranges (or space heaters) without burner safety pilots are the only paths for raw gas to disperse through a building. The operator cited a recent study by NOVA, a Canadian chemical and pipeline company, that demonstrated that a rate of raw gas buildup in a small residence (300 square feet) would have to be about 60 cubic feet per hour to reach an ignitable level in five hours. This allows a five hour period for someone to discover the gas release before the ignitable level is reached. A bypass-type EFV allows 20 cubic feet of gas per hour. Therefore, natural gas that is passing through an EFV with a bypass would take several hours to accumulate to the ignitable range in a building.

Response—RSPA has been concerned that excavators could repair a service line break equipped with an EFV with a bypass feature, the EFV would automatically reset, and service would be restored without the operator knowing that the line had been damaged. Consequently, gas could then pass into and accumulate in a residence where the pilot light on a gas appliance had been extinguished during the service line break.

RSPA was also concerned that restoration of gas service with unvented appliances would cause a rapid buildup of the gas/air mixture to an ignitable level. Commenters have posed circumstances under which such a buildup could occur. However, in response to its questions about this problem, RSPA did not receive any information that such an incident has actually occurred. Furthermore, an EFV manufacturer and AGA have assured RSPA that bypass-type EFVs operate properly to avoid unintended gas buildup within a building. An operator with 20,000 installed bypass-type EFVs stated that bypass gas from a tripped EFV had never caused or contributed to an unsafe situation on its system. Other operators made comparable statements. The NOVA study, described above, further allays RSPA's concern. Therefore, based on the record in this rulemaking, RSPA accepts the premise that EFVs with a bypass feature are safe.

RSPA also finds acceptable the Joint Commenters' recommendation to limit gas flow to 20 cubic feet per hour for bypass-type EFVs and to 0.4 cubic feet per hour for positive shutoff-type EFVs. Because EFVs with positive shutoff features were proposed in the NPRM, RSPA did not propose EFV flow limits. However, RSPA agrees that the limits recommended by the Joint Commenters are reasonable and feasible design requirements.

Accordingly, the final rule allows either bypass or positive shutoff EFVs. Closure flow rates will be limited to 20 cubic feet per hour for the bypass-type EFV and 0.4 cubic feet per hour for the positive shutoff EFV.

Proposed Section 192.381(b)(4)—(installation testing)—RSPA proposed that upon original installation of an EFV and each time the meter is removed or replaced, the EFV be tested to determine if it closes automatically. The Joint Commenters' recommendation deleted the requirement.

Comments—All 37 commenters on this proposed requirement asked that it be deleted. Most commenters stated that the test would require that the service line be disconnected from the meter set, the service valve at the meter opened, and gas vented to the atmosphere to trip the EFV. Many commenters said that venting of the gas near the residence, or inside the residence when the meter is indoors, would be hazardous and would needlessly release methane into the atmosphere contrary to the goals of the Clean Air Act.

An EFV user stated that it does not test the EFV when replacing meters. This commenter stated that it replaces one-tenth of its meters annually and provided RSPA a summary of the steps involved in testing an EFV when a meter is replaced on an existing service. This commenter further stated it would take a two person crew a full day to test an EFV, resulting in substantial cost with no corresponding benefit. The American Public Gas Association (APGA) commented that the proposed testing would add significantly to the costs of using EFVs with no corresponding safety benefits and noted that these costs were not included in the cost/benefit analysis.

Several other commenters also noted that this proposed requirement had not been covered in the cost/benefit analysis and provided data on the costs that would be incurred for such tests. AGA estimated that 3 million services have meters removed each year, so that the tests could cost $100 million per year, doubling RSPA's estimated installation cost of $20 per EFV (with bypass feature). These same commenters contended that testing positive shutoff EFVs would cost even more.

AGA and other commenters concluded that such tests would require removing the service regulator or

installing a fitting to allow gas to be vented upstream of the service regulator because the flow of gas passing through a service regulator may be too small to cause the EFV to trip. These commenters said that such a fitting would invite a resident to bypass the meter and steal gas.

The TPSSC voted 8 to 2 that no in-service testing of an EFV be required.

Response—Based on the comments about problems and costs of installation testing, the final rule will not require an operator to test the EFV when the EFV is installed or when the meter is removed or replaced. However, the requirement that the EFV must be manufactured and tested to an industry specification or manufacturer's written specification to ensure that the EFV functions properly up to the rated maximum operating pressure will certainly require random sample testing at the manufacturer's plant. Such sample testing is routinely conducted for all other valves in accordance with manufacturing standards.

Proposed Section 192.381(b)(5)—(automatic closure)—RSPA proposed that an EFV must close automatically if the service line is severed or if the customer's meter, regulator, or service valve is sheared off. The Joint Commenters' recommendation did not include such a requirement.

Comments—All seventeen commenters on this proposed requirement argued that it should be deleted. Most commenters stated that operators cannot guarantee that an EFV will perform as designed and warranted by the manufacturer. One commenter said that it would be difficult to comply with such a requirement because EFVs often fail to activate (due to fluid friction) in longer service line lengths of ½-inch pipe. Also, even if the meter set is sheared off, the flow rate may not exceed the EFV activation flow rate because the pipe may be squeezed off at the point where it is sheared, or because there are other restrictions in the line.

One EFV user stated that costs for assuring that an EFV closes automatically would approach $1,000 per installation. This commenter reasoned that an EFV is intended to help reduce the effects of dig-ins on a service line in the area of the street, where most excavation takes place, and requiring the EFV to do more than intended will increase costs.

The TPSSC voted 7 to 3 that the proposed requirement be changed so that an EFV ''be designed to close automatically if the service line is ruptured downstream of the valve.''

Response—RSPA agrees with the commenters that flow rate may not always exceed an EFV's activation flow rate because a long service line could cause excessive pressure drop, or a line could be squeezed off at the point where it is sheared, or there could be other restrictions in the line. Therefore, RSPA is not including proposed § 192.381(b)(5) in the performance standards. However, the final rule (§ 192.381(c)) requires that an EFV be manufactured according to an industry specification or manufacturer's written specification that will establish shutoff requirements for conditions comparable to a service line being severed or a meter set being sheared off.

Proposed Section 192.381(b)(6)—(sizing)—RSPA proposed that an EFV be sized to close within 10 percent of the rated flow specified by the manufacturer. The Joint Commenters recommended a closure rate not less, and not more than 50 percent higher, than the manufacturer's specified closure flow rate.

Comments to NPRM—The 32 commenters objected to this requirement. Most commenters suggested that the proposed 10 percent tolerance be raised to 50 percent because EFVs are not precision instruments. Some commenters suggested a 25 percent tolerance. Most commenters said that EFVs with 10 percent tolerance are not commercially available and would be significantly more expensive. GASAC also opposed the requirement as excessive.

AGA provided exhaustive information showing that EFVs with a 10 percent tolerance are not commercially available and may not be possible to mass produce. AGA suggested a 50 percent tolerance and cited a Gas Research Institute (GRI) study regarding EFV performance repeatability. In 1985, GRI tested seven EFV models and found that closure flows of a single copy were repeatable within a range of 6.4 percent to 20.8 percent, whereas closure flows between two arbitrary copies of the EFVs were repeatable within the range of 15.4 percent and 87.9 percent. None of these models would have met the RSPA proposed requirements. AGA provided an EFV manufacturer's graphs showing that none of the currently available EFVs tested by that manufacturer closed within 10 percent of the rated closure.

Comments on Joint Commenters' recommendation—A member of the Joint Commenters said its analysis of service ruptures found that EFVs could close as much as 50 percent over specified closure flow and still reliably close in the type of accident EFVs are meant to address. Three other commenters agreed with the Joint Commenters' recommendation.

The TPSSC voted 7 to 4 that the rule specify that an EFV must close no lower than its rated flow and not more than 50 percent above rated closure flow.

Response—Although no EFV is currently available at an acceptable cost that will conform to a 10 percent tolerance, RSPA believes that distribution operators must have a specified closure range for an EFV that is reliable. The requirement that an EFV activate at, or 50 percent above, a specified flow level provides an acceptable closure range in accordance with currently available EFVs. Accordingly, RSPA will require an EFV be sized to close at or 50 percent above the rated closure flow rate specified by the manufacturer.

Proposed Section 192.381(c)—(flow rate verification)—RSPA proposed that the operator verify the manufacturer's rated flow for the EFV by testing at a pressure of 10 psig for the gas to be transported in the service line. The Joint Commenters recommended that the manufacturer certify the EFV meets the manufacturer's written performance specifications, rather than place this responsibility on the operator.

Comments to NPRM—Thirty six commenters responded to RSPA's proposed requirement. Virtually all commenters objected to any operator responsibility for testing and suggested the requirement be deleted. Most commenters contended that operators cannot guarantee the performance of an EFV, but should be able to rely on the manufacturer to certify that EFVs meet the applicable standards—the approach allowed for other valves used in gas distribution systems. An EFV manufacturer also agreed that it should be the manufacturer's responsibility to test and certify EFVs. Most commenters stated that the proposed requirement would significantly increase an operator's costs.

Comments on Joint Commenters' recommendation—An industry association agreed with the recommendation to allow an operator to rely on the manufacturer's certification that EFVs meet performance standards rather than have the operator test each EFV. The association pointed out that RSPA allows such a procedure under § 192.145.

Response—RSPA agrees with the commenters that the flow rate verification test should be an EFV manufacturer's responsibility, not the operator's. Thus, the final rule requires that an EFV be manufactured and tested by the manufacturer according to an industry specification, or

manufacturer's written specification to ensure that each valve will perform specified minimum functions. This requirement should lead to a random EFV testing program by the manufacturer, similar to testing for other system valves. Currently, certain valves (cast iron and plastic) are installed that meet the specified manufacturing tests in § 192.145. All other valves must be manufactured according to specifications in American Petroleum Institute (API) Standard 6D, which also requires random testing by the manufacturer.

Proposed Section 192.381(d)—(replacement)—RSPA proposed that if an EFV does not close automatically during installation testing or when the service line is severed, it must be replaced with an EFV that closes as required. The Joint Commenters' approach would remove any requirement to assure that an EFV closes after installation.

Comments—None of those commenting on RSPA's proposal was entirely satisfied with it. Seven commenters suggested changes that included permitting the operator the option to repair or replace an EFV that doesn't close. These commenters further proposed exempting a location from the installation requirement after two EFVs do not perform properly at that location.

One operator questioned what constitutes satisfactory closure by explaining that minor accumulations of dust and dirt can interfere with an absolute 100 percent shutoff. This commenter said that RSPA should conduct additional studies to ascertain what long-term performance characteristics can be expected and include acceptable criteria in the rulemaking.

Eight commenters said the requirement was not needed or questioned the apparent intent to require the operator to keep replacing an EFV until one performs as required. Several said that the requirement assumed that an EFV's failure to close is always the valve's fault. Commenters explained that many factors influence the operation or performance of an EFV, including changes in operating pressures and the type of gaseous mixtures flowing through the service line. They suggested the practical approach would be to allow the utility to repair and replace an EFV at its own discretion as it does with other valves in its system.

Response—RSPA's proposed requirement that an operator replace an installed EFV if it fails during installation testing or during a service line break, is no longer applicable since on-site testing and mandatory EFV installation are not being required in this final rule. Instead, an EFV must be manufactured and tested by the manufacturer according to an industry specification or manufacturer's written specification to ensure that the valve will function properly. Furthermore, replacement or removal of a defective EFV will be left to agreement between the customer and operator.

Section 192.381(e)—(manufacturing specifications)—RSPA proposed that each EFV must be manufactured in accordance with written specifications that assure the EFV meets the manufacturer's published pressure and flow rate criteria. The Joint Commenters recommended that, instead, an EFV be manufactured and tested by the manufacturer according to a written specification to ensure that the EFV will function properly up to the maximum rated operating pressure and at all temperatures reasonably expected. The Joint Commenters further recommended that an EFV not close when pressures are below the manufacturer's minimum pressure.

Comments—Fourteen of the fifteen commenters responding to RSPA's proposed requirement were dissatisfied with the wording and recommended changes. These commenters stated that this provision appeared to shift responsibility for quality assurance from the manufacturer to the gas distribution operator who cannot assure that the manufacturer will produce valves meeting the manufacturer's published pressure and flow rate criteria. Commenters further stated that because of liability concerns there should be an industry EFV standard by which the valves should be manufactured. APGA also argued that manufacturers, not gas distribution operators, should be responsible for assuring that EFVs meet the necessary performance criteria.

Response—RSPA agrees that the proposed requirement was unclear as to who would be responsible for assuring that an EFV meets the specified performance requirements. Accordingly, the final rule clarifies that an EFV will have to be manufactured and tested by the manufacturer according to an industry specification or manufacturer's written specification to ensure that each valve meets the specified minimum performance standards.

Proposed Section § 192.381(f)—(service line capacity)—RSPA proposed that service line capacity must exceed the EFV manufacturer's flow rating by 50 percent. The Joint Commenters' approach did not include a similar requirement.

Comments on NPRM—Thirty three commenters responded to this proposed requirement. Five commenters said that maintaining a flow rate at least 50 percent over the rating of the EFV would severely restrict an operator and increase costs. These commenters explained that such a high flow rate would, in many cases, require the installation of service lines larger in diameter than required for a customer's load and also preclude the insertion of plastic tubing. These persons recommended reducing the flow rate margin to 25 percent.

Most commenters opposed establishing arbitrary excess flow capacity. These commenters stated that the sizing of service lines is the operator's responsibility and that many factors must be considered, such as costs, current and future loads, the possibility of future insertions, and future maintenance requirements.

Response—RSPA agrees that a requirement to design a service line with excess capacity is not necessary for an EFV to function properly and would add unnecessary expense. Thus, the final rule does not require that service line capacity exceed the EFV manufacturer's flow rating by 50 percent. This approach is consistent with Part 192, which does not require installation of service lines larger than required to meet the customer's load.

Proposed Section 192.381(g)—(Marking)—RSPA proposed that each service line with an EFV be physically marked or labeled in the field, so that the label would be readily visible to gas company employees.

Comments on NPRM—Twelve commenters said that requiring service lines with EFVs to be identified is unnecessary and is of little benefit. One commenter, currently using EFVs and marking those service lines, said it does not believe that marking should be required. Several commenters stated that marking service lines is futile due to customers painting the meter set, weather deterioration, and vandalism. A few commenters suggested that the operator have the option to mark or record the location of these valves. However, eight commenters supported the requirement, saying it is a good safety practice for gas company operator personnel, when arriving at a residence, to know if an EFV is installed in that service line.

Comments on Joint Commenters' Recommendation—The Joint Commenters' recommendation did not include a requirement to mark services in the field. An industry association supported the Joint Commenters' approach and further recommended that

the operator be allowed the option to mark services in the field or record EFV installation on its maps and records.

Response—RSPA believes it is helpful for operating personnel to know if an EFV is installed in a service line. In a service outage or emergency, service personnel arriving at a residence might respond differently depending on whether or not an EFV is installed. For example, if service personnel find that a service line has been severed and the line is marked or otherwise identified as having an EFV, service personnel should recognize that the small amount of gas escaping from the severed line is from an EFV with a bypass feature and not from a pinched service line that could suddenly release a hazardous flow of gas. With this knowledge, service personnel can initiate correct repair procedures.

Accordingly, the rule will require that an operator must mark or otherwise identify the presence of an EFV in the service line.

Proposed Section 192.381(h)—(Contaminants)—RSPA proposed that EFV installation not be required on a service line where the operator can demonstrate that contamination in the gas stream will cause an EFV to malfunction. The Joint Commenters' approach eased the operator's burden of proof by allowing the operator to document, rather than demonstrate, an unsatisfactory level of contamination.

The Joint Commenters also recommended that EFV installation not be required where the EFV would interfere with operation and maintenance activities, such as blowing liquids from the line.

Comments on NPRM—Twenty-four commenters supported the proposal to except EFV installation where prior experience indicates contaminants will cause a malfunction. Several commenters stated, however, that it is unclear how an operator could make such a demonstration. NTSB said RSPA should state the requirements necessary to claim the exemption. Several commenters said they hoped that an operator would not have to install an EFV and wait for it to fail before being able to demonstrate that contaminants should preclude installation. Two commenters argued that if an operator has experience with clogging of valves, regulators, or meters from liquids or solids in certain areas of its system, such experience should be sufficient to demonstrate that an EFV should not be installed on that part of the system.

An EFV manufacturer agreed that an EFV should not be installed where contaminants would interfere with the proper operation of an EFV, but based on its experience felt it unlikely that many systems have sufficient contaminants to cause an EFV to malfunction. GASAC commented that requests for an exemption should be subject to public disclosure and a formal review process to prevent unwarranted exemptions.

Comments on Joint Commenters' recommendation—AGA argued that the operator should determine whether to use EFVs in contaminated areas. AGA said a company might cite previous experience with service lines plugging with liquids or solids, plugging of other valves or service regulators, or knowledge of liquids or solid debris in certain parts of the system to justify not installing EFVs.

Another commenter said that iron oxide rouge from steel pipe mixed with tiny amounts of compressor fluids forms a sticky residue and prevented early model EFVs from successfully resetting following closure. The commenter said it is likely that no EFV on the market today is robust enough to withstand such contaminants and operate properly for the minimum expected life of 50 years estimated in the NPRM.

Response—RSPA agrees that an EFV is not recommended on a service line where the operator has prior experience with contaminants in the gas stream that could interfere with the EFV, cause loss of service to a residence, or cause an operator to incur undue expense in removing an inoperative EFV. An operator should, based on its previous history of service line or equipment problems from contaminants, decide whether it is appropriate to install an EFV. An operator should also consider if an EFV installed on a service line could interfere with the operator's operation and maintenance procedures.

Regulatory Notices and Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by the Office of Management and Budget. In addition, the final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it concerns a matter of substantial interest to the public and Congress.

Cost/Benefit Analysis (EFV—Performance Standards)

Since the final rule does not require mandatory installation of EFVs, the performance requirements of this rule will not impact gas distribution systems not currently installing EFVs unless they begin installing EFVs. This rule will impact manufacturers of EFVs. As previously mentioned, OPS will be initiating a separate rulemaking to propose that customers be notified that EFVs are available for installation and will be installed at customer expense. This means that all gas distribution systems may soon be installing EFVs, and, thus, may be impacted by the new EFV performance standards.

The new EFV performance standards will help ensure that gas distribution companies that currently install EFVs, as well as those that begin to install EFVs on their own or because of a new notification rule, properly install these EFVs. Furthermore, these standards, by helping to ensure that newly installed EFVs are manufactured to function properly (e.g., close when they are supposed to and not close when they are not supposed to), will reduce the cost of improper closure to both gas distribution system operators and the general public. The standards will also help keep substandard valves from entering the marketplace, thereby providing some assurance of reliability to both operators and customers. As a further result of these standards, reliable EFVs installed on compatible service lines will help mitigate the consequences of incidents on service lines.

The cost/benefit study accompanying this rule estimates and compares the benefits and costs of the EFV performance standards to determine whether the standards, taken as a whole, would be cost beneficial. This study estimates the expected benefits and costs of installing one EFV and uses these estimates to calculate a benefit/cost ratio. This approach yields the same benefit/cost ratio as an approach considers the number of EFVs installed in each year, but is less complicated and cumbersome, since it does not require the estimation of (1) the number of services expected to be renewed each year, (2) the number of new services expected to be installed each year, and (3) the number of existing services that will be discontinued each year.

The primary sources of EFV data used in the analysis were (1) the written submissions to the Docket for this rulemaking made by gas distribution companies, EFV manufacturers, and other interested parties and (2) direct contacts with gas distribution companies, EFV manufacturers, and other interested parties.

The pipeline incident data used in this analysis was taken primarily from the incident and annual report submissions made to OPS by gas distribution companies. These

submissions are required under the Federal pipeline safety regulations.

All dollar figures in the study are given in nominal dollars, unless otherwise indicated. Where deflation of nominal dollar figures has been performed, the Producer Price Index, All Commodities, with 1993 as the base, has been used.

As summarized below, benefits, costs, and net benefits were developed for (1) the standards for EFV installation, (2) marking requirements, and (3) the performance requirements. The complete Benefit/Cost Analysis for EFV Performance Standards, dated August 1995, is available in the Docket.

Standards for EFV Installation

The final rule requires that an EFV installed on a single-family residential gas service that always operates at 10 psig or greater (1) must be rated by the manufacturer for use at the pressure and flow rate anticipated on the service line and (2) must meet the applicable requirements of Subparts B and D of Part 192. The final rule also recommends that an installed EFV be placed as near as practical to the main. Although this rule specifies standards for EFV installation, the installation of EFVs is not mandatory. However, if an EFV is installed, the regulatory standards will help ensure the EFV performs as expected and protects the maximum length of the most vulnerable portion of a service line.

The standards for EFV installation appear to be consistent with current industry practice. Consequently, the benefits, costs, and net benefits of the requirements are all expected to be $0 per EFV per year.

Marking Requirements

The new marking requirement will enable gas distribution system operating and service personnel to know if a service line has an EFV installed when responding to a service outage or other service line call. This will make it possible for the personnel to safely initiate correct repair procedures. The new marking requirement is expected to reduce deaths and injuries to gas distribution system personnel, and to reduce damage to the system and nearby property.

The requirement to mark or otherwise identify services with EFVs is consistent with current industry practice. As a consequence, the benefits, costs, and net benefits are all expected to be $0 per EFV per year.

Performance Requirements

The final rule sets performance requirements for all newly installed EFVs on single-family residential services operating at 10 psig or greater. These performance requirements are to be ensured through design, manufacturing, and testing by EFV manufacturers in accordance with an industry specification or with the manufacturer's written specifications.

The performance requirements will help ensure the reliability of EFVs. Greater reliability will result in (1) the replacement of fewer EFVs by gas distribution systems and (2) an increase in the number of EFV actuations when there are catastrophic service line breaks. The primary benefit of the new performance requirements will be an increased average reliability of the EFVs on the market. This assumes that all EFVs currently on the market are not fully consistent with the new requirements, which appears to be the case. A secondary benefit will be the assurance that the quality of EFVs will not degrade (with respect to the performance characteristics covered by the new performance requirements) in the future.

The new performance requirements for EFVs cover (1) rated maximum operating pressure, (2) the impact of external temperature, (3) sizing, (4) reduction in gas flow upon closure, and (5) inappropriate closure. The requirements for rated maximum operating pressure, the impact of external temperature, and sizing appear to be consistent with current industry practice. The benefits of the new performance requirements are expected to be between $15,675 and $1,254 per year. The costs are expected to be $0 per year. Consequently, the net benefits are expected to be between $15,675 and $1,254 per year.

The net benefits calculated for the performance requirements do not include (1) the costs related to the redesign of EFVs, (2) the full monetary value of the benefits accruing to gas distribution companies that currently install EFVs, and (3) the monetary value of the benefits that will accrue to gas distribution companies that install EFVs in the future.

Present Value of the Net Benefits

The net benefits for the new performance requirements are the sum of the net benefits of (1) EFV installation standards, (2) the marking requirements, and (3) the EFV performance requirements. Since the net benefits for the EFV installation standards and for the marking requirements are expected to be greater than $0 per year, while the net benefits for the new performance requirements are expected to be between $15,674 and $1,254 per year, the total net benefits for the EFV requirements specified in the final rule will be, at most, greater than $15,674, and, at least, greater than $1,254 per year. Discounted over 50 years (the life of an EFV assumed by OPS) using a 7 percent discount rate, the present value of the total net benefits is expected to be, at most, greater than $223,768, and, at least, greater than $17,901. Since costs are $0, their present value is also $0 and the cost-to-benefit ratio is 0 at both the upper and lower bounds of the benefits.

Conclusion

The positive present value of the expected net benefits, as well as the cost-to-benefit ratio of 0 at both the upper and lower bounds on the benefits, indicate that the performance standards presented in the final rule will be cost beneficial.

Regulatory Flexibility Act

Based on costing assumptions discussed in the Cost/Benefit Analysis, this rule will not have an undue impact on small operators. Therefore, I certify under section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

E.O. 12612

This rulemaking action 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 E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 192 is amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113 and 60118; 49 CFR 1.53.

* * * * *

2. Part 192 is amended by adding § 192.381 to subpart H to read as follows:

§ 192.381 Service lines: Excess flow valve performance standards.

(a) Excess flow valves to be used on single residence service lines that operate continuously throughout the year at a pressure not less than 10 psig must be manufactured and tested by the manufacturer according to an industry specification, or the manufacturer's written specification, to ensure that each valve will:

(1) Function properly up to the maximum operating pressure at which the valve is rated;

(2) Function properly at all temperatures reasonably expected in the operating environment of the service line;

(3) At 10 psig:

(i) Be sized to close at, or not more than 50 percent above the rated closure flow rate specified by the manufacturer; and

(ii) Upon closure, reduce gas flow—

(A) For an excess flow valve designed to allow pressure to equalize across the valve, to no more than 5 percent of the manufacturer's specified closure flow rate, up to a maximum of 20 cubic feet per hour; or

(B) For an excess flow valve designed to prevent equalization of pressure across the valve, to no more than 0.4 cubic feet per hour; and

(4) Not close when the pressure is less than the manufacturer's minimum specified operating pressure and the flow rate is below the manufacturer's minimum specified closure flow rate.

(b) An excess flow valve must meet the applicable requirements of Subparts B and D of this part.

(c) An operator must mark or otherwise identify the presence of an excess flow valve in the service line.

(d) An operator should locate an excess flow valve beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply.

(e) An operator should not install an excess flow valve on a service line where the operator has prior experience with contaminants in the gas stream, where these contaminants could be expected to cause the excess flow valve to malfunction or where the excess flow valve would interfere with necessary operation and maintenance activities on the service, such as blowing liquids from the line.

Issued in Washington, DC, on June 14, 1996.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 96–15564 Filed 6–19–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AD43

Addition of Ohio River Islands National Wildlife Refuge to the List of Open Areas for Sport Fishing in West Virginia, Pennsylvania, and Kentucky

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds Ohio River Islands National Wildlife Refuge to the list of areas open for sport fishing in West Virginia, Pennsylvania, and Kentucky, along with pertinent refuge-specific regulations for such activities. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Order 12962, (Recreational Fisheries), and is otherwise in the public interest by providing additional recreational opportunities at a national wildlife refuge.

EFFECTIVE DATE: This rule is effective July 22, 1996.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240; Telephone (703) 358–2397.

SUPPLEMENTARY INFORMATION: National wildlife refuges generally are closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management, and must otherwise be in the public interest. This rulemaking opens Ohio River Islands National Wildlife Refuge to sport fishing.

In the November 29, 1995, issue of the Federal Register (60 FR 61239–61240) the Service published a proposed rulemaking and invited public comment. A description of the refuge and the proposed fishing program was provided. No comments were received during the 60-day public comment period.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

In many cases, refuge-specific regulations are developed to ensure the compatibility of the programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and the RRA has been ensured for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This has ensured that the determinations required by these acts have been made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

The Service has determined that this action is in accordance with the provisions of all applicable laws, is

consistent with principles of sound fish and wildlife management, helps implement Executive Order 12962 (Recreational Fisheries), and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budget to operate the hunting and sport fishing programs as proposed.

Ohio River Islands National Wildlife Refuge

Established in 1990, the Ohio River Islands National Wildlife Refuge is located on the Ohio River from Shippingport, Pennsylvania to Manchester, Ohio. There are currently eighteen islands in the refuge totaling 1,020 acres. Through ongoing acquisition efforts, the refuge has the potential to include all, or a portion of, 38 islands located along 362 river miles encompassing up to 3,500 acres of wildlife habitat.

The Ohio River islands and their back channels are recognized for high quality fish and wildlife, recreation, scientific, and natural heritage values. These areas provide some of the regions' highest quality riverine, wetland, and bottomland habitats, and are used by waterfowl, shorebirds, songbirds, warmwater fish, and freshwater mussels.

The Ohio River Islands National Wildlife Refuge was established under the authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j). The refuge's primary purposes are: ''* * * for the development, advancement, management, conservation and protection of fish and wildlife resources'', and ''for the benefit of the United States Fish and Wildlife Service, in performing its activities and services.'' The objectives of the sport fishing program are to:

(1) Provide for the wise use of renewable natural resources;

(2) provide an opportunity for sport fishing and minimal; interference from other anglers and freedom to participate in a natural setting; and

(3) provide sport fishing opportunity when such use was not detrimental to the refuge's primary objective and is compatible with other wildlife-dependent recreation.

A total of 55 species of fish were collected by the West Virginia Department of Natural Resources and the Service in the vicinity of the islands. The shallow water areas against the islands, particularly the back channels, are important nursery areas for a variety of game fish. Opening the refuge to sport fishing will have a negligible impact on the fishery resource.

The 18 refuge islands comprise 1,020 acres, and State surveys of recreational fishing indicate little impact has been realized on the island habitats. The overwhelming majority of fish harvest occurs at dam tailwaters and main channel borders.

Opening the refuge to fishing is compatible with refuge purposes. The fishing program will be reviewed, as appropriate, to ensure that sensitive habitats are protected from disturbance. Sufficient funds will be available within the refuge budget to operate this fishing program.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Economic Effect

Service review has revealed that this rulemaking will increase fishermen visitation to the surrounding area of the refuge before, during or after recreational uses, compared to the refuge being closed to these recreational uses. When the Service acquired this land, all public use ceased under law until opened to the public in accordance with this rulemaking.

This refuge is located away from large metropolitan areas. Businesses in the area consist primarily of small family owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small commercial and recreational fishing and hunting camps and marinas in the general area. This rule would have a positive effect on such entities; however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands were not generally available for general public use prior to government acquisition; however, they were fished and hunted upon by friends and relatives of the landowners, and some were under commercial hunting and fishing leases. Many nearby residents also participate in other forms of nonconsumptive outdoor recreation, such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge hunting and fishing programs on local communities are calculated from average expenditures in the ''1995 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation''. In 1995, 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, big game hunters averaged spending $40, small game hunters $20, and migratory bird hunters $33. Applying these national averages to projected visitation at Ohio River Islands NWR results in the following: 1200 fisherman are expected to spend $12,200 annually in pursuit of their sport.

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. Hunters and/or fishermen increase visitation and expenditures in the surrounding area of the refuge and contribute in a positive manner, but the total amounts are not significant to the local area, therefore, this rule would have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, in their 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, the Service has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost

of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Service has determined that these final regulations meet the applicable standards provided in Sections (a) and (b) of Executive Order 12988.

Environmental Effects

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment was prepared for this opening. Based upon the Environmental Assessment, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation pursuant to the Endangered Species Act was conducted. The Service determined that this action will not affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. These documents are on file at the offices of the Service and may be reviewed by making preliminary arrangements with the primary author noted below.

Primary Author: Stephen R. Vehrs, Division of Wildlife Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7, List of refuge units open to hunting and/or fishing, is amended by alphabetical adding ''Ohio River Islands National Wildlife Refuge'' to the States of Kentucky and Pennsylvania.

3. Section 32.36 *Kentucky* is amended by adding ''Ohio River Islands National Wildlife Refuge'' in alphabetical order to read as follows:

§ 32.36 Kentucky.

* * * * *

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge under Kentucky's State fishing regulations and guidelines, unless otherwise posted on the refuge.

* * * * *

4. Section 32.57, *Pennsylvania* is amended by adding ''Ohio River Islands National Wildlife'' alphabetically to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge under Pennsylvania's State fishing regulations and guidelines, unless otherwise posted on the refuge.

* * * * *

5. Section 32.68, *West Virginia* is amended by revising paragraph D, under ''Ohio River Islands National Wildlife Refuge'' to read as follows:

§ 32.68 West Virginia.

* * * * *

Ohio River Islands National Wildlife Refuge

* * * * *

D. Sport fishing. Sport fishing is permitted on designated areas of the refuge under West Virginia's State regulations and guidelines, unless otherwise posted on the refuge.

* * * * *

Dated: April 16, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–15738 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 32

RIN 1018–AD44

Addition of Great Bay National Wildlife Refuge to the List of Open Areas for Hunting in New Hampshire

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds Great Bay National Wildlife Refuge to the list of areas open for hunting in New Hampshire along with pertinent refuge-specific regulations for such activities. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities at a national wildlife refuge.

EFFECTIVE DATE: This rule is effective July 22, 1996.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, at the address above; Telephone (703) 358–2397.

SUPPLEMENTARY INFORMATION: National wildlife refuges generally are closed to hunting until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and otherwise must be in the public interest. The Service opens Great Bay National Wildlife Refuge to hunting migratory birds, and big game.

In the November 29, 1995, issue of the Federal Register (60 FR 61237–61239) the Service published a proposed rulemaking and invited public comment. A description of the refuge and the proposed hunting program was provided. No comments were received during the 60-day public comment period.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for

public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

In many cases, refuge-specific regulations are developed to ensure the compatibility of the programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and the RRA has been ensured for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This has ensured that the determinations required by these acts have been made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

The Service has determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budget to operate the hunting programs as proposed.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and has found it to contain no information collection requirements.

Economic Effect

Service review has revealed that this rulemaking will increase hunter visitation to the surrounding area of the refuge before, during or after recreational uses, compared to the refuge being closed to these recreational uses. When the Service acquired this land, all public use ceased under law until opened to the public in accordance with this rulemaking.

This refuge is located away from large metropolitan areas. Businesses in the area consist primarily of small family owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small commercial and recreational hunting camps and marinas in the general area. This final rule would have a positive effect on such entities; however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands were not generally available for general public use prior to government acquisition; however, they were fished and hunted upon by friends and relatives of the landowners , and some were under commercial hunting and fishing leases. Many nearby residents also participate in other forms of nonconsumptive outdoor recreation, such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge fishing and hunting programs on local communities are calculated from average expenditures in the ''1995 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation''. In 1995, 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, big game hunters averaged spending $40, small game hunters $20, and migratory bird hunters $33. Applying these national averages to projected visitation at Great Bay National Wildlife Refuge, 500 hunters are expected to spend $20,000 annually in pursuit of their sport.

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. Hunters and or fishermen increase visitation and expenditures in the surrounding area of the refuge and contribute in a positive manner, but the total amounts are not significant to the local area, therefore, this rule would have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, in their 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, the Service has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Service has determined that these final regulations meet the applicable standards provided in Sections (a) and (b) of Executive Order 12988.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment was prepared for this opening. Based upon the Environmental Assessment, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation pursuant to the Endangered Species Act was conducted. The Service determined that the final action will not affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. These documents are on file at the offices of the Service and may be reviewed by contacting the primary author.

Primary Author

Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7, *List of refuge units open to hunting and/or fishing,* is amended to add the alphabetical listing of ''Great Bay National Wildlife Refuge'' under the State of New Hampshire.

3. Section 32.48 *New Hampshire* is amended by adding the alphabetical listing of Great Bay National Wildlife Refuge to read as follows:

§ 32.48 New Hampshire.

Great Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Waterfowl hunting will not require a permit. Hunting will be allowed only from the immediate shoreline of the Bay.

2. Only portable blinds are permitted. All decoys, blinds, and boats must be removed after each day's hunt.

3. Waterfowl hunters will access shorelines by boat only.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Refuge Permits are required for the deer hunt.

2. Big game hunters are required to wear, in a conspicuous manner on the head, chest and back, a minimum of 400 square inches of solid-colored blaze orange clothing or material.

D. *Sport Fishing.* [Reserved]

* * * * *

Dated: March 15, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–15737 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 061496C]

Groundfish of the Bering Sea and Aleutian Islands Area; Yellowfin Sole by Vessels Using Trawl Gear

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 17, 1996, until 12 noon, A.l.t., August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The third seasonal bycatch allowance of Pacific halibut for the BSAI trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(1), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 100 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the third seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

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

Dated: June 17, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–15766 Filed 6–17–96; 2:58 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 120
Thursday, June 20, 1996

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

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Arizona-California Citrus Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of Arizona-California citrus. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Arizona-California Citrus Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business July 22, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through August 19, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 30, 2006.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in the Arizona-California Crop Insurance Provisions have been submitted to OMB for approval under section 3507(j) of the Paperwork Reduction Act of 1995. This proposed rule will amend the information collection requirements under OMB control number 0563–0003 through September 30, 1998.

The Federal Crop Insurance Corporation will be amending the information collection to adjust the estimated reporting hours and revising the usage of FCI–12–P, Pre-Acceptance Perennial Crop Inspection Report as it applies to the Arizona-California Citrus Crop Insurance Provisions.

Section 7 of the 1998 Arizona-California Citrus Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop. This practice was not insurable under the previous Arizona-California Citrus Crop Insurance Policy. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 0.5 percent of the 2,468 insureds who interplant their Arizona-California citrus crop. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop. This is a benefit to agriculture because insurance is now available for more perennial crop producers and as a result less acreage will need to be covered by the noninsured crop disaster assistance program (NAP).

Revised reporting estimates and requirements for usage of OMB control number 0563–0003 will be submitted to OMB for approval under the provisions of 44 U.S.C., chapter 35. Public comments are due by August 19, 1996.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Arizona-California Citrus Crop Insurance Provisions.'' The information to be collected includes a crop insurance acreage report, insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are growers of Arizona-California citrus that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 25 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, PO Box 2415, Ag Box 0572, United States Department of Agriculture, Washington, DC 20013–2415. Copies of the information collection may be obtained from Bonnie Hart at the above address, telephone (202) 690–2857.

The Office of Management and Budget (OMB) is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least 3 years. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require 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 No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.121, Arizona-California Citrus Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will supersede and replace the current provisions for insuring Arizona-California citrus found at 7 CFR part 409 (Arizona-California Citrus Crop Insurance Regulations). By separate rule, the current provisions for insuring Arizona-California citrus will be revised to restrict its effect through the 1997 crop year and later remove that part.

This rule makes minor editorial and format changes to improve the Arizona-California Citrus Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring Arizona-California citrus as follows:

1. *Section 1*—Add definitions for the terms ''days,'' ''dehorning,'' ''direct marketing,'' ''FSA,'' ''good farming practices,'' ''hedged,'' ''interplanted,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre),'' ''scaffold limb,'' ''set out,'' ''type,'' and ''written agreement'' for clarification.

2. *Section 1*—Change the definition of ''harvest,'' for clarification.

3. *Section 3(a)*—Clarify that an insured may select one price election for each citrus type, but that the price election selected for each type does not need bear the same percentage relationship to the maximum price offered for each type. However, if separate price elections are available by variety within each type, the price elections the insured chooses within the type must have the same percentage relationship to the maximum price offered by the insurance provider for each variety within the type. This helps protect against adverse selection and simplifies the administration of the program.

4. *Section 3(b)*—Add a provision to specify that instead of reporting citrus

production for the previous crop year as required by the Basic Provisions, there is a lag period of one year because the citrus is not harvested until after the production reporting date.

5. *Section 3(c)*—Add a provision to specify that the insured must report damage, dehorning, removal of trees, and change in practices that may reduce yields. Further, add provisions that for the first year of insurance for acreage interplanted with another perennial crop the insured must report the age and type, if applicable, the planting pattern, and any other information that the insurance provider requests to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurance provider of circumstances that may reduce the yield below the yield upon which the insurance guarantee is based, the insurance provider will reduce the production guarantee at any time the circumstances become known. This allows the insurance provider to limit liability, if necessary, before insurance attaches.

6. *Section 5*—The cancellation and termination dates are changed to November 20. Currently, the policy states November 30. This change is consistent with other perennial crop policies and allows for ease of administration.

7. *Section 6*—Remove citrus type designations from the Arizona-California Citrus Crop Provisions and add them to the Special Provisions. This will eliminate the need to amend the Arizona-California Citrus Crop Provisions if FCIC decides to add additional types.

8. *Section 7*—Add a provision to make interplanted citrus insurable if planted with another perennial crop unless the insurance provider inspects the acreage and determines it does not meet the other requirements for insurability. This clause will make insurance available to more producers and will reduce the number of acres for which coverage would be available only under the noninsured crop disaster assistance program (NAP).

9. *Section 8(a)*—Change the beginning of the insurance period from December 1 to November 21 to be consistent with other perennial crops. However, if an application is accepted by the insurance company after November 20, insurance will attach on the 10th day after the application is received in the local agent's office, if approved.

10. *Section 8(b)*—Add provisions to clarify the procedure for insuring acreage when an insurable share is acquired or relinquished on or before the acreage reporting date.

11. *Section 9(a)*—Add the clause, ''if caused by an insured peril that occurs during the insurance period,'' to the end of the phrase ''failure of the irrigation water supply.'' This will limit coverage to a cause of loss covered by the policy.

12. *Section 9(b)*—Clarify that disease and insect infestation are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available.

13. *Section 10*—The previous 15 day ''notice of probable loss'' requirement is replaced by the requirement that the insured provide notice of damage within 72 hours of discovery to be consistent with other citrus policies.

14. *Section 10(a)*—Add a provision requiring the insured to give notice within 3 days of the date harvest should have started if the crop will not be harvested in order to permit a timely appraisal of the marketable production.

15. *Section 10(b)*—Require the producer to give notice at least 15 days before any production from any unit will be marketed directly to consumers because insureds usually have inadequate records of such marketing and an appraisal is necessary to accurately determine the direct marketed production.

16. *Section 12*—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contracts by written agreement for some policies. This amendment will extend this practice to Arizona-California citrus fruit and make it possible to tailor the policy to a specific insured in certain specific instances.

List of Subjects in 7 CFR Part 457

Crop insurance, Arizona-California citrus.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), and 1506(p)

2. 7 CFR part 457 is amended by adding a new § 457.121 to read as follows:

§ 457.121 Arizona-California Citrus Crop Insurance Provisions.

The Arizona-California Citrus Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Arizona-California Citrus Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Carton—The standard container for marketing fresh packed fruit by citrus type as shown below. In the absence of marketing records on a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton.

Container size	Types of fruit	Pounds
Container #58	.....	38
Navel oranges.		
	Valencia oranges & Sweet oranges	.....
Container #58 Lemons.	.....	40
Container #59 Grapefruit.	.....	32
Container #63 Tangerines.	.....	25
	(including Tangelos) & Mandarin oranges	.....

Crop year—In lieu of the definition in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

Days—Calendar days.

Dehorning—Cutting of any scaffold limb to a length that is not greater than one-fourth (¼) the height of the tree before cutting.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Good farming practices—The cultural practices generally in use in the county for

the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The severance of mature citrus from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-contiguous land—Any two or more tracts of land owned by you, or rented by you for any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land that is separated only by a public or private right-of-way, waterway or irrigation canal will be considered to be contiguous.

Production guarantee (per acre)—The number of citrus (cartons) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Scaffold limb—A major limb attached directly to the trunk.

Set out—Transplanting a tree into the grove.

Type—Classes of fruit with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

Written agreement—A written document that alters designated terms of a policy in accordance with section 12.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each citrus type designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(e) All optional units must be identified on the acreage report for each crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election and coverage level for each citrus fruit type designated in the Special Provisions that you elect to insure. The price elections you choose for each type need not bear the same percentage relationship to the maximum price offered by us for each type. For example, if you choose one hundred percent (100%) of the maximum price election for sweet oranges, you may choose seventy-five percent (75%) of the maximum price election for grapefruit. However, if separate price elections are available for varieties within each type, the price elections you choose for each variety must have the same percentage relationship to the maximum price offered by us for each variety within the type.

(b) In lieu of reporting your citrus production of marketable fresh fruit for the previous crop year, as required by the Basic Provisions (§ 457.8), there is a lag period of one year. Each crop year, you must report your production from two crop years ago, e.g., on the 1998 crop year production report, you will provide your 1996 crop year production.

(c) In addition, you must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type, if applicable:

(1) The number of trees damaged, dehorned or removed, and any change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; damage; dehorning; removal of trees; or change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce yields from previous levels, we will reduce your production guarantee, as necessary, at any time we become aware of the circumstance.

4. Contract Changes

The contract change date is August 31 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the acreage in the county of each citrus type designated in the Special Provisions that you elect to insure and for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is a type adapted to the area; and

(3) That is grown in a grove that, if inspected, is considered acceptable by us.

(b) In addition to citrus not insurable in section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus fruit:

(1) That is not irrigated; and

(2) That has not reached the sixth growing season after being set out, unless we inspect and allow insurance on such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus interplanted with another perennial crop is insurable unless we inspect the acreage and determine it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the first crop year, if the application is accepted by us after November 20, insurance will attach on the 10th day after the application, if approved, is received in our local agent's office.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) August 31 for Navel oranges and Southern California lemons;

(ii) November 20 for Valencia oranges; and

(iii) July 31 for all other types of citrus.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

If you relinquish your share, no premium or indemnity will be due unless a transfer of coverage is properly executed.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather conditions:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the citrus for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within three 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be marketed directly to consumers. We will conduct an appraisal that will be used to determine your production to count for direct marketed production. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be marketed directly to consumers will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement Of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type by its respective production guarantee;

(2) Multiplying each result in paragraph (1) by the respective price election for each type, or variety within a type;

(3) Totaling the results in paragraph (2);

(4) Multiplying the total production to be counted of each type or variety, if applicable (see section 11(c)), by the respective price election;

(5) Totaling the results of paragraph (4);

(6) Subtracting the total of paragraph (5) from the total in paragraph (3); and

(7) Multiplying the result of paragraph (6) by your share;

(c) The total production to count (in cartons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Marketed directly to consumers if you fail to meet the requirements contained in section 10;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production determined to be marketable as fresh packed fruit; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production marketed as fresh packed fruit from the insurable acreage.

(3) All disposed or sold damaged citrus that was disposed or sold without an inspection or written consent.

(d) Any production will be considered marketed or marketable as fresh packed fruit unless, due to insurable causes, such production was not marketed or marketable as fresh packed fruit.

(e) Citrus that cannot be marketed due to insurable causes will not be considered production to count.

(f) If we determine that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the frost protection equipment was used.

12. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC., on June 13, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–15770 Filed 6–19–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 95N–0417]

Carcinogenicity Testing of Compounds Used in Food-Producing Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the regulation that sets forth the requirements for the carcinogenicity testing of compounds used in food-producing animals to allow the agency and sponsors greater flexibility when choosing the types of studies used for testing the carcinogenicity of compounds used in food-producing animals. FDA is proposing to revise the study requirements because FDA recognizes that advances in models used to assess the carcinogenicity of compounds have been made. The specific requirement that a sponsor must conduct oral, chronic, dose-response studies would be deleted under the proposed regulation. Sponsors would have more options for testing the carcinogenicity of compounds used in food-producing animals. This proposal implements the goals stated by the National Performance Review.

DATES: Written comments by September 3, 1996.

ADDRESSES: Written comments to the Dockets Managements Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Margaret A. Miller, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205.

SUPPLEMENTARY INFORMATION: Section 500.80(b) (21 CFR 500.80(b)) sets forth the requirements for the carcinogenicity testing of compounds used in food-producing animals. Specifically, the regulation states, ''The bioassays that a sponsor conducts must be oral, chronic, dose-response studies and must be designed to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response.''

At the time that this regulation was written, a chronic study was considered to be the standard test for carcinogenicity. However, FDA recognizes that advances in models used to assess carcinogenicity have been made in recent years. For example, scientists now agree that, depending on the compound, a chronic study (as required under current regulations) may not measure the appropriate time point necessary to assess carcinogenicity. Study designs other than chronic may result in a better evaluation of the compound. Thus, FDA is proposing to remove the requirement for oral, chronic, dose-response studies to allow sponsors the option of using other study designs when assessing carcinogenicity of compounds used for food-producing animals.

This proposal is aligned with the goals stated by the National Performance Review. This proposed rule is a result of the President's directive to conduct a comprehensive review of all rules to identify those that are obsolete and burdensome and to delete or revise them. The agency has determined that this rule is in need of revision as described herein.

I. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has determined that this action is categorically excluded under 21 CFR 25.24(a)(8). The procedure for testing the carcinogenicity of compounds used for food-producing animals is being revised. This revision will not cause an increase in the existing level of use or cause a change in the intended uses of the product or its substitutes. Therefore, neither an environmental assessment nor an environmental impact statement is required.

II. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would clarify FDA policy and simplify the process for submitting certain applications, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Paperwork Reduction Act of 1995

The agency has determined that this proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

IV. Federalism

FDA has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this proposal does not warrant the preparation of a Federalism Assessment.

V. Request for Comments

Interested persons may, on or before September 3, 1996 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 500 is amended as follows:

Part 500—General

1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

§ 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (b) by removing the phrase ''must be oral, chronic, dose-response studies and.''

Dated: June 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–15725 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–01–F

INTERNATIONAL BOUNDARY AND WATER COMMISSION

22 CFR Part 1102

United States and Mexico, United States Section, Freedom of Information Act: Uniform Fee Schedule and Administrative Guidelines

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule will revise the United States Section, International Boundary and Water Commission (IBWC) regulations that implement the Freedom of Information Act (FOIA) fee schedule. This revision pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and section 1102.4 of the IBWC rules, unless such fees are restricted or waived in accordance with section 1102.6. These fees are being revised to correspond to modifications of rates of pay approved by the U.S. Congress.

DATES: All comments received on or before July 22, 1996, will be considered before final action is taken on this proposed rule.

ADDRESSES: Please submit any written comments to the Freedom of Information Act Officer, International Boundary and Water Commission, United States Section, The Commons, Bldg. C, Suite 310, 4171 N. Mesa, El Paso, TX 79902–1441, telephone: (915) 534–6697.

FOR FURTHER INFORMATION CONTACT: Dell Driver, telephone (915) 534–6697.

SUPPLEMENTARY INFORMATION: The IBWC is modifying section 1102.4(a) of the rules which pertains to the charges for searching and reviewing records requested under the Freedom of Information Act (FOIA).

The FOIA requires Federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, since the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government wide selection of fees.

List of Subjects in 22 CFR Part 1102

Freedom of information.

For the reasons set out in the preamble, part 1102.4(a)(1) of title 22 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1102—FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552 (Pub. L. 90–23, as amended by Pub. L. 93–502 and Pub. L. 99–570).

2. Section 1102.4 (a)(1) and (a)(2) are revised to read as follows:

§ 1102.4 Fees.

(a) The following shall be applicable with respect to services rendered to the public under this subpart:

(1) Fee Schedule.

(i) Searching for records, per hour or fraction thereof, per individual:

Professional	$23.71
Technical	$16.57
Clerical	$13.38

Includes the salary of the category of employee who actually performs the search computed at Step 5 of each grade level plus an additional 24% of that rate for personnel benefits. These fees will be periodically modified to correspond to changes in pay approved by Congress.

(ii) The cost for computer searches will be calculated based on the salary of the category of employee who actually performs the computer search, plus 24% of that rate to include personnel benefits, plus the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(iii) Reproduction fees:

Pages no larger than 8½×14 inches when reproduced by routine electrostatic copying: $0.10 per page.

Pages requiring reduction, enlargement, or other special services will be billed at direct cost to the Section. Reproduction by other than routine electrostatic copying will be billed at direct cost to the Section.

(iv) Certification of each record as a true copy—$1.00.

(v) Duplication of architectural photographs and drawings:

Blueprinting	$1.00 per sq. ft.
Vellum Reproducible from blueprints	$5.00 per sq. ft.

(vi) *Postage and handling.* Full costs will be recovered from the requestor if special mailing such as express mail is indicated. Otherwise, records will be sent by first-class certified mail, domestic addresses only, direct cost paid by the U.S. Section.

(2) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 24% of the rate to cover personal benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of record) and not review at the administrative appeal level of the exemption(s) already applied.

Dell Driver,

Freedom of Information Act Officer.

[FR Doc. 96–15344 Filed 6–19–96; 8:45 am]

BILLING CODE 7010–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 142

RIN 1076 AD66

Operation of U.S.M.S.''North Star'' Between Seattle, Washington, and Stations of the Bureau of Indian Affairs and Other Government Agencies, Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise its regulations in Alaska Resupply Operation as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of existing regulations.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Mail comments to Warren Heisler, Assistant Area Director, Juneau Area Office, Bureau of Indian Affairs, Department of the Interior, 709 West 9th Street, Juneau, Alaska 99802; OR, hand deliver them to the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately two weeks after publication of this document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Warren Heisler, Assistant Area Director, Juneau Area Office, Bureau of Indian Affairs at telephone (907) 586–7177.

SUPPLEMENTARY INFORMATION:

Background

The U.S.M.S. North Star has been decommissioned. However, the need for a resupply operation in Alaska continues. The Juneau Area Office

administers the Alaska Resupply Operation through the Seattle Support Center. All accounts receivable and payable are handled by the Seattle Support Center that also publishes a tariff of rates and conditions.

Evaluation and Certification

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Executive Order 12630

The Department has determined that this proposed rule does not have ''significant'' takings implications. The proposed rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

There are no information collection requirements contained in this proposed rule which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Drafting Information

The primary author of this document is Alan E. Mather, Traffic Manager, Seattle Support Center, Juneau Area Office, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 142

Indians—shipping; Indians—maritime carriers.

For the reasons given in the preamble part 142, Chapter I of Title 25 of the Code of Federal Regulations is proposed to be revised as set forth below:

PART 142—ALASKA RESUPPLY OPERATION

Sec.

142.1 Definitions.
142.2 What is the purpose of the Alaska Resupply Operation?
142.3 Who is responsible for the Alaska Resupply Operation?
142.4 For whom is the Alaska Resupply Operation operated?
142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?
142.6 How are the rates and conditions for the Alaska Resupply Operation established?
142.7 How are transportation and scheduling determined?
142.8 Is economy of operation a requirement for the Alaska Resupply Operation?
142.9 How are orders accepted?
142.10 How is freight to be prepared?
142.11 How is payment made?
142.12 What is the liability of the United States for loss or damage?
142.13 Information collection.

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586.

§ 142.1 Definitions.

Area Director means the Area Director, Juneau Area Office, Bureau of Indian Affairs.

Bureau means Bureau of Indian Affairs

Department means Department of the Interior.

Manager means Manager of the Seattle Support Center.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Indian means any individual who is a member of an Indian tribe.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Pub. L. 103–454, 108 Stat. 4791.

Alaska Native means a member of an Alaska Native village or a Native shareholder in a corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq*.

§ 142.2 What is the purpose of the Alaska Resupply Operation?

The Alaska Resupply Operation provides consolidated purchasing, freight handling and distribution, and necessary transportation services from Seattle, Washington to and from other points in Alaska or en route in support of the Bureau's mission and responsibilities.

§ 142.3 Who is responsible for the Alaska Resupply Operation?

The Seattle Support Center, under the direction of the Juneau Area Office, is responsible for the operation of the Alaska Resupply Operation, including the management of all facilities and equipment, personnel, and procurement of goods and services.

(a) The Seattle Support Center is responsible for publishing the rates and conditions that must be published in a tariff.

(b) All accounts receivable and accounts payable are handled by the Seattle Support Center.

(c) The Manager must make itineraries for each voyage in conjunction with contracted carriers. Preference is to be given to the work of the Bureau.

(d) The Area Director is authorized to direct the Seattle Support Center to perform special services that may arise and to act in any emergency.

§ 142.4 For whom is the Alaska Resupply Operation operated?

The Manager is authorized to purchase and resell food, fuel, clothing, supplies and materials, and to order, receive, stage, package, store and transport these goods and materials for:

(a) Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization.

(b) Other Federal agencies and the State of Alaska and its subsidiaries, as long as the ultimate beneficiaries are the Alaska Natives or their communities.

(c) Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians.

(d) The Manager must make reasonable efforts to restrict competition with private enterprise.

§ 142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?

The general authority of the Assistant Secretary—Indian Affairs to establish rates and conditions for users of the Alaska Resupply Operation is delegated to the Area Director.

(a) The Manager must develop a tariff that establishes rates and conditions for charging users.

(1) The tariff must be approved by the Area Director.

(2) The tariff must be published on or before March 1 of each year.

(3) The tariff must not be altered, amended, or published more frequently than once each year, except in an extreme emergency.

(4) The tariff must be published, circulated and posted throughout Alaska, particularly in the communities commonly and historically served by the resupply operation.

(b) The tariff must include standard freight categories and rate structures that are recognized within the industry, as well as any appropriate specialized warehouse, handling and storage charges.

(c) The tariff must specify rates for return cargo and cargo hauled between ports.

(1) The rates and conditions for the Bureau, other Federal agencies, the State of Alaska and its subsidiaries must be the same as that for Native entities.

(2) Different rates and conditions may be established for Non-Indian and Non-Native commercial establishments, if those establishments do not meet the standard in § 142.4(c) and no other service is available to that location.

§ 142.6 How are the rates and conditions for the Alaska Resupply Operation established?

The Manager must develop tariff rates using the best modeling techniques available to ensure the most economical service to the Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, without enhancing the Federal treasury.

(a) The Area Director's approval of the tariff constitutes a final action for the Department for the purpose of establishing billing rates.

(b) The Bureau must issue a supplemental bill to cover excess cost in the event that the actual cost of a specific freight substantially exceeds the tariff price.

(c) If the income from the tariff substantially exceeds actual costs, a prorated payment will be issued to the shipper.

§ 142.7 How are transportation and scheduling determined?

(a) The Manager must arrange the most economical and efficient transportation available, taking into consideration lifestyle, timing and other needs of the user. Where practical, shipping must be by consolidated shipment that takes advantage of economies of scale and consider geographic disparity and distribution of sites.

(b) Itineraries and scheduling for all deliveries must be in keeping with the needs of the users to the maximum extent possible. Planned itineraries with dates set as to the earliest and latest anticipated delivery dates must be provided to users prior to final commitment by them to utilize the transportation services. Each shipping season the final departure and arrival schedules must be distributed prior to the commencement of deliveries.

§ 142.8 Is economy of operation a requirement for the Alaska Resupply Operation?

Yes. The Manager must ensure that purchasing, warehousing and transportation services utilize the most economical delivery. This may be accomplished by memoranda of agreement, formal contracts, or cooperative arrangements. Whenever possible joint arrangements for economy will be entered into with other Federal agencies, the State of Alaska, Alaska Native cooperatives or other entities providing services to rural Alaska communities.

§ 142.9 How are orders accepted?

(a) The Manager must make a formal determination to accept an order, for goods or services, and document the approval by issuing a permit or similar instrument.

(b) The Seattle Support Center must prepare proper manifests of the freight accepted at the facility or other designated location. The manifest must follow industry standards to ensure a proper legal contract of carriage is executed, upon which payment can be exacted upon the successful delivery of the goods and services.

§ 142.10 How is freight to be prepared?

All freight must be prepared in accordance with industry standards, unless otherwise specified, for overseas shipment, including any pickup, delivery, staging, sorting, consolidating, packaging, crating, boxing, containerizing, and marking that may be deemed necessary by the Manager.

§ 142.11 How is payment made?

(a) Unless otherwise provided in this Part, all regulations implementing the Financial Integrity Act, Anti-Deficiency Act, Prompt Payments Act, Debt Collection Act of 1982, 4 CFR Ch. II Federal Claims Collection Standards, and other like acts apply to the Alaska Resupply Operation.

(b) Payment for all goods purchased and freight or other services rendered by the Seattle Support Center are due and payable upon final receipt of the goods or services. If payment is not received within the time specified on the billing document, interest and penalty fees at the current treasury rate will be charged, and handling and administrative fees may be applied.

(c) Where fuel and other goods are purchased on behalf of commercial enterprises, payment for those goods must be made within 30 days of delivery to the Seattle Support Center Warehouse. Payment for freight must be made within 30 days from receipt of the goods by the shipper.

§ 142.12 What is the liability of the United States for loss or damage?

(a) The liability of the United States for any loss or damage to, or non-delivery of freight is limited by 46 U.S.C. 746 and the Carriage of Goods by Sea Act (46 U.S.C. 1300 et seq.). The terms of such limitation of liability must be contained in any document of title relating to the carriage of goods by sea. This liability may be further restricted in specialized instances as specified in the tariff.

(b) In addition to the standards of conduct and ethics applicable to all government employees, the employees of the Seattle Support Center shall not conduct any business with, engage in trade with, or accept any gifts or items of value from any shipper or permittee.

(c) The Seattle Support Center will continue to function only as long as the need for assistance to Native village economies exits. To that end, a review of the need for the serve must be conducted every five years.

§ 142.13 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information

collections contained in this regulation is not required.

Dated: May 31, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–15510 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–39–93]

RIN 1545–AR63

Definition of Structure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to deductions available upon demolition of a building. These proposed regulations reflect changes to the law made by the Tax Reform Act of 1984 and affect owners and lessees of real property who demolish buildings. This document also provides notice of a public hearing on these regulations.

DATES: Written comments, requests to appear and outlines of topics to be discussed at the public hearing scheduled for October 9, 1996, must be received by September 18, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–39–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–39–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622–3110; concerning submissions and the hearing, Christina Vasquez, (202) 622–6803 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 280B of the Internal Revenue Code. Section 280B was added by the Tax Reform Act of 1976, Public Law 94–455, 2124(b), 90 Stat. 1520, 1918 (Oct. 4, 1976), and significant amendments were made to the provision by the Economic Recovery Tax Act of 1981, Public Law 97–34, 212(d)(2)(C) and (e)(2), 95 Stat. 172, 239 (Aug. 13, 1981) (1981 Act) and the Tax Reform Act of 1984, Public Law 98–369, 1063, 98 Stat. 494, 1047 (July 18, 1984) (1984 Act). Transition rules were provided in the Tax Reform Act of 1986, Public Law 99–514, 1878(h), 100 Stat. 2085, 2904 (Oct. 22, 1986) (1986 Act). As originally enacted, section 280B required any costs or losses incurred on account of the demolition of any certified historic structure (a building or structure meeting certain requirements) to be capitalized into the land upon which the demolished structure was located. The 1981 Act modified the definition of certified historic structure for purposes of section 280B from a building or structure meeting certain requirements to a building (or its structural components) meeting certain requirements. The 1984 Act substituted ''any structure'' for ''certified historic structure.'' These proposed regulations define what ''structure'' means for purposes of section 280B.

Explanation of Provisions

These proposed regulations define the term ''structure'' for purposes of section 280B as a building and its structural components as those terms are defined in § 1.48–1(e) of the Income Tax Regulations. Thus, under section 280B, a structure will include only a building and its structural components and not other inherently permanent structures such as oil and gas storage tanks, blast furnaces, and coke ovens.

The proposed regulations rely on the legislative history underlying the 1984 and 1986 Acts, which refer repeatedly to buildings rather than to structures generally. In addition, the legislative history of the 1984 Act discusses the difficulty of applying the intent test of § 1.165–3 of the regulations, which applies to the demolition of buildings, and indicates that the newly added language is meant to eliminate this difficulty.

Proposed Effective Date

The regulations are proposed to be effective on and after the date that final regulations are filed with the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 9, 1996, in the Commissioner's Conference Room. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 1996.

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 regulations is Bernard P. Harvey, Office of Assistant Chief Counsel (Passthroughs and Special Industries). 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 1.280B–1 is added to read as follows:

§ 1.280B–1 Demolition of structures.

(a) *In general.* Section 280B provides that, in the case of the demolition of any structure, no deduction otherwise allowable under chapter 1 of subtitle A shall be allowed to the owner or lessee of such structure for any amount expended for the demolition or any loss sustained on account of the demolition, and that the expenditure or loss shall be treated as properly chargeable to the capital account with respect to the land on which the demolished structure was located.

(b) *Definition of structure.* For purposes of section 280B, the term *structure* means a building, as defined in § 1.48–1(e)(1), and the structural components of that building, as defined in § 1.48–1(e)(2).

(c) *Effective date.* This section applies with respect to demolitions occurring on or after the date that the final regulations are filed with the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–15665 Filed 6–19–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[FI–32–95]

RIN 1545–AT94

Mark to Market for Dealers in Securities; Equity Interests in Related Parties and the Dealer-Customer Relationship

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that make mark-to-market accounting inapplicable to most equity interests in related entities. The regulations also relate to the definition of a dealer in securities for certain federal income tax purposes. To qualify as a dealer in securities, a taxpayer must engage in transactions with customers. The proposed regulations concern the existence of dealer-customer relationships. The Revenue Reconciliation Act of 1993 amended the applicable tax law. These regulations provide guidance for taxpayers that engage in securities transactions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at a public hearing scheduled for October 15, 1996, at 10 a.m., must be received by September 18, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (FI–32–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (FI–32–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jo Lynn L. Ricks, (202) 622–3920, or Robert B. Williams, (202) 622–3960; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by August 19, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is described in the Explanation of Provisions section of the Preamble (rather than being included in the text of the proposed regulations). The Preamble requests comments on whether the final regulations should permit taxpayers to elect to disregard certain inter-company transactions in determining status as a dealer in securities. The preamble also indicates that, if the election is allowed to be made, it is expected that taxpayers would make it by attaching a statement to a tax return. If the final regulations allow taxpayers to make this election in this manner, the information will be required by the IRS to determine whether the election has been made, and will be used for that purpose. The likely respondents will be businesses that file consolidated tax returns. If taxpayers are allowed to make the election, responses to this collection of information will be required to obtain the benefit of having status as a dealer in securities determined without regard to certain inter-company transactions.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103. Estimated total annual reporting burden: 6,000 hours. The estimated annual burden per respondent varies from .25 hour to 1 hour, depending on individual circumstances, with an estimated average of .5 hours. Estimated number of respondents: 12,000. Estimated annual frequency of responses: once in the existence of each respondent.

Background

This document contains proposed regulations under section 475 of the Internal Revenue Code, which requires mark-to- market accounting for certain dealers in securities. Section 475 was added by section 13223 of the Revenue Reconciliation Act of 1993, Pubic Law 103–66, 107 Stat. 481, and is effective for all taxable years ending on or after December 31, 1993.

Temporary and proposed regulations published on December 29, 1993, (58 FR 68798) provide that stock in a 50-percent-controlled subsidiary (and interests in 50-percent-controlled partnerships and trusts) are deemed properly identified as held for investment and thus are excluded from mark-to-market accounting. The IRS is reproposing this rule with two changes. First, the IRS has concluded that the rationale for the rule applies equally to equity interests in most related persons and not just to persons controlled by the taxpayer. Second, after considering various comments received, the IRS determined that this rule prohibiting marking a security to market should not apply if two requirements are met: (1) The security is actively traded on a national securities exchange or through an interdealer quotation system; and (2) the taxpayer who marks owns less than 5 percent of all shares or interests of the same class. Comments are requested as

to whether it is appropriate to allow any equity interests in related parties to be marked to market, and, if so, whether the proposed limitations are the most appropriate ones. The provisions in this document concerning these issues are referred to below in this preamble as the reproposed regulations.

When commenting on the temporary and proposed regulations, taxpayers asked the IRS to provide guidance on whether certain transactions are entered into with customers for purposes of section 475. Whether transactions are entered into with customers can affect both whether a taxpayer is a dealer in securities subject to mark-to-market accounting (see section 475(c)(1)) and whether a dealer may exempt a security from mark- to-market treatment (see section 475(b)(1) (A) and (B) and § 1.475(b)–1T(a)).

In response to these comments, on January 4, 1995, the IRS published proposed regulations [(FI–42–94) (60 FR 397)] stating that whether a taxpayer is transacting business with customers is determined based on all of the facts and circumstances (see proposed § 1.475(c)–1(c), reproposed as § 1.475(c)–1(a)). These proposed regulations also provide that the term dealer in securities includes a taxpayer that, in the ordinary course of its trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B) (see proposed § 1.475(c)–1(c)(2), reproposed as § 1.475(c)–1(a)(2)).

On March 4, 1996, the IRS published Notice 96–12 (1996–10 I.R.B. 29), stating that the IRS intended to publish additional proposed regulations concerning when transactions with related parties may be transactions with customers for purposes of section 475. Notice 96–12 also described the substance of rules that the proposed regulations were expected to contain. The rules were expected to be proposed to be effective for taxable years beginning on or after February 20, 1996. The proposed regulations in this document generally reflect the substance that was described in Notice 96–12.

Explanation of Provisions

Prohibition Against Marking Equity Interests in Related Persons

The reproposed regulations identify certain assets that are inherently investments and, thus, may not be marked to market under section 475. The new rules retain the provision in the temporary regulations that prevents marking certain insurance products to market, but they differ from the temporary regulations in the provisions that prevent the marking of certain equity interests. Under the temporary regulations, the prohibition against marking applies only if the dealer in securities controls the issuer of an equity interest (whether it is stock in a corporation or an interest in a widely held or publicly traded partnership or trust). The reproposed regulations expand the scope of this treatment so that mark-to-market accounting cannot be used for equity interests in many related issuers. (For these purposes, the reproposed regulations incorporate by reference the relevant relations described in sections 267(b) and 707(b)(1).) The reproposed regulations also narrow the scope of this prohibition against marking so that mark-to-market accounting can be used for certain actively-traded securities, regardless of the dealer's relation to the issuer of the security, if the dealer owns less than five percent of the securities. The IRS is particularly interested in receiving comments on the scope of the reproposed rules' exception to the general prohibition on marking to market equity interests in a related person.

These reproposed regulations also contain rules to cover situations where a security begins, or ceases, to be subject to this deemed-identification rule. First, if a security is being marked to market and then, as a result of a change in facts, the regulations prohibit the security from continuing to be marked to market, the regulations require that the security be marked as of the close of business on the last day before the day when the prohibition on marking first applies.

Second, the reproposed regulations also cover situations in which the regulations have prohibited a security from being marked to market and then the prohibition on marking ceases to apply. In these cases, the deadline for the taxpayer to identify the security under section 475(b)(2) as exempt from mark-to-market treatment is generally extended until the date the prohibition on marking ceases to apply. (If the taxpayer had identified the security by the original deadline, the extension, of course, is irrelevant.) If the identification is not made on or before the deadline (as so extended), new changes in value are taken into account under the mark-to-market method, but recognition of appreciation and depreciation that occurred while the security was not being marked is suspended. This is the approach adopted by section 475(b)(3) for securities that lose their exemption from mark-to-market treatment. The reproposed rule is to apply both when the prohibition on marking ceases because of a change in facts and when the prohibition on marking ceases because the rule covering certain actively-traded securities becomes effective.

In sum, under the reproposed regulations, the following assets held by a dealer in securities are deemed to be properly identified as held for investment: (1) Stock in a corporation (or a partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust) to which the taxpayer is related (other than certain actively-traded stock or interests); and (2) an annuity, endowment, or life insurance contract. The provision concerning the second category of assets continues to be proposed to apply to all taxable years ending on or after December 31, 1993. The rules concerning the first category of assets, however, are proposed to prohibit only those marks to market that would have occurred on or after June 19, 1996. If the prohibition against marking begins to apply to a security solely because of this effective date rule, then (unlike the situation when the onset of the prohibition is caused by a change in facts) the security is not marked to market immediately before the prohibition begins.

In general, the provision allowing certain actively-traded securities to be marked to market even when the issuer of the security is related is proposed to be effective for marks to market on or after June 19, 1996. Thus, this effective date is the same as the effective date in the reproposed regulations for the general prohibition on marking to market securities issued by a related person. Until the reproposed regulations are finalized, however, all equity interests issued by controlled entities continue to be subject to the temporary regulations' prohibition against being marked to market, even if the dealer owns less than 5 percent of interests of that class and even if the interests are actively traded.

Some commenters suggested there should be no per se rule treating certain securities as held for investment, but instead there should be a rebuttable presumption to this effect for these items. Other commenters proposed to add, or delete, a variety of items to or from those deemed to be per se held for investment. The reproposed regulations do not adopt these suggestions.

Consolidated Returns

Under both the temporary and the reproposed regulations, there are situations in which the mark-to-market method may apply to a consolidated

group member's stock held by another member of the group. This may result in the recognition of duplicate gain or loss. For instance, if a common parent marks to market stock in a subsidiary to reflect increases in the value of the subsidiary stock owned by the parent resulting from appreciation in the value of the subsidiary's assets, the parent will recognize gain on that stock under the mark-to-market method. The subsidiary's subsequent sale of the assets will replicate that gain at the subsidiary level. The gains will generate duplicate stock basis increases under section 475 and § 1.1502–32(b), creating the potential for an offsetting loss when the stock is subsequently marked down to fair market value under section 475. Section 1.1502–20, however, may disallow any such offsetting loss. Comments are invited regarding how to address the anomalies these rules may produce.

The Dealer-Customer Relationship

These proposed regulations clarify that a taxpayer's transactions with members of its consolidated group or other related persons may be transactions with customers for purposes of section 475. Thus, a taxpayer may be a dealer in securities for purposes of section 475 even if its only customer transactions are transactions with members of its consolidated group. In enacting section 475, Congress adopted a taxpayer-by-taxpayer approach to determining dealer status, rather than the single-entity approach embodied in § 1.1502–13.

An example in the proposed regulations clarifies that, for purposes of section 475, transactions do not fail to be transactions with customers solely because the parties enter into them with other than arms-length pricing terms. Under section 482 and the regulations thereunder, however, the district director may make allocations between or among the members of the group if he or she determines that a member has not reported its true taxable income.

These proposed regulations generally reflect the substance of the rules set forth in Notice 96–12 (1996–10 I.R.B. 29). In response to taxpayer comments, however, certain language in Notice 96–12 has been clarified. Because of these changes, although the rules described in Notice 96–12 were expected to be proposed to be effective for taxable years beginning on or after February 20, 1996, these proposed regulations are to be effective for taxable years beginning on or after June 20, 1996. If there are any situations in which the proposed rules lead to a different result from that which would be reached under the rules described in the notice, a taxpayer may reasonably and consistently apply the rules described in the notice for any taxable year beginning on or after February 20, 1996, and before June 20, 1996.

Under these regulations, a taxpayer may be a dealer in securities based solely on transactions with other members of its consolidated group. The IRS requests comments on whether certain consolidated groups should be allowed to disregard inter-member transactions in determining a member's status as a dealer in securities. For instance, a group might be allowed to disregard inter-member transactions if the group, considered as a single corporation, would not be a dealer in securities for purposes of section 475. It is likely that the election, if permitted by the final regulations, would be made by attaching an appropriate statement to the taxpayer's return. (See the Paperwork Reduction Act section of this preamble, which requests comments on the burden that might be imposed by this requirement.) The IRS hereby requests comments on the desirability and potential terms and conditions of any such election. Comments could also address whether such an election should apply in determining whether a taxpayer had made more than negligible sales for purposes of reproposed § 1.475(c)-1(c). Further, the IRS requests comments on whether the election should be available only to groups that have not made a separate-entity election under § 1.1221–2(d)(2).

Miscellaneous

Some of the 1993 and 1995 proposed regulations are reordered.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 15, 1996, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 1996.

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 authors of these regulations are Jo Lynn L. Ricks and Robert B. Williams, Office of Assistant Chief Counsel (Financial Institutions & Products). 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, as proposed on January 4, 1995, at 60 FR 401, is further amended by revising the entries for ''Section 1.475(b)–1'', ''Section 1.475(b)–2'', and ''Section 1.475(b)–4'' to read as follows:

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

Section 1.475(b)–1 also issued under 26 U.S.C. 475(a) and 26 U.S.C. 475(e).

Section 1.475(b)–2 also issued under 26 U.S.C. 475(b)(2) and 26 U.S.C. 475(e). * * *

Section 1.475(b)–4 also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(e), and 26 U.S.C. 6001. * * *

Par. 2. Section 1.475–0, as proposed on January 4, 1995 (60 FR 401), is amended by:

1. Revising the heading and entries for §§ 1.475(b)–1, 1.475(b)–2, and 1.475(b)–4.

2. Revising the entries under §§ 1.475(c)–1 and 1.475(c)–2.

3. Removing the entries under § 1.475(e)–1.

The revisions read as follows:

§ 1.475–0 Table of contents.

* * * * *

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(c) Securities involved in integrated transactions under § 1.1275–6.
(1) Definitions.
(2) Synthetic debt held by a taxpayer as a result of legging in.
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* * * * *

§ 1.475(b)–4 Exemptions—Transitional issues.

(a) Transitional identification.
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(1) Purpose.
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(i) Added identifications.
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§ 1.475(c)–1 Definitions—Dealer in securities.

(a) Dealer-customer relationship.
(1) [Reserved].
(2) Transactions described in section 475(c)(1)(B).
(i) In general.
(ii) Examples.
(3) Related parties.
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(ii) Example.
(b) Sellers of nonfinancial goods and services.
(c) Taxpayers that purchase securities but do not sell more than a negligible portion of the securities.
(1) Exemption from dealer status.
(2) Negligible portion.
(3) Special rules.
(d) Issuance of life insurance products.

§ 1.475(c)–2 Definitions—Security.

(a) In general.
(b) Synthetic debt held by a taxpayer as a result of an integrated transaction under § 1.1275–6.
(c) Negative value REMIC residuals.
(d) Special rules.

* * * * *

§ 1.475(e)–1 Effective dates.

Par. 3. Section 1.475(b)–1 as proposed on December 29, 1993 (58 FR 68798), is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 1.475(b)–1 Scope of exemptions from mark-to-market requirement.

* * * * *

(b) *Securities deemed identified as held for investment*—(1) *In general.* The following items held by a dealer in securities are per se held for investment within the meaning of section 475(b)(1)(A) and are deemed to be properly identified as such for purposes of section 475(b)(2)—

(i) Except as provided in paragraph (b)(3) of this section, stock in a corporation, or a partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust, to which the taxpayer has a relationship specified in paragraph (b)(2) of this section; or

(ii) A contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract (see sections 817 and 7702).

(2) *Relationships*—(i) *General rule.* The relationships specified in this paragraph (b)(2) are—

(A) those described in section 267(b)(2), (3), (10), (11), or (12); or

(B) those described in section 707(b)(1) (A) or (B).

(ii) *Attribution.* The relationships described in paragraph (b)(2)(i) of this section are determined taking into account sections 267(c) and 707(b)(3), as appropriate.

(iii) *Trusts treated as partnerships.* For purposes of this paragraph (b)(2), the phrase *partnership or trust* is substituted for the word *partnership* in sections 707(b)(1) and 707(b)(3), and a reference to beneficial ownership interest is added to each reference to capital interest or profits interest in those sections.

(3) *Securities traded on certain established financial markets.* Paragraph (b)(1)(i) of this section does not apply to a security if—

(i) The security is actively traded within the meaning of § 1.1092(d)–1(a) taking into account only established financial markets identified in § 1.1092(d)–1(b)(1) (i) or (ii) (describing national securities exchanges and interdealer quotation systems), and

(ii) The taxpayer owns less than 5 percent of all of the shares or interests in the same class.

(4) *Changes in status*—(i) *Onset of prohibition against marking*—(A) Once a security begins to be described in paragraph (b)(1) of this section and for so long as it continues to be so described, section 475(a) does not apply to the security in the hands of the taxpayer.

(B) If a security has not been timely identified under section 475(b)(2) and, after the last day on which such an identification would have been timely, the security begins to be described in paragraph (b)(1) of this section, then the dealer must recognize gain or loss on the security as if it were sold for its fair market value as of the close of business of the last day before the security begins to be described in paragraph (b)(1) of this section, and gain or loss is taken into account at that time.

(ii) *Termination of prohibition against marking.* If a taxpayer did not timely identify a security under section 475(b)(2) and paragraph (b)(1) of this section applies to the security on the last day on which such an identification would have been timely but it thereafter ceases to apply—

(A) An identification of the security under section 475(b)(2) is timely if made on or before the close of the day paragraph (b)(1) of this section ceases to apply; and

(B) Unless the taxpayer timely identifies the security under section 475(b)(2) (taking into account the additional time for identification that is provided by paragraph (b)(4)(ii)(A) of this section), section 475(a) applies to changes in value of the security after the cessation in the same manner as under section 475(b)(3).

(iii) *Examples.* These examples illustrate this paragraph (b)(4):

Example 1. *Onset of prohibition against marking*—(A) *Facts.* Corporation *H* owns 75 percent of the stock of corporation *D*, a dealer in securities within the meaning of section 475(c)(1). On December 1, 1995, *D* acquired less than half of the stock in corporation *X*. *D* did not identify the stock for purposes of section 475(b)(2). On July 17, 1996, *H* acquired from other persons 70 percent of the stock of *X*. As a result, *D* and *X* became related within the meaning of paragraph (b)(2)(i) of this section. The stock of *X* is not described in paragraph (b)(3) of this section (concerning securities traded on certain established financial markets).

(B) *Holding.* Under paragraph (b)(4)(i) of this section, *D* recognizes gain or loss on its *X* stock as if the stock were sold for its fair market value at the close of business on July 16, 1996, and the gain or loss is taken into account at that time. As with any application of section 475(a), proper adjustment is made in the amount of any gain or loss subsequently realized. After July 16, 1996, section 475(a) does not apply to *D*'s *X* stock while *D* and *X* continue to be related to each other.

Example 2. *Termination of prohibition against marking; retained securities identified as held for investment*—(A) *Facts.* On July 1, 1996, corporation *H* owned 60 percent of the stock of corporation *Y* and all of the stock of corporation *D*, a dealer in securities within the meaning of section 475(c)(1). Thus, *D* and *Y* are related within the meaning of paragraph (b)(2)(i) of this section. Also on July 1, 1996, *D* acquired, as an investment, 10 percent of the stock of *Y*. The stock of *Y* is not described in paragraph (b)(3) of this section (concerning securities traded on certain established financial markets). When *D* acquired its shares of *Y* stock, it did not identify them for purposes of section 475(b)(2). On December 27, 1996, *D* identified its shares of *Y* stock as held for investment under section 475(b)(2). On December 30, 1996, *H* sold all of its shares of stock in *Y* to an unrelated party. As a result, *D* and *Y* cease to be related within the meaning of paragraph (b)(2)(i) of this section.

(B) *Holding.* Under paragraph (b)(4)(ii)(A) of this section, identification of the *Y* shares is timely if done on or before the close of December 30, 1996. Because *D* timely identified its *Y* shares under section 475(b)(2), it continues to refrain from marking to market its *Y* stock after December 30, 1996.

Example 3. *Termination of prohibition against marking; retained securities not identified as held for investment*—(A) *Facts.* The facts are the same as in Example 2 above, except that *D* did not identify its stock in *Y* for purposes of section 475(b)(2) on or before December 30, 1996. Thus, *D* did not timely identify these securities under section 475(b)(2) (taking into account the additional time for identification provided in paragraph (b)(4)(ii)(A) of this section).

(B) *Holding.* Under paragraph (b)(4)(ii)(B) of this section, section 475(a) applies to changes in value of *D*'s *Y* stock after December 30, 1996, in the same manner as under section 475(b)(3). Thus, any appreciation or depreciation that occurred while the securities were prohibited from being marked to market is suspended. Further, section 475(a) applies only to those changes occurring after December 30, 1996.

* * * * *

(d) *Special rules*—(1) *Stock, partnership, and beneficial ownership interests in certain controlled corporations, partnerships, and trusts*—(i) *In general.* The following items held by a dealer in securities are per se held for investment within the meaning of section 475(b)(1)(A) and are deemed to be properly identified as such for purposes of section 475(b)(2)—

(A) Stock in a corporation that the taxpayer controls (within the meaning of paragraph (d)(1)(ii) of this section); or

(B) A partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust that the taxpayer controls (within the meaning of paragraph (d)(1)(ii) of this section).

(ii) *Control defined.* Control means the ownership, directly or indirectly through persons described in section 267(b) (taking into account section 267(c)), of—

(A) 50 percent or more of the total combined voting power of all classes of stock entitled to vote; or

(B) 50 percent or more of the capital interest, the profits interest, or the beneficial ownership interest in the widely held or publicly traded partnership or trust.

(iii) *Applicability.* The rules of this paragraph (d)(1) apply only before the date 30 days after final regulations on this subject are published in the Federal Register.

(2) [Reserved].

§ 1.475 [Amended]

Par. 4. Section 1.475(b)–2, as proposed on December 29, 1993 (58 FR 68798), is redesignated as § 1.475(b)–4.

Par. 5. Section 1.475(b)–4, as proposed on January 4, 1995 (60 FR 404), is redesignated as § 1.475(b)–2.

Par. 6. Section 1.475(c)–1, as proposed on December 29, 1993 (58 FR 68798), and amended on January 4, 1995 (60 FR 405), is amended as follows:

1. Paragraph (c) is removed.

2. Paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively.

2. New paragraph (a) is added to read as follows:

§ 1.475(c)–1 Definitions—Dealer in securities.

(a) *Dealer-customer relationship.* Whether a taxpayer is transacting business with customers is determined on the basis of all of the facts and circumstances.

(1) [Reserved].

(2) *Transactions described in section 475(c)(1)(B)*—(i) *In general.* For purposes of section 475(c)(1)(B), the term dealer in securities includes, but is not limited to, a taxpayer that, in the ordinary course of the taxpayer's trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (a)(2). In the following examples, B is a bank:

Example 1. *B* regularly offers to enter into interest rate swaps with other persons in the ordinary course of its trade or business. *B* is willing to enter into interest rate swaps under which it either pays a fixed interest rate and receives a floating rate or pays a floating rate and receives a fixed rate. *B* is a dealer in securities under section 475(c)(1)(B), and the counterparties are its customers.

Example 2. *B*, in the ordinary course of its trade or business, regularly holds itself out as being willing and able to enter into either side of positions in a foreign currency with other banks in the interbank market. *B*'s activities in the foreign currency make it a dealer in securities under section 475(c)(1)(B), and the other banks in the interbank market are its customers.

Example 3. *B* engages in frequent transactions in a foreign currency in the interbank market. Unlike the facts in *Example 2*, however, *B* does not regularly hold itself out as being willing and able to enter into either side of positions in the foreign currency, and all of *B*'s transactions are driven by its internal need to adjust its position in the currency. No other circumstances are present to suggest that B is a dealer in securities for purposes of section 475(c)(1)(B). *B*'s activity in the foreign currency does not qualify it as a dealer in securities for purposes of section 475(c)(1)(B), and its transactions in the interbank market are not transactions with customers.

(3) *Related parties*—(i) *In general.* A taxpayer's transactions with members of its consolidated group or with other related persons may be transactions with customers for purposes of section 475. For example, transactions enumerated in section 475(c)(1)(B) between members of a consolidated group are transactions with customers if, in the ordinary course of its business, the taxpayer holds itself out as being willing and able to engage in these transactions on a regular basis. A taxpayer may be a dealer in securities within the meaning of section 475(c)(1) even if its only customer transactions are transactions with other members of its consolidated group.

(ii) *Example.* The following example illustrates this paragraph (a)(3):

Example. *Risk management transactions*—(1) *Facts. HC*, a hedging center, provides

interest rate hedges to all of the members of its consolidated group. Because of the efficiencies created by having a centralized risk manager, group policy prohibits members other than *HC* from entering into derivative interest rate positions with outside parties. *HC* regularly holds itself out as being willing and able to, and in fact does, enter into either side of interest rate swaps with its fellow members. *HC* periodically computes its aggregate position and hedges the net risk with an unrelated party. *HC* does not otherwise enter into interest rate positions with persons that are not members of the consolidated group. Because *HC* attempts to operate at cost and the terms of its swaps do not factor in any risk of default by the affiliate, *HC*'s affiliates receive somewhat more favorable terms then they would receive from an unrelated swaps dealer.

(2) *Holding.* Because *HC* regularly holds itself out as being willing and able to enter into transactions enumerated in section 475(c)(1)(B), *HC* is a dealer in securities for purposes of section 475(c)(1)(B) and the other members are its customers.

* * * * *

§ 1.475 [Amended]

Par. 7. Section 1.475(c)-2, as proposed on December 29, 1993 (58 FR 68798), and amended on January 4, 1995 (60 FR 405), is amended as follows:

1. Paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (b), respectively.

2. Paragraph (a) and newly designated paragraph (c) are revised by removing the phrase ''paragraph (b)'' each place it appears and replacing it with ''paragraph (c)'' each place it appeared.

3. Newly designated paragraph (d) is revised by removing the phrase ''paragraphs (a)(3) and (b)'' and replacing it with ''paragraphs (a)(3) and (c)''. Newly designated paragraph (d) is further revised by removing the phrase ''this paragraph (c)(1)).'' and replacing it with the phrase ''this paragraph (d)(1)).''.

4. Newly designated paragraph (b) is revised by removing the words ''See § 1.475(b)–4(c)'' and replacing them with the words ''See § 1.475(b)-2(c)''.

Par. 8. Section 1.475(e)–1, as proposed on December 29, 1993 (58 FR 68798), and amended on January 4, 1995 (60 FR 405), is revised to read as follows:

§ 1.475(e)–1 Effective dates.

(a) Section 1.475(a)–1 (concerning mark-to-market for debt instruments) applies to taxable years beginning on or after January 1, 1995.

(b) Section 1.475(a)–2 (concerning marking a security to market upon disposition) applies to dispositions or terminations of ownership occurring on or after January 4, 1995.

(c) Section 1.475(a)–3 (concerning acquisition by a dealer of a security with a substituted basis) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(d) Section 1.475(b)–1 (concerning the scope of exemptions from the mark-to-market requirement) applies as follows:

(1) Section 1.475(b)–1(a) (concerning securities held for investment or not held for sale) applies to taxable years ending on or after December 31, 1993.

(2) Except as provided elsewhere in this paragraph (d)(2), § 1.475(b)–1(b)(1) (concerning securities deemed identified as held for investment) applies to taxable years ending on or after December 31, 1993.

(i) Section 1.475(b)–1(b)(1)(i) (concerning equity interests issued by a related person) applies on or after June 19, 1996. If, on June 18, 1996, a security is subject to mark-to-market accounting and, on June 19, 1996, § 1.475(b)–1(b)(1) begins to apply to the security solely because of the effective dates in this paragraph (d)(2) (rather than because of a change in facts), then the rules of § 1.475(b)–1(b)(4)(i)(A) (concerning the prohibition against marking) apply, but § 1.475(b)–1(b)(4)(i)(B) (imposing a mark to market on the day before the onset of the prohibition) does not apply.

(ii) Section 1.475(b)–1(b)(2) (concerning relevant relationships for purposes of determining whether equity interests in related persons are prohibited from being marked to market) applies on or after June 19, 1996.

(iii) Section 1.475(b)–1(b)(3) (concerning certain activelytraded securities) generally applies on or after June 19, 1996 to securities held on or after that date. In the case, however, of securities described in § 1.475(b)–1(d)(1)(i) (concerning equity interests issued by controlled entities), § 1.475(b)–1(b)(3) applies on or after the date thirty days after final regulations on this subject are published in the Federal Register to securities held on or after that date. If § 1.475(b)–1(b)(1) ceases to apply to a security by virtue of the operation of this paragraph (d)(2)(ii), the rules of § 1.475(b)–1(b)(4)(ii) apply to the cessation.

(iv) Except to the extent provided in paragraph (d)(2)(i) of this section, § 1.475(b)–1(b)(4) (concerning changes in status) applies on or after June 19, 1996.

(e) Section 1.475(b)–2 (concerning the identification requirements for obtaining an exemption from mark-to-market treatment) applies to identifications made on or after January 4, 1995.

(f) Section 1.475(b)–3 (concerning exemption of securities in certain securitization transactions) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(g) Section 1.475(b)–4 (concerning transitional issues relating to exemptions) applies to taxable years ending on or after December 31, 1993.

(h) Section 1.475(c)–1(a) (concerning the dealer-customer relationship), except for § 1.475(c)–1(a)(1), (a)(2)(ii), and (a)(3), applies to taxable years beginning on or after January 1, 1995. Section 1.475(c)–1(a)(2)(ii) and (a)(3) (concerning certain aspects of the dealer-customer relationship) apply to taxable years beginning on or after June 20, 1996.

(i) Section 1.475(c)–1(b) (concerning sellers of nonfinancial goods and services) and (c) (concerning taxpayers that purchase securities but do not sell more than a negligible portion of the securities) applies to taxable years ending on or after December 31, 1993.

(j) Section 1.475(c)–1(d) (concerning the issuance of life insurance products) applies to taxable years beginning on or after January 1, 1995.

(k) Section 1.475(c)–2 (concerning the definition of security) applies to taxable years ending on or after December 31, 1993. Note, however, that, by its terms, § 1.475(c)–2(a)(3) applies only to interests or arrangements that are acquired on or after January 4, 1995, and that the integrated transactions to which § 1.475(c)–2(b) applies will exist only after the effective date of § 1.1275–6.

(l) Section 1.475(d)–1 (concerning the character of gain or loss) applies to taxable years ending on or after December 31, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–15666 Filed 6–19–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI21

Disinterments in National Cemeteries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend regulations concerning disinterments from national cemeteries. Current regulations permit disinterment of persons buried in a national cemetery with the consent of immediate family members. The definition of immediate family members includes a surviving spouse only if unmarried. It is proposed

to change the definition of immediate family members for purposes of disinterments to include a surviving spouse regardless of whether remarried or not. This appears to be necessary since we believe the emotional ties of the surviving spouse would be sufficient to justify his or her consent as a condition of disinterment. This document also would make nonsubstantive changes for purposes of clarification.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001. Comments should indicate that they are submitted in response to ''RIN 2900–AI21.'' All written comments will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Ken Greenberg, Program Analyst, Communications Division (402B1), National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5179 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: As stated in 38 CFR 1.621, burials in VA national cemeteries are considered permanent and final and disinterments are permitted only for cogent reasons.

The current regulations concerning disinterments from national cemeteries (38 CFR 1.621) require the written and notarized consent of all living immediate family members of the decedent in order for a disinterment request to be approved. The current regulations, however, do not require the notarized signature of the surviving spouse of the deceased if the spouse has married again.

It appears that approving a disinterment without the consent of all living immediate family members including a remarried surviving spouse does not adequately serve the needs of veterans and their families. For example, a spouse may die and be buried in a national cemetery. The surviving spouse later remarries and the National Cemetery System (NCS) receives a written and notarized disinterment request from all family members except the remarried spouse. Under current regulations, NCS takes action concerning the disinterment without the remarried spouse being notified, thereby eliminating any opportunity to object. Furthermore, a remarried surviving spouse may, now, upon the termination of the remarriage, regain eligibility for burial in a national cemetery as the surviving spouse of an eligible decedent. *See* Pub. L. No. 103–446, section 802, 108 Stat. 4675 (1994); 38 U.S.C. 2402(5).

VA requires that disinterment requests be executed on VA Form 40–4970, Request for Disinterment. VA would amend that form accordingly to reflect the change in regulations if the proposed rule is made final.

In addition, the second sentence of current § 1.621(c), which states that the Department of Veterans Affairs or officials of the cemetery should not be made a party to a court action regarding disinterment, would be deleted since it has no binding effect.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

This collection of information included in 38 CFR 1.621 concerns an application for authority to disinter remains that must be submitted on VA Form 40–4970. It is proposed to change the information on the form to reflect that the written and notarized consent of a remarried surviving spouse is prerequisite for a disinterment from a national cemetery.

The Department of considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection(s) of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this document between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Title: Application for a Disinterment from a National Cemetery.

Summary of collection of information: The Department requires an application with approval of all immediate family members of a decedent in order for VA to authorize disinterment of a decedent's remains from a national cemetery. The requested information is necessary in order to obtain the approval of a remarried surviving spouse of a decedent for disinterment. Previously, a remarried surviving spouse has not been considered an immediate family member.

Description of the need for information and proposed use of information: The requested information is necessary to obtain the approval of a remarried surviving spouse of a decedent for disinterment from a national cemetery.

Description of likely respondents: Surviving remarried spouses of decedents interred in national cemeteries.

Estimated total annual reporting burden: 33 hours.

Estimated annual burden per respondent: 10 minutes.

Estimated number of respondents: 200.

Estimated annual frequency of responses: 1.

The Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because

the amendment does not affect any small entities. Only individual VA beneficiaries could be directly affected.

The proposed rule is not subject to the Office of Management and Budget review pursuant to E.O. 12291.

Catalog of Federal Domestic Assistance Number for programs affected by this regulation are 64.201 and 64.202.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Privacy, Security.

Approved: June 11, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 1.621, paragraph (c) is amended by removing the second sentence; paragraph (d) and the designation ''[Reserved]'' are removed; paragraph (e) is redesignated as paragraph (d); and paragraphs (a) and (b)(2) are revised to read as follows:

§ 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, ''immediate family members'' are defined as surviving spouse, whether or not he or she is remarried, all adult children of the decedent, the appointed guardian(s) of minor children, and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered ''immediate family members.''

(b) * * *

(1) * * *

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

* * * * *

[FR Doc. 96–15711 Filed 6–19–96; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 96–254]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Telecommunications Act of 1996 directs the Commission to promulgate new rules governing the payphone industry. Section 276 of the 1996 Act directs the Commission, among other things, to ensure that all payphone owners are compensated for calls originated on their payphones, and to ''discontinue * * * all intrastate and interstate'' subsidies for payphones owned by incumbent local exchange carriers (''LECs''). In this NPRM, the Commission proposed rules that would accomplish the following objectives set forth by Congress in Section 276: compensation for ''each and every completed intrastate and interstate call using [a] payphone[;]'' termination of all subsidies for LEC payphones, including ''access charge payphone service elements[;]'' prescription of nonstructural safeguards for Bell Operating Company (''BOC'') payphones; promulgation of rules permitting the BOCs to negotiate with the payphone location provider about a payphone's presubscribed interLATA carrier, unless the Commission finds that such negotiations are ''not in the public interest;'' promulgation of rules permitting all payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; and establishment of a class of public interest payphones to be located ''where there would otherwise not be a payphone[.]'' The intended effect of this NPRM is to propose a rule implementing Section 276 of the Communications Act of 1996.

DATES: Written comments by the public on the Further NPRM of Proposed Rule Making and the proposed and/or modified information collections are due June 27, 1996. Reply comments are due on July 8, 1996. Written comments by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before August 19, 1996.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, Enforcement Division, Common Carrier Bureau, (202) 418–0960. For additional information concerning the information collections contained in this Further Notice of Proposed Rule Making contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in CC Docket No. 96–128, adopted on June 4, 1996 and released June 6, 1996. The full text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202) 857–3800. This Notice of Proposed Rule Making contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Paperwork Reduction Act

This NPRM contains eight proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the

information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due August 19, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

(1) *OMB Control Number:* None.

Title: Proposed Quarterly Report of Interexchange Carriers (''IXCs'') Listing the Number of Dial-Around Calls for Which Compensation is Being Paid to Payphone Owners.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 275.

Estimated Time Per Response: ½ hour.

Total Annual Burden: 550 hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: IXCs who are responsible for paying per-call compensation to payphone providers must provide this report to the payphone providers. Without provision of this report, payphone providers would be unable to ascertain the compensation amount to be paid by the IXCs.

(2) *OMB Control Number:* None.

Title: Proposed Annual Report of Interexchange Carriers (''IXCs'') Listing the Compensation Amount Paid to Payphone Providers and the Number of Payees.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 275.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 550 hours.

Estimated Cost Per Respondent: $5,000.

Needs and Uses: IXCs who are responsible for paying per-call compensation to payphone providers are required to provide annual reports to the Common Carrier Bureau listing the amount of compensation paid to payphone providers and the number of payees. Without provision of this report, the Commission would be unable to ensure that all the IXCs are paying their respective compensation obligations. In addition, IXCs must initiate an annual independent verification of their per-call tracking functions.

(3) *OMB Control Number:* None.

Title: Proposed Quarterly Report of IntraLATA Carriers Listing Payphone ANIs.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 400.

Estimated Time Per Response: 8 hours for initial report, 2 hours for subsequent reports.

Total Annual Burden: 5600 hours for initial report, 3200 hours for subsequent reports.

Estimated Cost Per Respondent: $0.

Needs and Uses: IntraLATA carriers are required to provide to interexchange carriers (''IXCs'') a quarterly report listing payphone ANIs. Without provision of this report, resolution of disputed ANIs would be very difficult because IXCs would not be able to tell which ANIs belong to payphones and would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes.

(4) *OMB Control Number:* None.

Title: Proposed One-Time Report of Local Exchange Companies (''LECs'') of Cost Accounting Studies.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 400.

Estimated Time Per Response: 50 hours.

Total Annual Burden: 20,000 hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: LECs are required to provide to the Common Carrier Bureau, on a one-time basis, a report containing engineering studies, time and wage studies, and other cost accounting studies to identify the direct cost of central office coin services. Without provision of this report, the Commission would be unable to ascertain whether the LECs were charging their payphone competitors unreasonably high prices for central office coin services.

(5) *OMB Control Number:* None.

Title: Proposed Initial Report of Bell Operating Companies (''BOCs'') of Comparably Efficient Interconnection Plans.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 7.

Estimated Time Per Response: 50 hours.

Total Annual Burden: 350 hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: BOCs are required to provide to the Common Carrier Bureau initial Comparably Efficient Interconnection (''CEI'') plans describing how they intend to comply with the CEI equal access parameters. Thereafter, they may include this information in the CEI plans they already file with the Commission. Without the provision of these reports, the Commission would be unable to ascertain whether the BOCs were providing competing payphone providers with unbundled nondiscriminatory access to their network features and functionalities.

(6) *OMB Control Number:* None.

Title: Proposed Report of Bell Operating Companies (''BOCs'') of Modified Comparably Efficient Interconnection Plans.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 7.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 42 hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: BOCs are required to provide to the Common Carrier Bureau initial Comparably Efficient Interconnection plans describing how they intend to comply with the CEI equal access parameters. Thereafter, they may include this information in the CEI plans they already file with the Commission. Without the provision of these reports, the Commission would be unable to ascertain whether the BOCs were providing competing payphone providers with unbundled nondiscriminatory access to their network features and functionalities.

(7) *OMB Control Number:* None.

Title: Proposed Annual Filing of Nondiscrimination Reports (on quality of service, installation and maintenance) by Bell Operating Companies (''BOCs'').

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 7.

Estimated Time Per Response: 50 hours.

Total Annual Burden: 350 hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: BOCs are required to provide to the Common Carrier Bureau nondiscrimination reports on an annual basis. Without the provision of these reports, the Commission would be unable to ascertain whether the BOCs were providing competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

(8) *OMB Control Number:* None.

Title: Proposed Public Disclosure of Network Information by Bell Operating Companies (''BOCs'').

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Number of Respondents: 7.

Estimated Time Per Response: 50 hours.

Total Annual Burden: 350 hours. Report would be issued periodically, when new network services are developed or network changes made.

Estimated Cost Per Respondent: $0.

Needs and Uses: BOCs are required to publicly disclose changes in their networks or new network services at two different points in time. First, disclosure would occur at the ''make/buy'' point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC could introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. Without provision of these reports, the industry would be unable to ascertain whether the BOCs were designing new network services or changing network technical specifications to the advantage of their own payphones.

SUMMARY OF NOTICE OF PROPOSED RULE MAKING

I. Background

1. Section 276(b)(1)(A) directs the Commission to establish a compensation mechanism to ensure ''that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call'' from their payphones. Section 276(b)(1)(B) mandates that the Commission ''discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate subsidies from basic exchange and exchange access revenues.'' In addition, Section 276(b)(1)(D) directs the Commission to consider whether BOCs should be permitted to be involved with the location provider's selection of the payphone's presubscribed carrier. Together with the other subsections of Section 276, these three provisions help to establish regulatory parity for all payphone service providers (''PSPs''), whether competitive payphone owners or incumbent LECs (both independents and BOCs).

II. Discussion

A. Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones

a. Scope of Payphone Calls Covered by this Rulemaking

2. Currently, most calls originated on payphones are within one of the following categories: (1) coin calls; (2) directory assistance calls; (3) operator service (''0+'' and ''0−'') calls; (4) access code calls (using *e.g.*, ''10XXX'' codes and ''1–800'' or ''950'' carrier access numbers); and (5) subscriber 800 calls. Each of these categories can be further subdivided between local, intraLATA toll, intrastate interLATA, interstate interLATA and international. Each type of call is a potential source of revenue for the payphone owner, whether the revenue is derived from coins deposited into the payphone, through commission payments on operator service calls, or from compensation mandated by the FCC or the states.

3. The 1996 Act requires the Commission to ensure that PSPs are fairly compensated for all calls originated by their payphones. In light of the multiple sources of revenue for payphones, the Commission seeks comment on what constitutes ''fair'' compensation and how we should ''ensure'' that each PSP receives it for calls for originated by its payphones. The Commission concludes that its mandate under Section 276(b)(1)(A) is to ensure that PSPs are ''fairly compensated'' for ''each and every completed intrastate and interstate call'' regardless of whether the PSP currently receives compensation for the particular call originated by its payphone. The Commission tentatively concludes, however, that it should use this mandate to *prescribe* compensation only when payphone providers are not already ''fairly compensated.'' Currently, PPOs and non-BOC LECs receive compensation, pursuant to individual contracts, from the payphone's presubscribed IXC for all ''0+'' calls. IXCs have long competed for this type of business. Therefore, the Commission tentatively concludes that it need not prescribe per-call compensation for 0+ calls because competition in this area ensures ''fair'' compensation for PSPs. It seeks comment on these tentative conclusions.

4. The 1996 Act does not expressly state that compensation should extend to international calls. The Commission finds no evidence, however, of congressional intent to leave these calls uncompensated. Therefore, despite the lack of reference to international calls in Section 276(b)(1)(A), the Commission tentatively concludes that it should exercise its general jurisdiction under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are compensated for international as well as interstate and intrastate calls originating from their payphones in the United States. The Commission seeks comment on this tentative conclusion.

5. The rate for the most common type of call, the local coin call, is set by state commissions. Typically, the rate set for local coin services provided by the incumbent LECs also applies to the PPOs. Section 276 of the Act requires the Commission to ensure that the payphone provider receives fair compensation for each interstate and intrastate call, including local coin sent-paid calls. Section 276 also expressly preempts state regulations that are inconsistent with the Commission's regulations. The Commission seeks comment, however, on how it should exercise its jurisdiction under Section 276. The Commission notes that it had a range of options for ensuring fair compensation for these calls, and it sought comment on which option will ensure fair compensation for PSPs with respect to local coin sent-paid calls.

6. More specifically, one option would be to set a nationwide local coin rate for all calls originated by payphones. The Commission seeks comment on whether the Commission should take such action and request that commenters identify the specific public interest benefits they believe would result from a nationwide rate, why local rates are inadequate to ensure fair compensation, the impacts of variations among the states in the local coin sent-paid rate on PSPs and the public, and whether those impacts are predominantly local, statewide, regional or national. Another option would be for the Commission to prescribe specific national guidelines that states would use to establish a local rate that would ensure that all PSPs are fairly compensated. The Commission seeks comment on whether the Commission should take such action and request that commenters identify specific public interest benefits they believe would result from the Commission prescribing such guidelines, what factors such guidelines should consider, how the guidelines would ensure fair compensation for local coin calls, the impacts of variations among the states

in local coin rates, and whether those impacts are predominantly local, statewide, regional or national.

7. A third option for ensuring fair compensation for PSPs would be for the states, in the first instance, to continue to set the coin rates for local payphone calls according to factors within their discretion. The Commission has long recognized the interest of the states in setting end-user rates for local calls, including rates for 411 calls. Indeed, as discussed above, the states have long had a traditional and primary role in regulating payphones. However, because Section 276 of the 1996 Act requires the Commission to ensure that PSPs are fairly compensated for ''each and every completed intrastate and interstate call,'' the Commission seeks comment on what further procedures, such as a complaint or petition process, it should establish, should it ultimately determine to defer to the states in setting payphone rates. The Commission also seeks comment on what standards it could use to adjudicate any complaints or petitions that challenge a particular rate. It further ask whether the states' setting of the rates for local coin calls subject to complaint or petition would be consistent with Section 276's mandate that the Commission ensure fair compensation for ''each and every completed intrastate and interstate call.'' The Commission sought comment on whether the Commission should take such action and request that commenters identify specific public interest benefits they believe would result from having coin rates for local payphone calls set by the states.

b. Entities Required To Pay Compensation

8. Because the 1996 Act directs the Commission to ensure that all PSPs are compensated, with limited exception, for ''each and every intrastate and interstate call'' using their payphones, the Commission also addresses who pays that compensation. The possible payors include: the caller using the payphone; the carrier over whose network the call is placed; or, in the case of subscriber 800 calls, the entity being called (who may or may not directly pass all the charges on to the caller using the payphone). Industry participants have made two compensation proposals that might satisfy the per-call compensation requirement.

9. The first proposal builds on the per-call compensation mechanism proposed for interstate access code calls in CC Docket No. 91–35. If this ''carrier-pays'' mechanism were extended to all dial-around calls, the IXC who receives such a call from a payphone would be required to pay a per-call charge to the provider of the payphone. Each IXC would decide independently how to recover this cost.

10. Another approach would be to rely on a ''set use fee.'' The ''set use fee'' is a fee that the IXC would bill and collect from the end user. The fee would then be remitted to the PSP. In the case of the subscriber 800 and other toll-free number calls, the set use fee could be collected from the subscriber. For access code calls and operator-assisted calls, the set use fee would be collected from the end user that is billed for the call.

11. The Commission tentatively concludes that, for non-coin payphone calls, either a ''carrier-pays'' system or a ''set use fee'' system where the end user pays would satisfy the requirements of the 1996 Act. As a general principle, however, the Commission tends to favor an approach that minimizes transaction costs on the caller and on the industry. The Commission finds that the carrier-pays mechanism is preferable because it would result in less transaction costs because the IXC could aggregate its payments to payphone providers. Under a set-use fee, these payments would be spread among a vast number of payphone callers through their individual telephone bills. Therefore, the Commission tentatively concludes that it should adopt a ''carrier-pays'' compensation mechanism that builds on existing procedures. It seeks comment on these tentative conclusions.

c. Ability of Carriers To Track Calls From Payphones

12. Based on prior FCC proceedings, the Commission tentatively concludes that tracking mechanisms and surrogates exist, or might readily be made available, to support the complete per-call compensation plan mandated by Section 276(b)(1)(A). It seeks comment on what tracking options are currently, or may soon be, available. The Commission seeks further comment on the ability of existing IXC-based tracking mechanisms to accommodate all payphone providers and IXCs. In the event that there is no standard technology or mechanism available for tracking, the Commission seeks comment on alternative surrogate methodologies that could be devised and by whom. Finally, it seeks comment on which party or parties, whether IXCs, PSPs, or intraLATA carriers, should be required to develop and maintain the tracking or surrogate methodologies.

d. Administration of Per-Call Compensation

13. The Commission tentatively concludes that the direct-billing arrangement established in previous Commission orders should be maintained with the simple addition of requiring IXCs, and the intrastate interexchange operations of LECs to send back to each PSP a statement indicating the number of toll-free and access code calls that each carrier has received from each of that PSP's payphones. The Commission proposes to continue to leave the details of the billing arrangements for the parties to determine. All parties, whether carriers or PSPs, would be free to retain the services of one or more clearinghouses to assist them with billing and collection and/or payment of the compensation. The Commission would require, however, that the carrier responsible for paying compensation file each year a brief report with the Common Carrier Bureau listing the total amount of compensation paid, pursuant to the rules adopted in this proceeding, to PSPs for intrastate, interstate, and international calls; the number of compensable calls received by the carrier; and the number of payees.

e. Per-Call Compensation Amount

14. The Commission previously examined various compensation methods in the *Second Report and Order.* The Commission notes that the theory of compensation and price surrogates that the Commission has historically relied upon in its determination of the ''range of reasonable compensation rates'' provides some guidance for our analysis of how to ensure that PSPs are ''fairly compensated'' and what should be the appropriate per-call compensation amount for all calls within the scope of this rulemaking. As before, while the Commission noted that it was confronted in the proceeding by the lack of reliable PPO cost data, it tentatively concludes that PSPs should be compensated for their costs in originating the types of calls for which it has tentatively concludes that compensation is appropriate. It tentatively concludes further that these costs should be measured by appropriate cost-based surrogates. It seeks comment on these tentative conclusions. The Commission also questions whether, to ensure that PSPs receive fair compensation, it should prescribe different per-call compensation amounts for the different types of calls originated by payphones. It seeks further comment on how

compensation levels should be permitted to change in the future, and whether some cost index or price cap system would be appropriate to ensure that compensation levels reflect expected changes in unit costs over time. The Commission also seeks comment on whether it should provide PPOs some measure of interim compensation, to be paid until the effective date of the final rules we adopt in this proceeding, for the growing volume of dial-around calls originated from their payphones.

B. Reclassification of Incumbent LEC-Owned Payphones

a. Classification of LEC Payphones as CPE

15. To effectuate the Act's mandate that access charge payphone service elements and payphone subsidies be discontinued, the Commission tentatively concludes that it should treat incumbent LEC payphones as unregulated, detariffed CPE. It tentatively concludes further that incumbent LECs should be required to provide to PSPs, on a nondiscriminatory tariffed basis, all functionalities used in a LEC's delivery of payphone services.

16. The option of using central office coin services, such as coin recognition, answer detection, and other related services, allows incumbent LECs to use the less expensive ''dumb'' pay telephones, which gives incumbent LECs a cost advantage over their competitors. The Commission tentatively concludes that requiring that central office coin services be made available to PPOs eliminates this cost advantage and will increase competition in the payphone industry. To unbundle payphones from their underlying transmission, the Commission tentatively concludes that incumbent LECs, whether or not they themselves provide payphone service, must offer individual central office coin transmission services to PSPs under a nondiscriminatory, public, tariffed offering. It seeks comment on this tentative conclusion and on which central office coin services must be made available by incumbent LECs to the PSPs to achieve this goal. In the interest of clarity, it seeks comment on both the type of services and the technological requirements necessary to allow PPOs to use payphones that are equivalent to those payphones currently used by LECs. The Commission also tentatively concludes that Section 68.2(a)(1) of the FCC's regulations should be amended to facilitate registration of both instrument implemented and central-office-implemented payphones. It seeks comment on this tentative conclusion.

b. Transfer of Payphone Equipment to Unregulated Status

17. If the Commission concludes that it will treat payphones as detariffed CPE, the incumbent LECs would have to transfer their payphones and related equipment from regulated to unregulated activities. FCC rules provide that, if reallocations of telecommunications plant (*i.e.*, central office equipment and outside plant) from regulated to nonregulated operations are required, such plant will be transferred at undepreciated baseline cost plus an interest charge based on the authorized interstate rate of return to reflect the time value of money. The Commission seeks comment on the specific assets to be transferred. It tentatively concludes that the assets to be transferred should be defined generally in terms of CPE deregulation. Thus, the assets to be transferred may include all facilities related to payphone service, including associated taxes and depreciation, but likely would not include the loops connecting the payphones to the network, or the central office ''coin-service'' or operator service facilities supporting incumbent LEC payphones. Including these network support facilities may be inappropriate because it would allow incumbent LECs to continue providing a different form of interconnection to their payphones than is available to PSPs. The Commission also tentatively concludes that a phase-in period for a transfer of payphone-related assets is not necessary, because payphone terminal equipment consists of less than one percent of total plant investment for the entire LEC industry. The Commission seeks comment on our tentative conclusions and the general approach to asset transfers outlined here.

c. Termination of Access Charge Compensation and Other Subsidies

18. Incumbent LECs today generally recover payphone costs allocated to the interstate jurisdiction through the per-minute carrier common line (''CCL'') charge they assess on IXCs and other interstate access customers for originating and terminating interstate calls. The incumbent LEC assesses the PPO a subscriber line charge (''SLC'') (at the multi-line business rate) to recover the payphone common line costs associated with that phone. In the case of competitive payphones, a PPO recovers its payphone costs out of the revenue it receives from end users, premises owners, and OSPs to whom its payphones are presubscribed.

19. The 1996 Act mandates that the Commission ''discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]'' Accordingly, the Commission must adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (*i.e.*, the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). It tentatively concludes that incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.44(c) of our rules. The Commission requests incumbent LECs to identify in their comments all accounts that contain costs attributable to their payphone operations. The Commission also requests comment on whether specific cost pools and allocators should be used to capture the nonregulated investment and expenses associated with their payphone operations. It seeks further comment on whether a transition period is necessary to move from subsidized compensation to per-call compensation for LEC payphones, and how that transition would proceed.

20. The Commission also proposes, pursuant to the mandate of Section 276(b)(1)(B), to require incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. The Commission solicits comment on whether it should set a deadline and a specific mechanism for elimination of any intrastate subsidies as well, or whether it would be both consistent with the statute as well as preferable from a policy perspective to permit the states to formulate their own mechanisms for achieving this result within a specific time frame.

21. In the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate SLC assessed upon the end user customer who subscribes to local service; and a per-minute CCL charge that recovers the balance of the interstate subscriber line costs not

recovered through the SLC. LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While PPOs are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge. The Commission tentatively concludes that, to avoid discrimination among payphone providers, the SLC should apply to subscriber lines that terminate at both LEC and competitive payphones. It tentatively concludes that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone would result in the recovery of LEC payphone costs on a more cost-causative basis. The Commission seeks comment on these tentative conclusions and, more generally, on how removing LEC payphones from the CCL charge would affect the SLC.

22. The incumbent LECs' multi-line business SLC is currently subject to a $6.00 per month cap. Those LECs with interstate subscriber line costs that exceed this amount recover a portion of the interstate costs of subscriber lines through the CCL charge. The issue of the appropriate interstate SLC for the future has been referred to a Federal-State Joint Board. To the extent that LECs charge or impute to their own payphone operations only the multi-line business SLC, which may be less than the full interstate cost of the subscriber lines connecting their payphones to the network, and recover the balance of the cost of these lines through the CCL charge, they may, in effect, be subsidizing their payphones with access charge revenues, in violation of Section 276. The Commission seeks comment on whether LECs in those circumstances should charge or impute to their own payphone operations, as well as to PPOs, an additional monthly charge representing the difference between the SLC cap and the full interstate cost of these subscriber lines. It also seeks comment on whether comparable changes should be made to incumbent LECs' intrastate rates.

d. Deregulation of AT&T Payphones

23. In the *Interstate, Interexchange Marketplace* proceeding, the Commission notes that it would consider in the instant proceeding ''the issue of bundling pay telephone equipment with the underlying transmission capacity.'' The Commission tentatively concludes that other IXC bundling issues should be treated under the same rules we have proposed in the *Interstate, Interexchange Marketplace* proceeding. Commenters who disagree with this tentative conclusion, however, are invited to comment in the proceeding.

24. Like LEC payphones, AT&T payphones are classified as network equipment and, therefore, may receive subsidies. The Commission tentatively concludes that payphones provided by AT&T should be classified as CPE. While the 1996 Act does not expressly address AT&T payphones, Section 276 directs the Commission to adopt regulations that will ''promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]'' Discontinuing possible subsidies for AT&T payphones would be congruent with the 1996 Act's requirement that the Commission discontinue subsidies for other payphones (*i.e.*, those owned by incumbent LECs) and would provide for symmetrical regulation of the payphone industry. There are other reasons why this proposed action is in harmony with the other rules the Commission has proposed in its proceeding. First, since *Tonka*, AT&T payphones have been treated the same as BOC payphones. Once LEC telephones, including those provided by the BOCs, are declared to be CPE, the basis for treating AT&T payphones as network equipment no longer exists. Second, the Commission believes that deregulating AT&T payphones is in line with its general policy to deregulate non-dominant carriers. It seeks comment on this tentative conclusion.

C. Nonstructural Safeguards for BOC Provision of Payphone Service

25. The *Computer III* nonstructural safeguards currently apply to a BOC's provision of payphone service if enhanced services are provided through the payphone. Under the *Computer III* framework, BOCs are permitted to provide enhanced services on an integrated basis subject to nondiscrimination safeguards. The safeguards the Commission adopted in *Computer III* include: (1) nondiscriminatory access to network features and functionalities; (2) restrictions on the use of Customer Proprietary Network Information (''CPNI''); (3) network information disclosure rules; (4) nondiscrimination in the provision, installation, and maintenance of services as well as nondiscrimination reporting requirements; and (5) cost accounting safeguards. The Commission tentatively concludes that all *Computer III* nonstructural safeguards must be applied to meet our obligation under the 1996 Act. It seeks comment on this tentative conclusion. We also seek comment on whether there are other nonstructural safeguards that, while not explicitly specified in the *Computer III*, should be applied to BOC payphones.

26. Currently, the Commission regulates BOC provision of enhanced services through Comparably Efficient Interconnection (''CEI'') and Open Network Architecture (''ONA'') requirements that require unbundled nondiscriminatory access to BOC network features and functionalities. Pursuant to these requirements, BOCs must file a service-specific CEI plan before offering any enhanced service on an integrated basis. A BOC must demonstrate in its CEI plan how it would provide competing enhanced service providers (ESPs) with ''equal access'' to all basic underlying network services the BOC used to provide its own enhanced services. Subsequently, the Commission required BOCs to develop and implement ONA plans detailing more fundamental unbundling of their basic network services. ONA requires further unbundling of network elements than under CEI because it is not limited to those elements associated with specific BOC enhanced services. In 1993, the Common Carrier Bureau lifted structural separation requirements after each BOC demonstrated that its ONA plan complied with the *BOC Safeguards Order*. Following the *California III* court decision, the Commission has continued to require BOCs to file CEI plans for each individual enhanced service it offers in addition to fulfilling the access requirements of its ONA plan.

b. BOC CEI Plans

27. To ensure BOC compliance with the *Computer III* and ONA requirements, we propose to require that each BOC file, within 90 days of the effective date of the order in this proceeding, an initial CEI plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. Thereafter, the BOCs may integrate the filing of information on payphone services unbundling and nonstructural safeguards with their ongoing ONA filings. Generally, in a CEI plan, a BOC must describe how it intends to comply with the CEI ''equal access'' parameters for the specific payphone service it intends to offer. The CEI equal access parameters include: interface functionality; unbundling of basic

services; resale; technical characteristics; installation, maintenance, and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or enhanced service providers. Because the 1996 Act requires that we apply safeguards that are equal to those set forth in *Computer III* ''at a minimum,'' the Commission seeks comment on any other parameters or requirements for BOC payphone service that, while not listed in this NPRM, are consistent with the intent of the 1996 Act.

D. Ability of BOCs To Negotiate With Location Providers on the Presubscribed Interlata Carrier

28. While the location provider selects the OSP for BOC and GTE payphones, all other payphone providers are able to select the OSP serving their payphones. As discussed above, payphone providers, both PPOs and independent LECs, compete in the market for payphone services by offering the location provider a commission on coin and 0+ traffic originating from the payphones located on the location provider's premises. In turn, payphone providers earn revenue by reselling local and 1+ long distance service and by contracting for 0+ traffic with OSPs that pay commissions on 0+ traffic. The legislation directs the Commission to provide similar rights to BOCs, unless the Commission determines that it is not in the public interest.

29. The Commission seeks comment on the extent to which extending to the BOCs the same rights that all other payphone providers have to select and contract with the interLATA carriers that carry interLATA traffic from their payphones would be ''not in the public interest.'' The Commission questions whether these rights will benefit the general public by increasing competition, available services, and overall efficiency. It also asks whether carrier-selection rights will help to foster increased competition and market parity that will ''promote the widespread deployment of payphone services to the benefit of the general public.'' Parties commenting on this issue should also address how any Commission action with respect to a BOC's right to select and contract with interLATA carriers would be consistent with the other goals enunciated in Section 276, such as promoting regulatory parity between BOCs and independent payphone providers, and that the location provider has the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers.

30. The Commission seeks comment on whether the ability to select the interLATA carrier serving their payphones is likely to permit the BOCs to behave anticompetitively in the payphone market in the absence of safeguards to prevent cost misallocations and discrimination. In addition, the Commission seeks comment on whether the structural and accounting safeguards mandated under Sections 271 and 272 of the 1996 Act, and any Commission rules implementing these safeguards, are sufficient to prevent anticompetitive abuses. If not, the Commission seeks comment on whether the Commission should adopt rules to prevent BOCs from giving more favorable interLATA rates to their own payphone operations than to their payphone competitors. Parties are asked to specify what safeguards would be necessary to prevent potential anticompetitive behavior by the BOCs in this regard. The Commission also seeks comment on to what extent a BOC not authorized to provide in-region interLATA service under Section 271 of the 1996 Act should be allowed to participate in the selection of the interLATA carrier, especially if the BOC has a non-attributable interest in the interLATA carrier, such as an option to purchase or an agreement to merge.

E. Ability of Payphone Service Providers To Negotiate With Location Providers on the Presubscribed Intralata Carrier

31. Currently, in some states, competitive payphones are required to route intraLATA 0+ and 0− calls, and sometimes other intraLATA calls, to the incumbent LEC. In contrast, Section 276(b)(1)(E) requires the Commission to prescribe regulations to allow PSPs to negotiate with the location provider on the selecting and contracting with the intraLATA carrier serving the payphone. In accordance with this requirement, the Commission tentatively concludes that all PSPs, whether LECs or PPOs, should be given this right to negotiate with location providers concerning the intraLATA carrier. The Commission seeks comment on these tentative conclusions.

F. Establishment of Public Interest Payphones

32. Because Section 276(b)(2) directs the Commission to ''determine whether public interest payphones * * * should be maintained,'' the Commission seeks comment on whether it would be in the public interest to maintain payphones provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone.''

33. If the Commission determines that public interest payphones should be maintained, then Section 276(b)(2) gives the Commission statutory authority to determine further how public interest payphones should be regulated. As with our jurisdiction over local call rates, the Commission seeks comment on a range of options for maintaining public interest payphones. One option would be for the Commission to prescribe federal regulations for the maintenance of these payphones. It seeks comment on whether and how this approach would serve the public interest, and on whether Section 276 requires the Commission to assume this responsibility.

34. A second option would be for the Commission to establish national guidelines for public interest payphones. It seeks comment on whether there are any state initiatives or programs concerning public interest payphones that the Commission could use as a model for national guidelines. Commenters supporting national guidelines should specify what factors the guidelines should consider and how the guidelines should be applied on a nationwide basis.

35. In the event that the Commission establishes national guidelines for public interest payphones, it seeks comment on what is to be considered a ''public interest payphone.'' The Joint Explanatory Statement for Section 276 clarifies that the term ''public interest payphones'' refers to payphones where payphone service would not otherwise be available as a result of the operation of the market. ''Thus, the term does *not* apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract.'' The Commission seeks comment on whether a ''public interest payphone'' should be defined as a payphone: (1) that operates at a financial loss, but also fulfills some public policy objective, such as emergency access; and (2) even though unprofitable by itself, is not provided for a location provider with whom the PSP has a contract. Under this definition, many payphones that fulfill important public policy objectives would not be included because they would be paid for, in the form of lower commission payments, by the entity that is requesting that a payphone be placed in a particular location to fulfill a public policy objective. This proposed definition would not necessarily

decrease the number of payphones in existence fulfilling public policy objectives, but would require the entities that most directly benefit from these low profitability payphones to assume the cost of their availability. The Commission seeks comment generally on this possible definition. Parties may specify whether the definition should be narrower, broader, or more specific.

36. A third option for maintaining public interest payphones would be to defer to the states to determine, pursuant to their own statutes and regulations, which payphones should be treated as ''public interest payphones.'' This approach would treat the provision of ''public interest payphones'' as primarily a matter of state concern. The Commission seeks comment on whether it would be consistent with the statute and better serve the public interest to allow the states to develop their own guidelines regarding which payphones are ''public interest payphones.''

37. With regard to a funding mechanism to support public interest payphones ''fairly and equitably,'' the Commission seeks comment on whether such a mechanism should be handled in conjunction with how public interest payphones are maintained, whether through federal regulations, federal guidelines for the states, or by the states themselves. In the alternative, the Commission seeks comment on whether it would it serve the public interest for the Commission and the states to administer different portions of a public interest payphone program. Commenters that support a Commission-mandated funding mechanism should detail how the mechanism would function, including who would be eligible to receive funding, who would be responsible for paying into the fund, and who would administer the funding mechanism.

G. Other Issues

1. Dialing Parity

38. Section 251(b)(3) states that all LECs have the duty to ''provide dialing parity to competing providers of telephone exchange service and telephone toll service.'' The Commission tentatively concludes that the benefits of dialing parity requirements that it adopts pursuant to Section 251(b)(3) of the Act should extend to all payphone location providers. It seeks comment on this tentative conclusion and on other methods for achieving dialing parity for payphone location providers, and users, of payphones that are consistent with the definition of dialing parity under Section 3(15) of the 1934 Act, as amended. As a related matter, the Commission seeks comment on whether the Commission should extend the type of intraLATA carrier unblocking requirements established in TOCSIA to all local and long distance calls.

2. Letterless Keypads

39. At least two distributors of payphone equipment have been promoting letterless keypads. Such keypads defeat callers' attempts to reach their OSP of choice through a ''vanity'' access number, such as MCI's ''1–800–COLLECT'' or AT&T's ''1–800–CALL–ATT'' and ''10ATT,'' that can be easily remembered by callers. Standard payphone keypads contain certain letters of the alphabet that correspond to each digit (*e.g.*, A, B, and C correspond to the digit ''2''). A ''letterless'' keypad does not include any letters associated with the requisite digits. The Commission expressed concern that use of letterless keypads may frustrate the intent of Congress, as expressed in TOCSIA, to permit callers to reach the OSP of their choice from payphones. In addition, the Commission is concerned that these keypads ultimately frustrates congressional intent, as expressed in the 1996 Act, ''to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]''

40. To promote consumer access to OSPs, TOCSIA required the unblocking of 800 and 950 access numbers at aggregator locations and directed the Commission to mandate the unblocking of 10XXX access codes and/or the establishment of 800/950 access numbers by each OSP. In the succeeding years, some OSPs have chosen to use ''vanity'' dialing sequences for access numbers. While the Commission has previously found that it does not have conclusive data showing a net change in the average number of access code calls (both 10XXX and 800/950 access calls) originated by each competitive payphone each month, payphone industry representatives have argued that use of ''vanity'' dialing sequences by payphone users has grown since their introduction.

41. The Commission staff has reviewed advertisements for letterless keypads that specifically refer to a ''by-pass keypad'' that ''prevents dial around [calls].'' The Commission tentatively concludes that the use of letterless keypads violates both TOCSIA and the 1996 Act by preventing callers from accessing their OSP of choice. It seeks comment on how the Commission should take action to prohibit use of these ''by-pass'' letterless keypads to restrict the availability of ''vanity'' access numbers.

3. Other Pending Payphone Proceedings

42. Several proceedings pending before the Commission concern the rules governing the payphone industry. The Commission tentatively concludes that it would further the public interest to consolidate and address those proceedings within this rulemaking. The pending proceedings are as follows: (1) Petition of the Public Telephone Council to Treat BOC Payphones as CPE, DA 88–2055; (2) Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket. No. 91–35 (payphone compensation issues only); (3) Petition of Oncor Communications, Inc. Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers, DA 95–1921; and (4) Amendment of Section 69.2 (m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the ''Public Telephone'' Exemption from End User Common Line Access Charges, RM 8723. Each of these proceedings addresses issues covered by Section 276 of the Act. We seek comment on the implications of our tentative conclusion. Specifically, the Commission seeks comment on which proceedings on the list commenters believe may be resolved here, and reasons for such opinions, and which proceedings should continue separately from this rulemaking, and the reasons for those opinions. The Commission also concludes in the NPRM that the Commission need not address the *Florida Payphone* remand in a separate proceeding because the rules adopted in the proceeding will address the remand by ensuring that PSPs are compensated, pursuant to the 1996 Act, for all intrastate and interstate calls, including subscriber 800 calls.

III. Comments and Ex Parte Presentations

43. All interested may file comments on the issues set forth in this NPRM, on which comment is specifically sought, by June 27, 1996, and reply comments by July 8, 1996. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, which involves issues concerning the Commission's expedited implementation of the 1996 Act, participants must file an original, ten copies, and the electronic version on disk of all comments and reply comments. Comments and reply comments should be sent to the Office of the Secretary, Federal

Communications Commission, Washington, DC 20554. If participants want each Commissioner to have a personal copy of their comments, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street NW., Washington, D.C. 20554. The petition, comments, and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

44. To facilitate review of comments and replies, both by parties and by Commission staff, the Commission requires that comments be no longer than seventy-five (75) pages and replies be no longer than thirty-five (35) pages, including exhibits, appendices, and affidavits of expert witnesses. Empirical economic studies and copies of relevant state orders will not be counted against these page limits. The page limits will not be waived and will be strictly enforced. Comments and replies must include a short and concise summary of the substantive arguments raised in the pleading. Comments and replies must also comply with Section 1.49 and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. Comments and replies also must clearly identify the specific portion of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

45. Parties are invited to submit, in conjunction with their comments or replies, proposed text for rules that the Commission could adopt in this proceeding. Specific rule proposals should be filed as an appendix to a party's comments or reply, and will not be counted against the page limits set forth in the preceding paragraph. Such appendices may include only proposed text for rules that would implement proposals set forth in the parties' comments and replies in this proceeding, and may not include any comments or arguments.

46. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.

IV. Conclusion

V. Regulatory Flexibility Analysis

47. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* (1981), the Commission has prepared a Regulatory Flexibility Analysis of the expected impact on small entities resulting from the policies and proposals set forth in the *NPRM.* The full analysis is contained within the *NPRM.* The Secretary shall send a copy of the *NPRM* to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

VI. Ordering Clauses

48. Accordingly, it is further ordered, pursuant to Sections 1, 4(i)–4(j), 201–205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, and 276 that a Notice of Proposed Rulemaking is ADOPTED.

49. It is furhter ordered that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures, if necessary, to provide for a fuller record and a more efficient proceeding.

50. It is further ordered that this Notice of Proposed Rulemaking is the Commission's disposition of all matters remanded by the U.S. Court of Appeals for the District of Columbia Circuit in *Florida Public Telecommunications Ass'n. v, FCC,* 54 F.3d 857 (D.C. Cir. 1995).

51. It is further ordered that the Secretary shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 64

Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–15789 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–124; RM–8813]

Radio Broadcasting Services; Winner and Wessington Springs, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Midwest Radio Corporation proposing the substitution of Channel 252C1 for Channel 253C1 at Winner, the reallotment of Channel 252C1 from Winner to Wessington Springs, South Dakota, and the modification of Station KGGK(FM)'s construction permit accordingly. Channel 252C1 can be allotted to Wessington Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 252C1 at Wessington Springs are North Latitude 44–05–12 and West Longitude 98–34–24. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 252C1 at Wessington Springs, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before July 29, 1996, and reply comments on or before August 13, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–124, adopted May 24, 1996, and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–15668 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–126; RM–8815]

Radio Broadcasting Services; Cross Hill, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ron Moore proposing the allotment of Channel 231A at Cross Hill, South Carolina, as the community's first local aural transmission service. Channel 231A can be allotted to Cross Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) southeast to avoid short-spacings to the licensed sites of Station WGOR(FM), Channel 230C3, Martinez, Georgia, and Station WMUU-FM, Channel 233C, Greenville, South Carolina. The coordinates for Channel 231A at Cross Hill are North Latitude 34–13–04 and West Longitude 81–51–41.

DATES: Comments must be filed on or before July 29, 1996, and reply comments on or before August 13, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ron Moore, 811–A Montague Ave., Greenwood, South Carolina 29649 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–124, adopted May 24, 1996, and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–15670 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–39; RM–8757]

Television Broadcasting Services; Irma, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This action dismisses a petition for rule making filed by David A. White requesting the allotment of UHF Television Channel 30+ to Irma, Wisconsin. *See* 61 FR 10978, March 18, 1996. No comments were received at the Commission stating an intention to file an application for Channel 30+ at Irma, Wisconsin. It is Commission policy to refrain from allotting a channel absent an expression of interest.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–39, adopted May 24, 1996, and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–15669 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252

[DFARS Case 94–D001]

Defense Federal Acquisition Regulation Supplement; U.S. European Command Supplement

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense is proposing revisions to the Defense Federal Acquisition Regulation

Supplement (DFARS) to incorporate certain text and clauses presently contained in the U.S. European Command (EUCOM) Supplement. The proposed rule generally applies only to requirements which will be performed wholly or in part in a foreign country.

DATES: Comments on the proposed rule and/or the associated information collection requirement should be submitted in writing to the address shown below on or before August 19, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Amy Williams, PDUSD (A&T) DP (DAR), 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D001 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Firms awarded Department of Defense contracts to be performed in foreign countries must meet requirements imposed by the host country's government concerning local business, labor, environmental, tax, and other laws in addition to meeting the requirements of the U.S. Government and obtaining all customs and tax exemptions to which contractors with the U.S. Government are entitled. The proposed DFARS revisions elevate text and clauses presently contained in the U.S. EUCOM Supplement to provide uniformity in the implementation of these requirements overseas.

B. Regulatory Flexibility Act

The proposed DFARS rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule only applies to contracts to be solicited, awarded, or performed overseas. More than 90 percent of such contracts are awarded to foreign firms. Those U.S. firms performing contracts overseas are not generally ''small entities.'' Under 5 U.S.C. 601 (3), the definition of ''small entity'' is the same as the definition of ''small business,'' contained in Section 3 of the Small Business Act (15 U.S.C. 631 *et seq.*), as implemented in 13 CFR 121.403. Section 121.403(a) states that a ''business concern eligible for assistance as a small business is a business entity organized for profit, with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, materials and/or labor.'' The proposed rule applies only to contracts which will be awarded or performed, wholly or in part, in foreign countries. Firms which compete for such procurements must meet requirements imposed by the host country's government concerning local business, labor, environmental, tax, and other laws, and obtain permits to operate, hire the mix of employees needed, etc., which are unique to conducting business within a particular country. The nature of these procurements limits the competition for U.S. requirements to those firms which are authorized by the local governments to conduct business within that country. There are only a few small businesses that qualify as ''invited contractors'' under the Status of Forces Agreements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small entities and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D001 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the proposed rule contains reporting and recordkeeping requirements. Necessary requests for approval of the information collection requirements in the proposed rule, as well as extension of existing requirements in Part 216 and related clauses, have been submitted to the Office of Management and Budget under Section 3507(d) of the Act. Information collection requirements relating to retention of records and making books available are already covered under OMB Clearance 9000–0034 (i.e., DFARS 252.216–7003(c) and 252.222–7004(a)). Invoicing requirements are covered under OMB Clearance 0704–0248 (i.e., DFARS 252.229–7001(b), 252.229–7003(d), 252.229–7007, and 252.229–7008(c)). Insurance requirements are covered in OMB Clearance 0704–0216 (i.e., 252.228–7007(c)).

1. Comments

Comments are invited. Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

2. Title, Associated Form, and OMB Number

a. Approval of the information collection requirements under proposed DFARS 252.216–7003(b)(1) has been requested as a revision and extension to ''Defense FAR Supplement, Part 216, Types of Contracts, and Related Clauses in Part 252.216,'' OMB Number 0704–0259.

b. Approval of the information collection requirements in proposed DFARS 252.229–710 (b) and (c) has been requested as a new clearance, ''Defense FAR Supplement Part 229, Taxes, and Related Clauses at 252.229.'' This information collection is an existing collection in use in the U.S. European Command Supplement without an OMB control number, which is now being incorporated in the DFARS.

3. Needs and Uses

a. The information collection required by the existing clauses, DFARS 252.216–7000(c) and DFARS 252.216–7001, and the proposed clause, DFARS 252.216–7003(b)(1), is necessary to enable the contracting officer to make a prompt modification to the contract, changing contract unit prices when appropriate. The information is used by contracting officers to evaluate the need for price adjustments.

b. The information collection required by proposed clause DFARS 252.229–7010 is necessary to permit Her Majesty's (HM) Customs to determine the amount of tax relief to be granted and to inform the contracting officer that an attempt to obtain relief has been initiated. After the Contractor obtains tax relief, the contracting officer appropriately adjusts the contract price. If the Contractor does not attempt to obtain relief within the time specified, the contracting officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered a request for relief.

4. *Affected Public.* Businesses or other for profit.

Extension				New	
252.216–700/7001				252.216–7003	252.229–7010
240	48			1568	96
20	6			196	24
3	1			2	1
60	6			392	24
4	8			4	4

5. *Annual Burden Hours:* 1952.
6. *Number of Respondents:* 246.
7. *Responses per Respondent:* 2.
8. *Number of Responses:* 482.
9. *Average Burden per Response:* 4.
10. *Frequency:* On occasion.
11. *Supplementary Information.* a. i. DFARS 252.216–7000(c), for which DoD is requesting extension of the existing paperwork burden clearance, requires contractors to notify contracting officers of the amount and effective date of each decrease in any established catalog or market price and permits contractors to submit a written request to increase their established prices.

ii. DFARS 252.216–7001(f), for which DoD is also requesting extension of the paperwork burden clearance, requires contractors, within 30 days of final delivery, to identify the correctness of the hourly earnings of their employees that are relevant to the computations of various labor indices and, upon request, make available all records used in the computation of those indices.

iii. The proposed clause at DFARS 252.216–7003(b)(1) requires the contractor to provide a written request for contract adjustment within 10 days of the increase in established wage rates or material prices, in order for the increase in contract unit price to be effective on the same date that the host government increases the applicable wage rates or material prices.

b. The proposed clause at DFARS 252.229–7010, Relief from Customs Duty (United Kingdom), requires contractors, whose contracts are awarded in the United Kingdom and which require the use of certain fuels and lubricants during performance, to provide specific information to Her Majesty's (HM) Customs and Excise and to provide the contracting officer with evidence that an attempt to obtain relief from customs duty on fuels and lubricants has been initiated.

Lists of Subjects in 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

2. Section 216.203–4–70 is amended by adding paragraph (c) to read as follows:

216.203–4–70 Additional clauses.

* * * * *

(c) *Price adjustment based on foreign government controlled wages or material prices.* (1) The price adjustment clause at 252.216–7003, Economic Price Adjustment—Foreign Government Controlled Wages or Materials, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wages or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Subpart 222.72 is added to read as follows:

Subpart 222.72—Compliance With Host Country Labor Laws

Sec.
222.7200 Scope of subpart.
222.7201 Contract clauses.

222.7200 Scope of subpart.

This subpart prescribes contract clauses, with respect to host country labor laws, for use when contracting for services or construction within the host country.

222.7201 Contract clauses.

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, or Puerto Rico.

(b) Use the clause at 252.222–7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222–7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction when contract performance will be in Spain.

PART 225—FOREIGN ACQUISITION

4. Subpart 225.9 is added to read as follows:

Subpart 225.9—Additional Foreign Acquisition Clauses

Sec.
225.970 Correspndence in English.
225.971 Authorization to Perform.

225.970 Correspondence in English.

Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

225.971 Authorization to perform.

Use the clause at 252.225–7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

PART 227—PATENTS, DATA, AND COPYRIGHTS

5. Section 227.676 is added to read as follows:

227.676 Foreign patent interchange agreements.

(a) Patent interchange agreements between the United States and foreign governments provide for the use of patent rights, compensation, free licenses, and the establishment of committees to review and make recommendations on these matters. The

agreements also may exempt the United States from royalty and other payments. The contracting officer shall ensure that royalty payments are consistent with patent interchange agreements.

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from: HQ USEUCOM, ATTN; ECLA, Unit 30400, Box 1000, APO AE 09128, Telephone No: DSN: 430–7474, Commercial: 49–0711–680–7474, Telefax No: 49–0711–680–7408.

PART 228—BONDS AND INSURANCE

6. Section 228.370 is amended by adding paragraph (f) to read as follows:

228.370 Contract clauses.

* * * * *

(f) Use the clause at 252.228–7008, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain by other than Spanish contractors or subcontractors.

PART 229—TAXES

7. Section 229.101 is amended by redesignating paragraphs (d)(i), (d)(ii) and (d)(iii) as (d)(iii), (d)(iv) and (d)(v); and by adding new paragraphs (d)(i), (d)(ii), and (d)(vi) to read as follows:

229.101 Resolving tax problems.

* * * * *

(d)(i) Tax relief agreements between the United States and foreign governments in Europe which exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information contact—HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128, Telephone No: DSN: 430–7474, Commercial: 49–0711–680–7474, Telefax No: 49–0711–680–7408.

(ii) Tax relief also may be available in countries which have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iii) of this section.

* * * * *

(vi) See also subpart 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting United States acquisitions in foreign countries with foreign contractors.

8. Subpart 229.4 is added to read as follows:

Subpart 229.4—Contract Clauses

Sec.
229.402 Foreign contracts.
229.402–1–70 Foreign fixed-price contracts.
229.402–70 Additional clauses.

229.402 Foreign contracts.

229.402–1–70 Foreign fixed-price contracts.

Use the clause at 252.229–7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign contractor.

229.402–70 Additional clauses.

(a) Use the clause at 252.229–7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign contractor in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229–7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of United States manufactured products into Germany.

(c) Use the clause at 252.229–7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229–7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import of supplies for construction, development, maintenance, and operation of Spanish-American installations and facilities.

(e) Use the clause at 252.229–7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(f) Use the clause at 252.229–7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229–7007, Verification of United States Receipt of Goods, in solicitations issued and contracts awarded in the United Kingdom.

(h) Use the clause at 252.229–7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229–7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom) in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229–7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom calling for the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

9. Subpart 229.70 is added to read as follows:

Subpart 229.70—Special Procedures for Overseas Contracts

Sec.
229.7000 Scope of subpart.
229.7001 Tax exemption in Europe.
229.7002 Tax exemption in Spain.
229.7003 Tax exemption in the United Kingdom.
229.7003–1 Value added tax.
229.7003–2 Import duty.
229.7003–3 VAT/Duty problem resolution.
229.7003–4 Information required by HM Customs and Excise.

229.7000 Scope of subpart.

This subpart prescribes procedures to be used by contracting officers to obtain tax relief and duty-free import privileges when conducting United States Government acquisitions in foreign countries with foreign contractors.

229.7001 Tax exemption in Europe.

When standard commercial items or services are being acquired, the contracting officer shall require the contractor to identify and separately state the tax amount from which the United States is exempt and which has been excluded from the contract price. The contracting officer will compare the excluded amount with the tax relief authorized by tax relief agreements to ensure that the United States Government is accorded the full benefit of all tax exemptions (see also 229.402–70(a) and the clause at 252.229–7001).

229.7002 Tax exemption in Spain.

(a) The Joint United States Military Group (JUSMG), Spain Policy Directive 400.4, or subsequent directive, applies to all United States contracting offices contracting for services or supplies in Spain which require the introduction of material or equipment into Spain.

(b) Upon award of a contract with a ''Direct Contractor,'' as defined in the clause at 252.229–7004, the contracting officer will notify JUSMG–MAAG Madrid, Spain, and HQ 16AF/LGTT and forward three copies of the contract to JUSMG–MAAG, Spain.

(c) If copies of the contract are not available and duty-free import of equipment or materials is urgent, the contracting officer will send JUSMG–MAAG three copies of the ''Letter of Intent'' or a similar document indicating the pending award. In these cases, authorization for duty-free import will

be issued by the Government of Spain. Upon formal award, the contracting officer will forward three copies of the completed contract to JUSMG–MAAG, Spain.

(d) The contracting officer will notify JUSMG–MAAG, Spain, and HQ 16AF/LGTT of ports-of-entry and identify the customs agents who will clear property on their behalf. Additional documents required for port-of-entry and customs clearance can be obtained by contacting HQ 16AF/LGTT. This information will be passed to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of customs agents may be obtained from the 600 ABG, APO AE 09646.

229.7003 Tax exemption in the United Kingdom.

This section contains procedures to be followed in securing relief from the British Value Added Tax (VAT) and import duties.

229.7003–1 Value added tax.

(a) United States Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) In order to facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for United States Government purchases (see 229.7003-3), contracting offices shall provide the name and activity address of personnel who have been granted warranted contracting authority to Her Majesty's (HM) Customs and Excise at the following address: HM Customs and Excise, International Customs Division G, Branch 4, Adelaide House, London Bridge, London EC4R 9DB.

229.7003–2 Import duty.

No import duty shall be paid by the United States and contract prices shall be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer shall document the contract file with a statement that

(1) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(2) It is impracticable to secure tax relief;

(3) Tax relief is therefore not being secured; and

(4) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

229.7003–3 VAT/Duty problem resolution.

In the event a VAT or import duty problem cannot be resolved at the contracting officer's level, refer the issue to HQ Third Air Force, Staff Judge Advocate, Unit 4840, Box 45, APO AE 09459. Direct contract with HM Customs and Excise in London is prohibited.

229.7003–4 Information required by HM Customs and Excise.

(a) *School bus contracts.* Provide one copy of the contract and all modifications to HM Customs and Excise.

(b) *Road fuel contracts.* For contracts which involve an application for relief from duty on the road fuel used in performance of the contract provide—

(1) To HM Customs and Excise—

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

(2) To the Regional Office of HM Customs and Excise to which the contractor applied for relief from the duty on road fuel—one copy of the contract.

(c) *Other contracts awarded to United Kingdom firms.* Provide information when requested by HM Customs and Excise.

PART 232—CONTRACT FINANCING

10. Section 232.806–70 is added to read as follows:

§ 232.806–70 Alternate contract clause for overseas contracting.

Use the clause at 252.232–7008, Assignment of Claims (Overseas), in place of FAR clause 52.232–23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

PART 233—PROTESTS, DISPUTES, AND APPEALS

11. Section 233.215–70 is added to read as follows:

§ 233.215–70 Additional contract clause.

Use the clause at 252.233–7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside of the United States, its possessions, or Puerto Rico, unless otherwise provided for in a Government-to-Government agreement.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

12. Section 236.570 is amended by adding paragraph (c) to read as follows:

§ 236.570 Additional provisions and clauses.

* * * * *

(c) See also 246.710(4) for additional clause applicable to construction contracts to be performed in Germany.

PART 246—QUALITY ASSURANCE

13. Section 246.710 is amended by adding paragraph (4) to read as follows:

§ 246.710 Contract clauses.

* * * * *

(4) Use the clause at 252.246–7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.216–7003 is added to read as follows:

§ 252.216–7003 Economic Price Adjustment—Foreign Government Controlled Wages or Materials.

As prescribed in 216.203–4–70(c), use the following clause:

Economic Price Adjustment—Foreign Government Controlled Wages or Materials (XXX XXXX)

(a) The Contractor represents that the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government or _____ (*Contractor—insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the Government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the host government increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer receives the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the host government decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the host government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates/prices set by the host government. The Contractor shall make available its books and records which support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

15. Section 252.222–7002 is added to read as follows:

§ 252.222–7002 Compliance with Local Labor Laws (Overseas).

As prescribed in 222.7201(a), use the following clause:

Compliance With Local Labor Laws (Overseas) (XXX XXXX)

(a) The Contractor shall comply with all—

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with Federal Acquisition Regulation 31.205–15(a) and 31.205–47(d), the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting Officer.

(End of clause)

16. Section 252.222–7003 is added to read as follows:

252.222–7003 Permit from Italian Inspectorate of Labor.

As prescribed in 222.7201(b), use the following clause:

Permit From Italian Inspectorate of Labor (XXX XXXX)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

17. Section 252.222–7004 is added to read as follows:

252.222–7004 Compliance with Spanish Social Security Laws and Regulations.

As prescribed in 222.7201(c), use the following clause:

Compliance With Spanish Social Security Laws and Regulations (XXX XXXX)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1—Certificate of Social Security Payments;

(2) TC2—List of employees;

(3) TC2/1—Certificate of Social Security Payments for Trainees;

(4) Nominal (pay statements) signed by both the employee and Contractor; and

(5) INFORMA DE SITUACION DE EMPRESA (Report of the condition of the enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's, shall contain a representation that they have been paid by either the Social Security Administration Office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause entitled ''Default.''

(End of clause)

18. Section 252.225–7041 is added to read as follows:

252.225–7041 Correspondence in English.

As prescribed in 225.970, use the following clause:

Correspondence in English (XXX XXXX)

The Contractor shall ensure that all contract correspondence which is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

19. Section 252.225–7042 is added to read as follows:

252.225–7042 Authorization to Perform.

As prescribed in 225.971, use the following clause:

Authorization To Perform (XXX XXXXX)

The Contractor represents that it has been duly authorized to operate and do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)

20. Section 252.228–7008 is added to read as follows:

252.228–7008 Compliance with Spanish Laws and Insurance.

As prescribed at 228.370(f), use the following cause:

Compliance With Spanish Laws and Insurance (XXX XXXXX)

(a) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor's failure to comply with such laws.

(b) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen's compensation, employees' liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(c) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the ''Notice to Proceed,'' that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation shall also state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage which could affect the United States Government's interests.

Type of insurance	Coverage/person	Coverage/accident	Property damage
Comprehensive ..... General Liability	$300,000.00	$1,000,000.00	$100,000.00

(d) The Contractor shall provide the Contracting Officer with a similar representation for all subcontractors who will perform work under this contract.

(e) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: ''The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under this policy'';

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

21. Section 252.229–7000 is added to read as follows:

252.229–7000 Invoices Exclusive of Taxes or Duties.

As prescribed at 229.402–1–70, use the following clause:

Invoices Exclusive of Taxes or Duties (XXX XXXX)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

22. Section 252.229–7001 is added to read as follows:

252.229–7001 Tax Relief.

As prescribed at 229.402–70(a), use the following clause:

Tax Relief (XXX XXXX)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's Government. The following taxes or duties have been excluded from the contract prices.

NAME OF TAX: _____
(Contractor insert)

RATE (PERCENTAGE): _____
(Contractor insert)

(b) The Contractor's invoice shall separately list the gross price, amount of tax deducted, and the net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall still ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

Alternate I. (XXX XXXX)

As prescribed at 229.402–70(a), add the following paragraph (d) to the basic clause (Note: The ''Offshore Steuerabkommen'' refers to the agreement on tax relief at 252.229–7010):

(d) Tax relief will be claimed in Germany pursuant to the United States-German Tax Agreement (Offshore Steuerabkommen). The Contractor shall use ''Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen'' (Performance certificate for tax-free deliveries/performance according to the offshore tax relief agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

23. Section 252.229–7002 is added to read as follows:

252.229–7002 Customs Exemptions (Germany)

As prescribed at 229.402–70(b), use the following clause:

Customs Exemptions (Germany) (XXX XXXX)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by contractors in accordance with the provisions of the ''Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.''

(End of clause)

24. Section 252.229–7003 is added to read as follows:

252.229–7003 Tax Exemptions (Italy).

As prescribed at 229.402–70(c), use the following clause:

Tax Exemptions (Italy) (XXX XXXX)

(a) The Contractor represents that the contract prices, including the prices in subcontracts awarded hereunder, do not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) Upon receipt of the invoice, the paying office will stamp the following statement on one copy of the invoice:

''I represent that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633 of 26 October 1972.''

(2) The copy with the representation, signed by an authorized Government official, will be returned together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(3) The Contractor must retain this copy of the invoice with the representation to substantiate non-payment of the IVA tax.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Marittima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(d) The Contractor's administrative procedures for claiming and validating the exemptions are as follows:

(1) Contract offer price shall not reflect IVA or any other tax or duty.

(2) Contract number must be set forth on Contractor invoices, which should state the exemptions claimed pursuant to Art. 72, Decree No. 633, dated October 26, 1972, for IVA exemption.

(3) Fiscal code for payments made by Aviano Air Base Appropriated Funds is: 91000190933.

(4) Questions may be addressed to the Ministry of Finance, 11th District, Room (06) 5910982.

(End of clause)

25. Section 252.229–7004 is added to read as follows:

252.229–7004 Status of Contractor as a Direct Contractor (Spain).

As prescribed at 229.402–70(d), use the following clause:

Status of Contractor as a Direct Contractor (Spain) (XXX XXXX)

(a) ''Direct Contractor'' means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement which allows duty-free import of equipment, materials and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated a ''Direct Contractor'' under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contracts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a ''Direct Contractor'' in order to complete duty-free import of non-Spanish materials and equipment represented as necessary for contract performance by the Contracting Officer. Material/equipment orders placed prior to official notifications of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to assure processing by the appropriate United States and Spanish Government agencies prior to the arrival of material/equipment in Spain. Seasonal variations in processing times are common and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund, in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported duty-free.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraphs (d) or (e) of this clause shall normally be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is

_____

(Contracting Officer insert amount at time of contract award.

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

26. Section 252.229–7005 is added to read as follows:

252.229–7005 Tax Exemptions (Spain).

As prescribed at 229.402–70(e), use the following clause:

Tax Exemptions (Spain) (XXX 1995)

(a) The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

(1) Derechos de Aduana (Customs Duties).

(2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports)

(3) Transmissiones Patrionomiales (Property Transfer Tax).

(4) Impuesto Sobre el Lujo (Luxury Tax).

(5) Actos Juridocos Documentados (Legal Official Transactions).

(6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).

(7) Impuestos Especiales de Fabricacion (Special Products Tax).

(8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its by-products when CAMPSA coupons are used).

(9) Impuesto Sobre el Uso de Telefona (Telephone Tax).

(10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).

(11) Impuesto Industrial (Industrial Tax).

(12) Impuesto de Rentas sobre el Capital (Capital Gains Tax).

(13) Plus Vailia (Increase on Real Property).

(14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).

(15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).

(16) Impuestos de la Diputacion (County Service Charges).

(17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

27. Section 252.229–7006 is added to read as follows:

252.229–7006 Value Added Tax Exclusion (United Kingdom).

As prescribed at 229.402–70(f), insert the following clause:

Value Added Tax Exclusion (United Kingdom) (XXX XXXX)

The supplies or services identified in this contract or purchase order are to be delivered at a price exclusive of Value Added Tax under arrangements between the appropriate United States authorities and Her Majesty's Customs and Excise (Reference Priv 46/7). By executing this contract, the Contracting Officer certifies that these supplies and/or services are being purchased for United States Government official purposes only.

(End of clause)

28. Section 252.229–7007 is added to read as follows:

252.229–7007 Verification of United States Receipt of Goods.

As prescribed at 229.402–70(g), use the following clause:

Verification of United States Receipt of Goods (XXX XXXX)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval:

''I represent that the items listed on this invoice have been received by the United States.''

(End of clause)

29. Section 252.229–7008 is added to read as follows:

252.229–7008 Relief from Import Duty (United Kingdom).

As prescribed at 229.402–70(h), use the following clause:

Relief From Import Duty (United Kingdom) (XXX XXXX)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty has already been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's (HM) Customs and Excise in order to obtain a refund upon completion of the contract (Reference HM Customs and Excise Notice No. 431, February 1973, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.'')

(End of clause)

30. Section 252.229–7009 is added to read as follows:

252.229–7009 Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom).

As prescribed at 229.402–70(i), use the following clause:

Relief From Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom) (XXX XXXX)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, fuels and lubricants used by passenger vehicles (except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice 431B dated August 1982, and any amendment thereto, shall be used to obtain relief from both Customs Duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices should be based on the recoupment by the Contractor of Customs Duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29–53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the Customs Duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

31. Section 252.229–7010 is added to read as follows:

252.229–7010 Relief from Customs Duty on Fuel (United Kingdom).

As prescribed at 229.402–70(j), use the following clause:

Relief From Customs Duty on Fuel (United Kingdom (XXX 1995)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.'' Application should be sent to the contractor's local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information which will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

32. Section 252.232–7008 is added to read as follows:

252.232–7008 Assignment of Claims (Overseas).

As prescribed at 232.806–70, use the following clause:

Assignment of Claims (Overseas) (XXX XXXX)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked ''Top Secret,'' ''Secret,'' or ''Confidential'' be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

33. Section 252.233–7001 is added to read as follows:

252.233–7001 Choice of Law (Overseas).

As prescribed at 233.215–70, use the following clause:

Choice of Law (Overseas) (XXX XXXX)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of contract appeals and the United States court of Federal claims for the hearing and determination of any and all Disputes which may arise under the Disputes clause of this contract.

(End of clause)

34. Section 252.246–7002 is added to read as follows:

252.246–7002 Warranty of Construction (Germany).

As prescribed at 246.710(4), use the following clause:

Warranty of Construction (Germany) (XXXX)

(a) In addition to any other representations in this contract, the Contractor represents, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work

performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor the repair of any damage resulting form any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

[FR Doc. 96–15222 Filed 6–19–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[I.D. 061396A]

Atlantic Surf Clam and Ocean Quahog Fisheries; Notice of Availability for Amendment 9

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for Secretarial review and is requesting comments from the public. The amendment would revise overfishing definitions for Atlantic surf clams and ocean quahogs.

DATES: Comments must be received on or before August 13, 1996.

ADDRESSES: Send comments to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope ''Comments on Overfishing Definitions for Clams and Quahogs.''

Copies of Amendment 9 and the environmental assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, on behalf of the Secretary, upon receiving the plan or amendment, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a document that the plan or amendment is available for public review and comment. NMFS will consider the public comments in determining whether to approve the amendment.

Amendment 9, if approved, would revise overfishing definitions for the stocks managed under the FMP in compliance with the NOAA Guidelines for Fishery Management Plans (50 CFR part 602).

During its discussions of the 1996 quota recommendations, the Council considered revising the overfishing definitions specified in the FMP. Overfishing is presently defined for both species in terms of actual yield levels—that is, overfishing is defined as harvests in excess of the specified quota levels. This definition does not incorporate biological considerations to protect against overfishing. NMFS has concluded that a harvesting strategy based on Council policy is no longer acceptable, since it depends on the Council taking appropriate action, rather than adhering to a rate-based biological standard. The overfishing definition proposed by the Council for surf clams as contained in Amendment 9 is a fishing mortality rate of $F_{20\%}$ (20 percent of maximum spawning potential (MSP)), which equates to an annual exploitation rate of 15.3 percent. The overfishing definition proposed by the Council for ocean quahogs as contained in Amendment 9 is a fishing mortality of $F_{25\%}$ (25 percent of MSP), which equates to an annual exploitation rate of 4.3 percent.

The receipt date for this amendment is June 12, 1996. No proposed or final regulations will be published for this amendment, because, if it is approved, no changes will be needed in the codified regulatory text that implements this FMP.

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

Dated: June 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–15661 Filed 6–14–96; 4:52 pm

BILLING CODE 3510–22–F

50 CFR Part 652

[Docket No. 960531155–6155–01; I.D. 050996B]

Atlantic Surf Clam and Ocean Quahog Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) is considering limiting future access to anyone entering that portion of the ocean quahog (*Arctica islandica*) fishery, commonly referred to as the Maine mahogany quahog fishery, that is managed through the Maine Mahogany Quahog Experimental Fishery Program after June 20, 1996 (control date). Future access to the Maine mahogany quahog resource in the exclusive economic zone (EEZ) will not be assured beyond the control date if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This document is intended to promote awareness of potential eligibility criteria for future access to that portion of the ocean quahog fishery managed through the Maine Mahogany Quahog Experimental Fishery Program and to discourage new entries into this fishery based on economic speculation while the Council contemplates whether and how access should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of ocean quahog landings. This document, therefore, gives the public notice that they should locate and preserve records

that substantiate and verify their participation in that portion of the Maine mahogany quahog fishery in Federal waters managed through the Maine Mahogany Quahog Experimental Fishery Program.

DATES: Comments must be submitted by July 19, 1996.

ADDRESSES: Comments should be directed to: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover DE 19904.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

Background

The surf clam and ocean quahog resources were the first resources placed under Federal management after the Magnuson Act was implemented. Surf clams and ocean quahogs are currently managed by the individual transferrable quota (ITQ) system that was implemented by Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP), that was effective September 30, 1990. Amendment 8 replaced an elaborate and costly effort control system with one which limited only the outputs, or landings of the two species, and gave harvesters the flexibility to utilize their landing allocation in whatever manner best suited their individual needs and situations.

NMFS assigned landing allocations to historic industry participants, which could be harvested, leased, or sold to other individuals at the allocation holder's discretion. The major factor employed in assigning those allocations was past participation in the fisheries. Documentation of past participation was provided by fishermen themselves, using logbook forms supplied by the government. Mandatory landings reports have been a requirement for any vessel harvesting surf clams or ocean quahogs in the EEZ since 1978.

Ocean quahogs are distributed in U.S. waters from the Canadian border to Cape Hatteras. South of Cape Cod, the species occurs primarily in EEZ waters, although some fishable concentrations occur in Rhode Island Sound, and in coastal waters off Massachusetts. In the Gulf of Maine, ocean quahogs occur both in state and EEZ waters. Two significant and separate fisheries currently exist for ocean quahogs, in the Middle Atlantic Bight, from Martha's Vineyard to the Delmarva Peninsula, and in waters off eastern Maine.

In general, over 99 percent of the ocean quahog landings in weight come from the mid-Atlantic fishery. Effort and catch per unit of effort in the Maine fishery are also substantially less than that in the mid-Atlantic. The Maine fishery occurs in a relatively restricted area centered off Mt. Desert Island. Ocean quahog catches from the coast of Maine are restricted to a narrow band inshore of the 50 fathom line.

In 1990, a problem was discovered relative to the fishery for ocean quahogs off of Maine. While previously this small-scale fishery had occurred primarily within Maine state waters, area closures were required due to the presence of paralytic shellfish poisoning toxin. These closures forced vessels to fish further offshore in the EEZ starting in 1987.

It was not until one of the participants in the Maine ocean quahog fishery was issued a violation notice by the U.S. Coast Guard that Maine participants came to understand the Federal management measures governing the quahog fishery. Some of the participants in this fishery had mistakenly believed that the animal that was locally called a ''mahogany clam'' was a different species than the ocean quahog under Federal management.

Although the mahogany quahog fishery that occurs off Maine uses the same species as the ocean quahog off the mid-Atlantic, the Maine mahogany quahog is a distinct biological group of animals. For instance, Maine mahogany quahogs have a much slower growth rate than ocean quahogs off the mid-Atlantic.

To address the issue of a distinct biological group of ocean quahogs off the coast of Maine, the Director, Northeast Region, NMFS, initiated an experimental fishery for mahogany quahogs off of downeast Maine. The participants in this fishery are required to obtain and carry on board their vessels a certificate issued by NMFS. Several conditions are placed on the experimental fishery, including an area restriction that prohibits vessels from fishing south of 43°50' N. latitude (changed from 43°00' N. latitude in 1992), vessel and dealer reporting requirements, an obligation to take observers aboard if required by NMFS, and a requirement for vessels to sell only to federally permitted dealers.

Significant differences exist between the Maine and mid-Atlantic fisheries. The markets into which each type of ocean quahog are sold also differ. The major ocean quahog fishery from the mid-Atlantic has typically been a larger scale industrial enterprise, conducted by large vessels operating in deep, offshore waters. Ocean quahogs are dislodged from the seabed using large, hydraulic dredges that shoot jets of water from their leading edge. Once on board, ocean quahogs are stored in metal cages capable of holding 32 bu each. At the dock, cranes lift the cages into tractor trailers for shipment to processing plants where they are steamed open, thoroughly washed, and processed into a variety of product forms primarily for clam chowder. Reported prices have been relatively constant over time and have ranged from $3.00 to $4.70 per bu in 1995.

The small-scale Maine mahogany quahog fishery utilizes small, dry dredges on small boats typically ranging between 35 (11 m) and 45 ft (14 m) in length. The quahogs targeted by these vessels are smaller than in the industrial fishery, averaging between 1.5 (38 mm) and 2.5 inches (63 mm), and are destined for the fresh, half-shell market. The average exvessel price in 1995 was $34 per bu but prices have been as high as $45 per bu in 1991.

Significant landings (124,000 bu) of quahogs in Maine were first recorded in 1986. For the next eight years, reported landings were on a declining trend, falling to a low of 22,000 bu in 1994. The number of vessels reporting landings in the Federal experimental fishery declined from 45 boats in 1991 to 30 in 1994.

The 1995 data have not yet been finalized, however, the State of Maine has records of landings increasing sharply to approximately 40,000 bu, due to the discovery of an extensive new bed. Indications from officials in Maine are that this new resource site straddles the boundary between the EEZ and state waters.

NMFS collected nonrandom samples from the coast of Maine with the 1992 and 1994 research surveys in order to map the distribution of ocean quahogs and to examine the population size frequency distributions. Within the 50–fathom range, ocean quahogs appear to be restricted to a patch centered between 67° and 68° W. longitude. Tows were taken to the east and west of the patch to attempt to define the limits. The location of the patch, as defined by survey data, agrees well with the location of recent landings. Maine is the only area with any evidence of substantial recruitment of small quahogs or of growth by medium-sized ocean quahogs in any region.

The 1994 stock assessment states that given the problems with the 1994 survey, it would be inappropriate to use the two surveys from Maine to make inferences about changes in population size, because those samples were taken

from nonrandom locations. In the Maine area, the population consists of two length modes. The larger group is centered between 50–54 mm (25 mm = 1 inch) shell length. Most clams in the smaller group measured 20–29 mm in July 1992, and 30–39 mm in August 1994. Work is currently in progress to section these shells and estimate age and growth. The 50–54 mm long clams are estimated to be 35 to 43 years of age. The smaller group, 30–39 mm long, are estimated to be 15 to 20 years of age.

The Council intends to address whether and how to limit entry of commercial vessels into this fishery in Amendment 10 to the FMP. The Council's intent in making this announcement is to discourage speculative entry into the Maine mahogany quahog fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from speculative entrants to the fishery. Fishermen are notified that entering the fishery after the control date will not assure them of future access to the ocean quahog resource on the grounds of previous participation. Furthermore, additional and/or other qualifying criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings. The Council may also decide not to limit entry into this fishery after a consideration of all reasonable alternatives for its management.

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

Dated: June 13, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–15679 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 120
Thursday, June 20, 1996

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

Submission for OMB Review; Comment Request

June 14, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, PACC–IRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Rural Development

Title: Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts, 7 CFR 1951–G.

Summary: This program enables rural residents of low and moderate income to become homeowners of an adequate but modest dwelling. It also enables very low income owner-occupants to obtain loans to remove safety and health hazards from their homes.

Need and Use of the Information: The information requested includes borrower financial information such as household income, assets and liabilities and monthly expenses. The information is vital to determine if borrowers qualify for the services offered and to assure that they receive all assistance for which they are eligible.

Description of Respondents: Individuals or households.

Number of Respondents: 29,000.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 11,638.

- National Agricultural Statistics Services

Title: Stocks Report.

Summary: Information is collected on stocks of grain, rice, potatoes, peanuts, hops, and dry beans. Estimates of stocks provide essential statistics on supplies and contributes to orderly marketing.

Need and Use of the Information: The data is used by USDA to administer various programs, including foreign trade, marketing, nutrition, economic analysis, and administration of farm programs.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 13,218.

Frequency of Responses: Reporting: Monthly; Quarterly.

Total Burden Hours: 14,766.

- Animal and Plant Health Inspection Service

Title: Domestic Quarantines.

Summary: The information collected is necessary to determine compliance with domestic quarantines. Quarantines are necessary to regulate movement of articles from infested/infected areas to non-infested/non-infected areas.

Need and Use of the Information: The information obtained is used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents. The information helps prevent the spread of insect infestation throughout the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 174,101.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 99,027.

Emergency processing of this submission has been requested by *June 14, 1996.*

- Food and Consumer Service

Title: Food Security Supplement to the Correct Population Survey—II.

Summary: This survey will collect data on household food expenditures, food assistance, and food adequacy that will allow FCS to measure and analyze the extent of food insecurity and hunger in the U.S.

Need and Use of the Information: The purpose is to obtain reliable data from a large representative national sample of people in order to track the prevalence of food insecurity and hunger. The data will assist in better identifying the dimension of national food-security problems, monitoring hunger in these conditions, planning nutritional and other health related policies and assessing the impacts of policies undertaken.

Description of Respondents: Individuals or households.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,330.

- Foreign Agricultural Service

Title: Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480.

Summary: Title I of the Agricultural Trade Development and Assistance Act of 1954 provides for U.S. Government financing of sales of U.S. agricultural commodities to foreign countries.

Need and Use of the Information: The data is needed to administer the program within the guidelines set forth under this Act.

Description of Respondents: Business and other for-profit.

Number of Respondents: 103.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 538.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–15769 Filed 6–19–96; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Environmental Impact Statement for the Thunder Mountain Project, Dewey Gold/Silver Mine, on the Krassel Ranger District of the Payette National Forest, Valley County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for a proposal submitted by USMX Inc. USMX's proposal is to develop a new open pit gold/silver mine in the Thunder Mountain Mining District located in Valley County, Idaho. The mine would be located on private and National Forest System (NFS) lands

within the Krassel Ranger District of the Payette National Forest.

The EIS will focus on: (1) construction of one mine pit, process facility, and haul road or conveyer on private land in the headwaters of Mule Creek, (2) construction of one waste dump on NFS land in the headwaters of Mule Creek, (3) construction of a dedicated heap facility on private land in Venable Saddle, and (4) the transportation of equipment and fuel across NFS lands to the mine site. The proposal will be referred to as the Dewey Mine project.

The Forest Service invites comments on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis of this proposal and that interested or affected people may participate and contribute to the final decision. Issues raised will help establish the scope of the environmental analysis and develop the range of alternatives to be considered. The Forest Service welcomes any public or agency comments on this proposal.

DATES: Comments concerning the scope of the analysis must be received by July 21, 1996, to ensure timely consideration. The Forest Service will conduct three open-house scoping meetings to allow interested parties an opportunity to identify issues and concerns. Representatives of the Forest Service and USMX will be available to answer questions about the proposed Plan of Operations.

Meetings will be held as follows:

June 26, 1996, 7:00 pm (MDT) at the Payette National Forest Supervisor's Office, 800 West Lakeside Avenue, in McCall, Idaho.

June 27, 1996, 7:00 pm (MDT) at location to be announced, in Boise, Idaho.

July 1, 1996, 7:00 pm (MDT) at the Town Hall in Yellow Pine, Idaho.

ADDRESSES: Submit written comments and suggestions to: Dewey Mine EIS, Payette National Forest, P.O. Box 1026, McCall, Idaho, 83638.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and DEIS to Fred Dauber, Krassel District Ranger, Krassel District Office, P.O. Box 1026, McCall, Idaho, 83638, telephone (208) 634–0614.

SUPPLEMENTARY INFORMATION: USMX, Inc., has submitted to the Payette National Forest a proposed Plan of Operations for a new mine to be located in the Thunder Mountain Mining District in Valley County, Idaho. The Plan describes proposed development, operational, and reclamation activities for the Dewey Mine, an open pit precious metal (gold and silver) mining and cyanide heap leaching operation. The proposal includes the following components:

- Developing an open pit in the vicinity of existing underground and surface workings which were last worked in the early 1980's by the Golden Reef Joint Venture.
- Constructing a synthetically lined pad and loading it with ore to which a sodium cyanide solution will be applied in order to leach gold and silver values. This pad will be at the location of the former Sunnyside Mine on-off leach pad used by Coeur d'Alene Mines Corporation in the late 1980's.
- Constructing one or more waste rock dumps near the open pits.
- Constructing and maintaining one or more soil stockpiles and an ore stockpile.
- Constructing haul roads or constructing a conveyor system to transport ore from the pit to the crusher.
- Constructing storage ponds for excess run-off and process solutions, including a lined pond in the partially backfilled Sunnyside Pit.
- Constructing or relocating one or more buildings in which gold recovery operations will occur and in which diesel generators for power generation will be located.
- Construction or relocation of storage tanks for diesel fuel.
- Reclaiming the site, including removal of roads and revegetation of the waste rock dumps and heap.

Proposed mine development and operation would affect approximately 223 acres within the Thunder Mountain Mining District, a 5,980-acre enclave within the Frank Church—River of No Return Wilderness. Of this 223 acres, 80.9 acres are unpatented mining claims on public lands and 142 acres are in private ownership. All of the affected acres have been disturbed to some extent by previous mining activities during the past 100 years. In addition, development and operation of the mine would require the use of approximately 100 miles of County and Forest System roads.

The EIS will consider a range of alternatives, including the no-action alternative. Other alternatives will be developed or modified to address issues and mitigate impacts. Agencies and the public have expressed preliminary concerns regarding effects on: surface and ground water, air quality, soils, geology, wildlife, fisheries, socioeconomic and social impacts, recreation and visual resources, public safety and transportation, and cultural resources.

The Forest Service will further expand and/or clarify issues based on public input provided during the scoping process. All interested and affected members of the public may participate in the scoping process. All interested and affected members of the public may participate in the scoping process. This process will include:

1. Identification of issues.
2. Identification of issues to be analyzed in depth.
3. Development of alternatives.
4. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

If requested, the Forest Service may make a copy of all comments provided in response to this Notice available to the public. This will include names, addresses, and any other personal information provided with the comments.

David F. Alexander, Forest Supervisor, Payette National Forest, McCall, Idaho, is the responsible official for this action. The DEIS is expected to be available for public review in May, 1997.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon,* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir, 1986),* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time

when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement or the merits of the alternatives formulated should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The FEIS is scheduled to be completed and available to the public by August, 1997. The responsible official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 215.

Dated: June 12, 1996.

Jerry D. Greer,

Planning Branch Chief, Payette National Forest.

[FR Doc. 96-15719 Filed 6-19-96; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; ISP International Spare Parts GmbH; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified ISP International Spare Parts GmbH (''ISP'') of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1996)) (the Act),[1] and the Export Administration Regulations (15 CFR Parts 768–799 (1995), as amended (61 FR 12714 (March 25, 1996)) (the Regulations),[2] based on allegations that:

1. Between January 1991 and December 1992, ISP conspired with a U.S. company to ship U.S.-origin fuel pumps to Libya, knowing that such shipments were prohibited by the Regulations, in violation of Section 787.3(b) of the Regulations; and

2. On three separate occasions, on or about January 31, 1991, April 3, 1991, and December 5, 1992, ISP caused, aided or abetted the reexport of U.S.-origin fuel pumps to Libya without the required reexport authorization, in violation of Section 787.2 of the Regulations;

BXA and ISP having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that a civil penalty of $40,000 is assessed against ISP, which shall be paid to BXA within 30 days of the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, for a period of ten years from the date of this Order, ISP may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[3] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that as authorized by § 766.18 of the Regulations, the ten-year denial period set forth in paragraph SECOND above shall be suspended for a period of three years beginning seven years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, ISP commits no violation of the Act or any regulation, order or license issued thereunder.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public. A copy of this Order shall be published in the Federal Register.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (50 FR 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1996)).

[2] The March 25, 1996 Federal Register publication redesignated the existing Regulations as 15 CFR Parts 768A–799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730–774, effective April 24, 1996.

[3] For purposes of this Order, ''license'' includes any general license established in 15 CFR Parts 768A–799A.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 11th day of June 1996.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 96–15743 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Wolfgang Nothacker; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Wolfgang Nothacker (''Nothacker') of its intention to initiate an administrative proceeding against him pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1996)) (the Act),[1] and the Export Administration Regulations (15 CFR parts 768–799 (1995), as amended (61 FR 12714 (March 25, 1996)) (the Regulations),[2] based on allegations that:

1. Between January 1991 and December 1992, Nothacker conspired with a U.S. company to ship U.S.-origin fuel pumps to Libya, knowing that such shipments were prohibited by the Regulations, in violation of section 787.3(b) of the Regulations; and

2. On three separate occasions, on or about January 31, 1991, April 3, 1991, and December 5, 1992, Nothacker caused, aided or abetted the reexport of U.S.-origin fuel pumps to Libya without the required reexport authorization, in violation of section 787.2 of the Regulations; and

BXA and Nothacker having entered into a Settlement Agreement pursuant to section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that, for a period of ten years from the date of this Order, Nothacker may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[3] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that have been or will be exported from the United States and that is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that as authorized by § 766.18 of the Regulations, the ten-year denial period set forth in paragraph SECOND above shall be suspended for a period of nine years beginning one year from the date of entry of this Order, and shall thereafter be waived, provided that: i) during the period of suspension, Nothacker commits no violation of the Act or any regulation, order or license issued thereunder; and ii) Nothacker cooperates with BXA in connection with its investigation into the transactions identified in the proposed Charging Letter, as agreed by BXA and Nothacker.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public. A copy of this Order shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 11th day of June 1996.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 96–15744 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp 1996)).

[2] The March 25, 1996 Federal Register publication redesignated the existing Regulations as 15 CFR Parts 768A–799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulation, designating them as an interim rule at 15 CFR Parts 730–774, effective April 24, 1996.

[3] For purposes of this Order, ''license'' includes any general license established in 15 CFR Parts 768A–799A.

International Trade Administration

A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Initiation of Antidumping Duty Administrative Reviews and Notice of Request for Revocation of an Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews and notice of request for revocation of an order.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. In accordance with our regulations, we are initiating those administrative reviews. The review period is May 1, 1995 through April 30, 1996. We have also received a request to revoke the antidumping order covering ball bearings and parts thereof from Thailand with respect to NMB Thai/Pelmec Thai Ltd. (NMB/Pelmec), the only known producer/exporter of this merchandise from Thailand.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a), for administrative reviews of the antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The orders cover three classes or kinds of merchandise: ball bearings (ball), cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical). Pursuant to 19 CFR 353.25, NMB/Pelmec has requested revocation of the antidumping order covering ball bearings and parts thereof from Thailand. NMB/Pelmec is the only known producer/exporter of this merchandise from Thailand. NMB/Pelmec based its request on its claim that there has been an absence of dumping on sales of the subject merchandise for a period of three consecutive years.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Initiation of Reviews

In accordance with 19 CFR 353.22(c), we are initiating administrative reviews of the following antidumping duty orders. Unless the time limit is extended in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, we intend to issue the preliminary results of these reviews no later than January 31, 1997, and the final results no later than 120 days after publication of the preliminary results.

Proceedings and firms	Class or kind
France A–427–801:	
SKF France (including all relevant affiliates)	Ball and Cylindrical.
SNFA	Ball and Cylindrical.
Societe Nouvelle de Roulements (SNR)	All.
Germany A–428–801:	
FAG Kugelfischer Georg Schaefer AG	All.
INA Walzlager Schaeffler KG	All.
NTN Kugellagerfabrik (Deutschland) GmbH	All.
SKF GmbH (including all relevant affiliates)	All.
Torrington Nadellager (Torrington/Kuensebeck)	Cylindrical.
Italy A–475–801:	
Meter, S.p.A.	Ball and Cylindrical.
FAG Italia S.p.A. (including all relevant affiliates)	Ball and Cylindrical.
SKF-Industrie S.p.A. (including all relevant affiliates)	Ball and Cylindrical.
Japan A–588–804:	
Asahi Seiko	Ball.
Izumoto Seiko Co., Ltd.	Ball.
Kohwa Technos Corp.	Ball.
Koyo Seiko Company, Ltd.	All.
Nachi-Fujikoshi Corp.	All.
Nippon Pillow Block Sales Company, Ltd.	All.
NSK Ltd. (formerly Nippon Seiko K.K.)	All.
NTN Corp.	All.
Sanwa Kizai Co., Ltd.	Ball.
Romania A–485–801:	
Tehnoimportexport, S.A.	Ball.
Singapore A–559–801:	
NMB Singapore/Pelmec Ind.	Ball.
Sweden A–401–801:	
SKF Sverige (including all relevant affiliates)	Ball.
Thailand A–549–801:	
NMB Thai/Pelmec Thai Ltd.	Ball.
United Kingdom A–412–801:	
Barden Corporation/FAG (U.K.) Ltd.	Ball and Cylindrical.

Proceedings and firms	Class or kind
NSK Bearings Europe, Ltd./RHP Bearings Ltd.	Ball and Cylindrical.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) of the Department's regulations. However, due to the large number of parties to these proceedings, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-served basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 353.25(c).

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–15682 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On October 21, 1994, in the case of *Zenith Electronics Corporation* v. *United States*, 865 F. Supp. 890 (*Zenith*), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) third results of redetermination on remand and prior remand determinations of the final results of the first administrative review of the antidumping duty order on color television receivers, except for video monitors (CTVs), from Taiwan, to the extent that they were not subsequently modified by the Court. The Court also vacated its July 29, 1991, order to the extent that the order held that ''no assessment rate cap may be applied in liquidating the subject entries unless the importer paid a cash duty for an estimated dumping duty.'' As a result, the Court ordered the Department to apply the assessment rate cap to all subject imports entered between the publication dates of the Department's preliminary affirmative determination of sales at less than fair value (LTFV) and the International Trade Commission's (ITC's) final affirmative injury determination.

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States*, 893 F.2d 337 (CAFC 1990) (*Timken*), on January 17, 1995, the Department published a notice in the Federal Register which suspended liquidation of the subject merchandise entered or withdrawn from warehouse for consumption until there was a ''final and conclusive'' decision in this case (60 FR 3391). On February 12, 1996, the CAFC upheld the Department's methodology for determining direct and indirect expenses for purposes of making a circumstance-of-sale (COS) adjustment in calculating AOC International, Inc.'s (AOC) final margin and remanded the case back to the Court for recalculation of dumping margins in a manner consistent with the CAFC's decision. Although the case is not yet ''final and conclusive'' for AOC, the other respondents in this proceeding are not affected by this outstanding issue. We have, therefore, prepared these amended final results for those respondents.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1986, the Department published in the Federal Register the final results of the first administrative review of the antidumping duty order on CTVs from Taiwan (51 FR 46895). In those results, the Department set forth its finding of weighted-average margins for nine companies, AOC, Capetronic (BSR) Ltd. (Capetronic), Fulet Electronic Industrial Co., Ltd. (Fulet), Nettek Corp., Ltd. (Nettek), RCA Taiwan (RCA), Shinlee Corp. (Shinlee), Shin-Shirasuna Electric Co. (Shin-Shirasuna), and Tatung Co. (Tatung), for the period of review (POR) October 19, 1983 through March 31, 1985, and Sampo Corp. (Sampo) for the POR April 1, 1984 through March 31, 1985, and announced its intent to instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Subsequent to the Department's final results, four of the reviewed companies and a domestic producer, Zenith, filed lawsuits with the Court challenging these results. Thereafter, on September 11, 1989, the Court issued an order and opinion remanding the Department's determination so that the Department could make reasonable allowances for ''bona fide differences in warranty expenses between the United States and the home market'', and to reconsider an adjustment for Sampo's bad debt losses based on its bad debt experience during the period or another appropriate period. *See AOC International, Inc. et. al.* v. *United States*, 721 F. Supp. 314 (CIT 1989). The Department requested a voluntary remand for the following reasons: to recalculate constructed value CV) for Tatung; to recalculate AOC's inland freight and explain the calculation methodology; to adjust Tatung's foreign market value (FMV) for discounts and rebates which Tatung paid to distributors for trade-ins of used CTVs by the dealers in the home market; to allocate advertising and sales promotion expenses on a product-line, rather than a model-specific basis; and to add to the U.S. price (USP) the amount of commodity taxes forgiven upon exportation of CTVs. On January 31, 1991, the Department filed its first remand results with the Court.

On July 29, 1991, the Court ordered a second remand for the Department to do the following: Determine the amount of commodity tax passed through to home market purchasers and add that amount to the U.S. price (USP); cease applying an assessment rate cap in liquidating entries of the subject merchandise unless the importer paid a cash deposit for an estimated antidumping duty; eliminate the use of sales adjustments in this case to the extent that they reduce CV general expenses to less than the statutory minimum amount; remove all home market export-related expenses from exporter's sale's price (ESP); request additional information from

AOC in order to remove from USP the import duties paid with respect to home market models, and instead add the import duties forgiven with respect to the exported models; investigate whether Shin-Shirasuna's sales to Canada were fictitious so as to manipulate the foreign market value for comparison with imports to the United States and thereby minimize the antidumping duty liability; recalculate Capetronic's dumping margins using production data related to a specific sale instead of using the weighted-average costs of production, remove from USP the value of certain proprietary selling expenses for Shirasuna; and correct certain programming errors. *See Zenith Electronics Corporation* v. *United States*, 770 F. Supp. 648 (CIT 1991). In addition, the Department requested a remand to explain the reasons underlying its *de minimis* determination. On January 31, 1992, the Department filed its second remand results with the Court.

On January 28, 1993, the Court ordered a third remand so that the Department could reconsider the tax pass-through in a manner consistent with the constant costs and imperfect competition characteristic of the Taiwanese color television market. In addition, the Court ordered the Department to ''cap'' the upward adjustment to USP for foreign tax at the amount of tax found to be passed through to home market purchasers, to make an adjustment for the difference in circumstances of sale included in the U.S. and home market taxable values, to insure that the general expenses component of CV was not reduced at any time to less than the statutory minimum amount by reason of adjustments for selling expenses associated with disregarded home market sales, and to correct two clerical errors. *See Zenith Electronic Corp.* v. *United States*, 812 F. Supp. 228 (CIT 1993). On May 5, 1993, the Department filed its third remand results with the Court.

On October 21, 1994, the Court, in *Zenith*, affirmed the Department's third remand results, and affirmed the prior remand determinations in this case to the extent that they were not subsequently modified by the Court. The Court also vacated its July 29, 1991 order to the extent that the order held that ''no assessment rate cap may be applied in liquidating the subject entries unless the importer paid a cash duty for an estimated dumping duty.'' As a result, the Court ordered the Department to apply the assessment rate cap to all subject imports entered between the publication dates of the Department's preliminary affirmative determination of sales at LTFV and the ITC's final affirmative injury determination, and it dismissed the case.

Because the Court's October 21, 1994 order affirmed the Department's recalculation of Capetronic's rate at 1.36 percent, the Department published amended final results of review for Capetronic in this administrative review. *See* 60 FR 11955 (March 3, 1995). As a result of this new rate, the Court issued an order in the third administrative review of CTVs from Taiwan to rescind its previous revocation of Capetronic from the antidumping duty order on CTVs from Taiwan because, as a result of the Department's redetermination of its rate in the first administrative review, Capetronic did not have three consecutive years of sales at not less than fair value. *See Tatung Company* v. *United States*, Court No. 90–12–00645 (March 8, 1995); *see also* 60 FR 29822 (June 6, 1995).

On January 17, 1995, the Department, consistent with the decision of the CAFC in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken), published a notice in the Federal Register stating that it would not order the liquidation of the subject merchandise entered or withdrawn from warehouse for consumption prior to a ''final and conclusive'' decision in this case. Although further action is required by the Court with regard to the Department's calculation of COS adjustments for AOC, this issue does not affect the other respondents in this review and, therefore, the Court's October 21, 1994 decision is ''final and conclusive'' for those respondents.

As a result of the Department's redeterminations on remand, we have determined the weighted-average dumping margins for CTVs from Taiwan for the following periods to be:

Manufacturer/ exporter	Time period	Margin percent
Fulet Elect. Industrial, Co	10/19/83–03/31/85	0.08
Sampo Corp	04/01/84–03/31/85	6.29
Tatung Co	10/19/83–03/31/85	2.56

The Department will determine, and the Customs Service will assess, antidumping duties on the appropriate entries for the above companies.

Once the Court remands *Zenith* back to the Department and the case is ''final and conclusive'' with respect to AOC, we will recalculate AOC's dumping margin in accordance with the Court's opinion, publish an amended Federal Register notice, and issue liquidation instructions for AOC for the first administrative review of CTVs from Taiwan.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: June 4, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–15683 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–810]

Stainless Steel Bar From India; Extension of Time Limit for Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the new shipper administrative review of the antidumping duty order on stainless steel bar from India, covering the period February 1, 1995, through July 31, 1995, because the Department has concluded that the case is extraordinarily complicated.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230; telephone : (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce received requests to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. On November 28, 1995, the Department of published in the Federal Register a notice of initiation of a new shipper review of Akai Asian and Viraj, two exporters of stainless steel bar to the United States (60 FR 58598). The review covers the period February 1, 1995, through July 31, 1995.

Because this review is extraordinarily complicated, we are unable to complete the review within the time limits mandated by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Tariff Act). See Memorandum dated June 4, 1996. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results to October 15, 1996.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34(b).

This extension is in accordance with section 751(a)(2)(B)(iv) of the Tariff Act (19 U.S.C. 1675(a)(2)(B)(iv)).

Dated: June 5, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–15684 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of new shipper antidumping duty administrative review.

SUMMARY: On January 22, 1996, the Department of Commerce (the Department) published a notice of initiation of a new shipper administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The Department is now terminating this review.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1996 (61 FR 1562), the Department published in the Federal Register notice of initiation of a new shipper administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India covering the exporter Rajinder Pipes, Ltd., and the period May 1, 1995 through October 31, 1995.

Based on Rajinder's questionnaire response, the Department determined that Rajinder made no sales to unaffiliated U.S. purchasers during the period of review or within a reasonable time after the period of review. Therefore, the Department is now terminating the review (see memorandum from Joseph A Spetrini to Paul L. Joffe, May 17, 1996).

This notice is published pursuant to 19 CFR 353.22(h).

Dated: May 30, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–15685 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DS–M

University of Albany, et al.; Notice of 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 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

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: 96–012. Applicant: University of Albany, Albany, NY 12222. Instrument: Mass Spectrometer, Model OPTIMA. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 11614, March 21, 1996. Reasons: The foreign instrument provides: (1) A high sensitivity ion source yielding low H_3^+ ion production during H/D analysis, (2) an acid-bath workstation to permit simultaneous C:N ratio analysis and (3) a universal triple collector assembly consisting of three Faraday collector buckets capable of N_2, O_2, CO_2 and SO_2 analysis. Advice received from: The National Institutes of Health, March 27, 1966.

Docket Number: 96–014. Applicant: Columbia University, Palisades, NY 10964. Instrument: Mass Spectrometer, Model OPTIMA. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 11614, March 21, 1996. Reasons: The foreign instrument provides: (1) A high sensitivity ion source yielding 1100 molecules CO_2 per mass 44 ion, (2) a universal triple collector assembly consisting of three Faraday collector buckets capable of N_2, O_2, CO_2 and SO_2 analysis and (3) a dual microinlet with automatic cold finger. Advice received from: The National Institutes of Health, March 28, 1996.

The National Institutes of Health advises in its memoranda 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. 96–15686 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members and guest speakers will discuss matters related to the functions of the panel, visions for the future of the Sea Grant Program, setting directions and strategic planning, procedures for allocating Sea Grant funds to the Sea Grant programs, status of authorization and

appropriation, procedures for evaluating the Sea Grant programs, and how to envision Sea Grant's role in the next Century.

DATES: The announced meeting is scheduled during two days: July 29 and 30, 1996.

ADDRESSES: National Oceanic and Atmospheric Administration, Silver Spring Metro Center Building III, 1315 East-West Highway, Room 4527, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, MD 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizen's groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Monday, July 29, 1996
- 8:30 a.m. Opening Formalities
- 9:00 a.m. Role and Operation of the Panel
- 10:30 a.m. Setting the Direction
- 12:00 p.m. Lunch
- 12:45 p.m. Setting the Direction (continued)
- 3:00 p.m. Meeting with Under Secretary Baker to Discuss His Vision on the Future Function of NOAA and the Role of Sea Grant
- 4:00 p.m. Consideration of Position Paper for Allocation of Sea Grant Funds
- Part One: Description
- 5:00 p.m. Adjourn

Tuesday, July 30
- 8:30 a.m. Review of Sea Grant Authorization/Appropriation Status
- 9:15 a.m. Consideration of Position Paper for Allocation of Sea Grant Funds
- Part Two: Discussion
- 10:30 a.m. Evaluation of Sea Grant Programs
- 12:00 p.m. Lunch
- 12:45 p.m. Consideration of Position Paper for Allocation of Sea Grant Funds
- Part Two: Discussion
- 1:45 p.m. Environmental Issues in the Next Century: How to Envision Sea Grant's Role?
- 2:15 p.m. Summarize Action Items
- 2:45 p.m. Set Meeting Schedule for SGRP and Its Committees
- 3:00 p.m. Adjourn

The meeting will be open to the public.

Dated: June 14, 1996.

Alan R. Thomas,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 96–15734 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–12–P

[I.D. 061296B]

Endangered Species; Permits

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

ACTION: Receipt of an application for an incidental take permit (P510C).

SUMMARY: Notice is hereby given that the Shoshone-Bannock Tribes at Fort Hall, ID (SBT) have applied in due form for a permit that would authorize an incidental take of a threatened species.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 22, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: SBT requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

SBT (P510C) requests a 5-year permit for an annual incidental take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to determine the distribution and abundance of bull trout (*Salvelinus confluentus*) in the Herd Creek watershed of the East Fork Salmon River and Burnt Creek of the Pahsimeroi River. SBT propose to electrofish at a total of about 25 reaches in both creeks to obtain depletion estimates of the number of fish. The work in Herd Creek would provide information to the Herd Creek Watershed Analysis, an interagency effort lead by the U.S. Bureau of Land Management and the U.S. Forest Service, to establish a scientifically-based understanding of the natural ecology of the watershed and to provide management recommendations. The work in Burnt Creek would provide information on the cumulative effects of fencing off the riparian zones on fish habitat, a response to the heavy impact of cattle grazing in the area. The Burnt Creek study would also allow a comparison between heavily-grazed and natural riparian conditions as related to bull trout abundance and distribution. The Burnt Creek study has the potential to provide information that can be used to design habitat improvements for resident fish species subjected to anthropogenic impacts.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 14, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–15673 Filed 6–19–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are Human Resource initiatives in the area of performance management and action items related to the Defense Partnership Council Plan of Action.

DATES: The meeting is to be held Wednesday, July 17, 1996, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by July 12, 1996, in order to be considered at the July 17 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations.

Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: June 14, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 96–15675 Filed 6–19–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS)

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS) will meet in closed session on July 18, 1996 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop an independent assessment of the analytic tools and models employed in the DoD internal DAWMS effort. Specifically, the Task Force will (1) assess the analysis developed in part one of the study, (2) evaluate the soundness of the analytic approach proposed for part two, and (3) review of alternatives—developed in part two to ensure that they are balanced and representative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: June 14, 1996.

L. M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–15676 Filed 6–19–96; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on July 2, 1996; July 9, 1996; July 16, 1996; July 23, 1996; and July 30, 1996, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: June 14, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–15674 Filed 6–19–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on July 15 through 19, and July 22 through 26, 1996. The meeting will be held at the Naval Command, Control and Ocean Surveillance Center, Research, Development, Test and Evaluation Division, San Diego, California. The session on July 15 will commence at 8:30 a.m. and terminate at 5:00 p.m.; the sessions on July 16 through 19, and July 22 through 25, 1996, will commence at 8:00 a.m. and terminate at 5:00 p.m.; and the session on July 26, 1996 will commence at 8:30 a.m. and terminate at 11:30 a.m. All sessions of these meetings will be closed to the public.

The purpose of these meetings is to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to Department of the Navy information warfare protection and attack detection processes, and shipboard damage control and maintenance. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Mason-Muir, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-6769.

Dated: June 11, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–15697 Filed 6–19–96; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 26, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:00 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will include an update on proposed

revisions to the Commission's Water Code and Water Quality Regulations concerning toxic pollutants, and status reports on the Commission's new computer program, Water Quality Zone 2 wasteload allocations and Special Protection Waters' watershed prioritization.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *New York State Department of Environmental Conservation D–77–20 CP (REVISION NO. 2).* A request to extend the experimental release program Docket No. D–77–20 CP (REVISION NO. 2), ''Modification To The Schedule Of Released Rates From Pepacton and Neversink Reservoirs,'' for up to one year.

2. *Zee Orchards, Inc. D–80–33 RENEWAL 3.* An application for the renewal of a ground water withdrawal project to supply up to 26.5 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Well No. 1. Commission approval on March 27, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 26.5 mg/30 days. The project is located in Harrison Township, Gloucester County, New Jersey.

3. *Philadelphia Park Race Track D–85–72 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 10.6 mg/30 days of water to the applicant's irrigation system from Well Nos. 1, 2, 3 and 4. Commission approval on March 27, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 10.6 mg/30 days. The project is located in Bensalem Township, Bucks County, Pennsylvania.

4. *Borough of Bellmawr D–90–82 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 60 mg/30 days of water to the applicant's distribution system from Well Nos. 3, 4, 5 and 6. Commission approval on March 27, 1991 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 60 mg/30 days. The project is located in Bellmawr Borough, Camden County, New Jersey.

5. *UNISYS Corporation D–92–82 (D).* A proposed ground water remediation project consisting of the treatment of up to 367,000 gallons per day (gpd) of ground water withdrawn at the applicant's computer manufacturing plant site situated in both East Whiteland and Tredyffrin Townships, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area. Withdrawal will be accomplished by Well Nos. MW–6D (7,200 gpd), MW–11D (72,000 gpd) and MW–21 (288,000 gpd) previously approved via Docket No. D–92–82 (G). The treatment facilities will consist of a chromium removal system with micro-filtration as well as a pre-filtration, and a carbon adsorption system for removal of volatile organic compounds. Treated effluent will be discharged to Little Valley Creek, in Tredyffrin Township.

6. *Pennsylvania American Water Company D–95–53 CP.* A project to increase the applicant's surface water withdrawal from 2.0 million gallons per day (mgd) to 6.0 mgd via new intake facilities (to replace its existing intake) on the Delaware River, located just south of Yardley Borough in Lower Makefield Township, Bucks County, Pennsylvania. The applicant's distribution system will continue to serve Yardley Borough and portions of Lower Makefield and Falls Townships. The Mill Road Filtration Plant will be expanded to treat the raw water.

7. *Honesdale Consolidated Water Company D–95–57 CP.* An application for approval of a ground water withdrawal project to supply up to 54.22 mg/30 days of water to the applicant's distribution system from existing Well Nos. 1 and 2, and new Well Nos. 3 through 6, and to limit the withdrawal from all wells to 54.22 mg/30 days. The project is located in Honesdale Borough and Texas Township, Wayne County, Pennsylvania.

8. *Township of Moorestown D–95–59 CP.* An application for approval of a ground water withdrawal project to supply up to 64.8 mg/30 days of water to the applicant's distribution system from existing Well No. 7, and to increase the existing withdrawal of 110 mg/30 days from all wells to 150 mg/30 days. The project is located in Moorestown Township, Burlington County, New Jersey.

9. *Borough of Quakertown D–96–1 CP.* A revised application to replace Well Nos. 13 and 14 in the applicant's water supply system that have become unreliable sources of supply with two new wells, Nos. 13A and 14A. The withdrawal from all wells will remain limited to 51.1 mg/30 days. The project is located in the Borough of Quakertown, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

10. *Jim Thorpe Municipal Authority D–96–19 CP.* A project to expand the rated capacity of the applicant's sewage treatment plant (STP) from 0.65 mgd to 0.92 mgd. The STP will serve existing and new development in the Borough of Jim Thorpe, Carbon County, Pennsylvania.

The STP, located on the east side of the Lehigh River near the southern boundary of the Borough, will continue to discharge to the Lehigh River after providing secondary biological treatment utilizing the activated sludge process and chlorine disinfection.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: June 11, 1996.

Anne M. Zamonski,

Acting Secretary.

[FR Doc. 96–15698 Filed 6–19–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Amendment to Notice of an Open Meeting

SUMMARY: This amends the notice of an open meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans published on June 10, 1996 in Vol. 61, No. 112 page 29362. The start time of the meeting scheduled to take place on June 20, 1996 has changed from 1:30 p.m. (est) to 8:00 a.m. (est). The meeting dates and agenda are unchanged.

Dated: June 17, 1996.

Henry Smith,

Senior Director.

[FR Doc. 96–15811 Filed 6–18–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF95–328–001]

EcoElectrica, L.P.; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 14, 1996.

On May 28, 1996, as supplemented on June 13, 1996, EcoElectrica, L.P. (Applicant) of Plaza Scotiabank, Suite 902, Avenida Ponce de Leon 273, Hato Rey, Puerto Rico 00917, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the topping-cycle cogeneration facility will be located at Punta Guayanilla, in the Municipality of Penuelas, Commonwealth of Puerto Rico, and will consist of two combustion turbine generators, two heat recovery boilers, an extraction/condensing steam turbine generator and two miles of 230 kV transmission line. Steam recovered from the facility will be used by the Applicant for the production of distilled water. The distilled water will be sold to Puerto Rico Aqueduct and Sewer Authority, an unaffiliated entity, for distribution and sale to residential, commercial and industrial customers. The maximum net electric power production capacity of the facility will be approximately 525 MW. The primary energy source will be natural gas.

Construction of the facility is expected to commence in the third quarter of 1996. The electric utility which will purchase the electric output of the facility is Puerto Rico Electric Power Authority.

Any person who wishes to be heard or to object to granting qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion of protest must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. A person who wishes to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15690 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10805–002 Wisconsin]

Midwest Hydraulic Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register or Historic Places

June 14, 1996.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the State Historical Society of Wisconsin (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. Section 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 10805–002.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through one programmatic agreement for comments under Section 106. The executed programmatic agreement would be incorporated into any order issuing license.

Midwest Hydraulic Company, as prospective licensee for Project No. 10805–002, is invited to participate in consultation to develop the programmatic agreement and to sign as a concurring party to the programmatic agreement.

Project No. 10805–002

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for Project No. 10805–002 as follows:

Mr. Richard Dexter, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706–1488

Dr. Robert D. Bush, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 809, 1100 Pennsylvania Ave., NW., Washington, D.C. 20004

Mr. Andy Blystra, Midwest Hydraulic Company, 680 Washington Ave., Holland, MI 49423

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, D.C., 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15793 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR Section 385.2010.

[Docket Nos. CP96–152–000, RP95–212, et al. PR94–3–000]

Riverside Pipeline Company, KansOk Partnership, et al., KansOk Partnership; Notice of Public Conference

June 14, 1996.

Take notice that on June 25, 1996, at 10:00 am, the Commission Staff will convene a public conference in the above captioned dockets for the parties to discuss the resolution of the issues arising from Riverside's certificate application in Docket No. CP96–152–000, as well as all other issues in the referenced dockets.

The conference will be held at the office of the Federal Energy Regulatory Commission, 888 1st Street NE, Washington, D.C., 20426, in Room 3M–2B. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

For further information, contact George Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 81–31.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15694 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1724–000]

SDS Petroleum Products, Incorporated; Notice of Issuance of Order

June 13, 1996.

SDS petroleum Products, Incorporated (SDS) submitted for filing a rate schedule under which SDS will engage in wholesale electric power and energy transactions as a marketer. SDS also requested waiver of various Commission regulations. In particular, SDS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SDS.

On June 6, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SDS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SDS is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SDS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 8, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–15652 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–73–003]

Tennessee Gas Pipeline Company; Notice of Refund Report

June 14, 1996.

Take notice that on June 12, 1996, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Transportation Cost Rate Adjustment (TCRA) refund report related to the September 1, 1993 through December 31, 1994 period.

Tennessee states that it dispersed refunds, with interest, to its customers pursuant to Tennessee's January 30, 1996 compliance filing in the above referenced proceedings.

Tennessee states that copies of the comprehensive refund report has been mailed to all affected state regulatory commissions and customers were served, along with their refunds, with detailed calculations supporting their refunded amount.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 21, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15695 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–275–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 14, 1996.

Take notice that on June 12, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective on August 1, 1996.

Second Revised Sheet No. 95
Second Revised Sheet No. 156
First Revised Sheet No. 165A
Second Revised Sheet No. 171
First Revised Sheet No. 402
First Revised Sheet No. 405
Original Sheet No. 405A
Original Sheet No. 405B
Original Sheet No. 405C

Tennessee states that it is filing the proposed tariff changes in order to implement a net present value criteria for evaluating requests for available capacity on its system, and to eliminate the provisions in its tariff that prevent requests for service from being submitted more than 90 days in advance of the date that the requested service is to commence.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15696 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1447–000, et al.]

Mid-Continent Area Power Pool, et al.; Electric Rate and Corporate Regulation Filings

June 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Mid-Continent Area Power Pool

[Docket No. ER96–1447–000]

Take notice that on June 10, 1996, Mid-Continent Area Power Pool tendered for filing an amendment in the above-referenced docket.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company South Beloit Water, Gas & Electric Company, Heartland Energy Services and Industrial Energy Applications, Inc.

[Docket No. EC96–13–000]

Take notice that on June 5, 1996, IES Utilities Inc. (IES), Interstate Power Company, (IPC) Wisconsin Power & Light Company (WPL), South Beloit Water, Gas & Electric Company (South Beloit), Heartland Energy Services (HES) and Industrial Energy Applications, Inc. (IEA) (collectively, the applicants) submitted for filing pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, their Supplemental Joint Application for Authorization and Approval of Merger and Disclosure Schedules for IES Industries, Inc., IPC and WPL Holdings, Inc.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company and UtiliCorp United Inc.

[Docket No. EC96–17–000]

Take notice that on June 10, 1996, Kansas City Power & Light Company and UtiliCorp United Inc. tendered for filing supplemental information to the March 29, 1996, filing submitted in the above-referenced docket.

Comment date: July 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Appalachian Power Company

[Docket No. ER96–1607–000]

Take notice that on June 10, 1996, Appalachian Power Company tendered for filing a supplement to its April 22, 1996, filing in the above-referenced docket.

Comment date: June 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER96–1702–000]

Take notice that on June 7, 1996, Wisconsin Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Power and Light Company

[Docket No. ER96–1704–000]

Take notice that on June 7, 1996, Black Hills Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. ICC Energy Corporation

[Docket No. ER96–1819–000]

Take notice that on May 28, 1996, ICC Energy Corporation filed an amendment to their filing in Docket No. ER96–1819–000.

Comment date: June 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER96–1820–000]

Take notice that on May 31, 1996, New England Power Company tendered for filing an amendment to its supplemental Service Agreement between New England Power Company and the Templeton Municipal Light Plant for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: June 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Ensource

[Docket No. ER96–1919–000]

Take notice that on May 24, 1996, Ensource (Ensource), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. In addition, on June 5, 1996, Ensource tendered for filing supplemental information to its May 24, 1996, filing in the above-referenced docket.

Comment date: June 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER96–1969–000]

Take notice that on June 7, 1996, Southwestern Public Service Company (SPS) tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a Supplement to the Interconnection Agreement between the West Texas Municipal Power Agency (WTMPA) and SPS entered into on June 1, 1996. The Supplemental Agreement allows for the resale to Lubbock Power & Light (Lubbock) for the period of June 1, 1996 to December 31, 1996. SPS requests waiver of the Commission's 60 day prior notice and filing requirements to allow Supplemental Agreement to become effective June 1, 1996. SPS states that a copy of this filing has been served on the customer, Lubbock Power & Light, and the Texas, New Mexico, Oklahoma and Kansas State Commissions.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Colorado

[Docket No. ER96–2010–000]

Take notice that on June 3, 1996, Public Service Company of Colorado (Public Service), tendered for filing a Letter Agreement to its Power Purchase Agreement (PPA) with the City of Burlington (City) designated as Public Service Rate Schedule FERC No. 44 and a Letter Agreement to its Power Purchase Agreement (PPA) with the Town of Julesburg (Town) designated as Public Service Rate Schedule FERC No. 46. The Letter Agreements will revise Exhibit A of each PPA to allow the City and the Town to purchase additional Monthly Energy for a two-month period, June 1, 1996 through July 31, 1996 from Western Area Power Administration (Western). Public Service requests an effective date of June 1, 1996.

Copies of the filing were served upon the City of Burlington, the Town of Julesburg, the Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER96–2011–000]

Take notice that on June 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Louisville Gas and Electric Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Louisville Gas and Electric Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Louisville Gas and Electric Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER96–2012–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated May 1, 1996, with TransCanada Power Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds TransCanada Power Corporation as a customer under the Tariff. DLC requests an effective date of May 1, 1996, for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER96–2013–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated April 18, 1996 with Sonat Power Marketing, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Sonat Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 18, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER96–2014–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated February 21, 1996 with CNG Power Services Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds CNG Power Services Corporation as a customer under the Tariff. DLC requests an effective date of February 21, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER96–2015–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated January 29, 1996 with MidCon Power Services Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds MidCon Power Services Corporation as a customer under the Tariff. DLC requests an effective date of May 30, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER96–2016–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated March 31, 1996 with Eastex Power Marketing, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Eastex Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of March 31, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Duquesne Light Company

[Docket No. ER96–2017–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated May 20, 1996 with Western Power Services, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Western Power Services, Inc. as a customer under the Tariff. DLC requests an effective date of May 20, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Duquesne Light Company

[Docket No. ER96–2018–000]

Take notice that on June 3, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated February 23, 1996 with Valero Power Services Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Valero Power Services Company as a customer under the Tariff. DLC requests an effective date of February 23, 1996 for the Service Agreement.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Power Company

[Docket No. ER96–2019–000]

Take notice that on June 3, 1996, Duke Power Company (Duke), tendered for filing Transmission Service Agreements (TSAs) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Enron Power Marketing, Inc. (EPM). Duke states that the TSAs set out the transmission arrangements under which Duke will provide EPM firm transmission service and non-firm transmission service under its Transmission Service Tariff.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power Company

[Docket No. ER96–2020–000]

Take notice that on June 3, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Jacksonville Electric Authority (JEA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide JEA non-firm transmission service under its Transmission Service Tariff.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Power Company

[Docket No. ER96–2021–000]

Take notice that on June 3, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and CNG Power Services Corp. (CNG). Duke states that the TSA sets out the transmission arrangements under which Duke will provide CNG non-firm transmission service under its Transmission Service Tariff.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Southwestern Public Service Company

[Docket No. ER96–2022–000]

Take notice that on June 3, 1996, Southwestern Public Service Company (SPS), submitted two executed service agreements under its point-to-point transmission tariff with Western Power Services, Inc. (WPS). The first service agreement is for umbrella non-firm transmission service. The second is for umbrella firm transmission service. WPS was provided a copy of the filing. SPS's point-to-point transmission service tariff is currently in effect subject to refund in Docket No. ER95–1138–000.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. San Diego Gas & Electric Company

[Docket No. ER96–2023–000]

Take notice that on June 3, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Global Petroleum Corporation (Global).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of August 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Global.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. San Diego Gas & Electric Company

[Docket No. ER96–2024–000]

Take notice that on June 3, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Western Power Services, Inc. (Western).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of August 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Western.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ES96–29–000]

Take notice that on June 11, 1996, Consolidated Edison Company of New York, Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of not more than $300 million outstanding at any one time, during the period July 1, 1996 through June 30, 1998, with a final maturity date no later than nine months after date of issuance.

Comment date: June 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Jean Giles Wittner

[Docket No. ID–2968–000]

Take notice that on June 6, 1996, Jean Giles Wittner (Applicant) tendered for filing an application under Section 305(b) to hold the following positions:

Director, Florida Power Corporation
Director, Raymond James Bank

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, 888 First 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15689 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER96–2026–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

June 14, 1996.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER96–2026–000]

Take notice that on June 3, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 17, 1996 with Rainbow Energy Marketing Corporation (Rainbow) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Rainbow as a customer under the Tariff.

PECO requests an effective date of May 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Rainbow and to the Pennsylvania Public Utility Commission.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Midwest Energy, Inc.

[Docket No. ER96–2027–000]

Take notice that on June 4, 1996, Midwest Energy, Inc., submitted for filing an application for authorization to engage in wholesale sales of electric power at rates to be negotiated with the purchaser.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER96–2028–000]

Take notice that on June 4, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Virginia Power (VP). This Service Agreement specifies that VP has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and VP to enter into separately scheduled transactions under which NMPC will sell to VP capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of May 1, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and VP.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER96–2029–000]

Take notice that on June 4, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with MidCon Power Services, Inc. for transmission service under FPL's Transmission Tariff No. 2.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1996, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2030–000]

Take notice that on June 4, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Vitol Gas & Electric, L.L.C. under Rate GSS.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

Docket No. ER96–2031–000

Take notice that on June 4, 1996, Florida Power Corporation, tendered for filing a service agreement providing for service to Georgia Power Company, pursuant to Florida Power's power sales tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on June 4, 1996.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER96–2032–000]

Take notice that on June 4, 1996, Southwestern Public Service Company (Southwestern), tendered for filing rate schedules to be included in its wholesale electric rate tariff. The rate schedules are a contribution in aid of construction agreement and a related joint use agreement between Southwestern and Lea County Electric Cooperative, Inc. (Lea County). The agreements provide for Lea County to pay Southwestern $973.00 for the installation of a structure necessary to allow Lea County's lines to cross existing lines of Southwestern and for continued use of the structure by Lea County.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

Docket No. ER96–2033–000

Take notice that on June 4, 1996, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Oglethorpe Power Corporation.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in Section 35.11 of the Commission's Regulations.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Massachusetts Electric Company

[Docket No. ER96–2034–000]

Take notice that on June 4, 1996, Massachusetts Electric Company (MECo), filed two service agreements between MECo and the Massachusetts Bay Transportation Authority (MBTA). Under the agreements MECo agrees to provide service to MBTA's Revere Beach and Beachmont stations.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER96–2035–000]

Take notice that on June 4, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 28, 1996 by KCPL. KCPL proposes an effective date of June 1, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER96–1045–000.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Co.

[Docket No. ER96–2036–000]

Take notice that on June 4, 1996, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement (the Agreement) between PP&L and Delhi Energy Services, Inc., dated May 30, 1996.

The Agreement supplements a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of June 4, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customer involved and to the Pennsylvania Public Utility Commission.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER96–2039–000]

Take notice that on June 3, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Southern Energy Marketing, Inc. (Southern), pursuant to PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of July 1, 1996.

Copies of the filing have been served upon Southern and the New Jersey Board of Public Utilities.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER96–2040–000]

Take notice that on June 4, 1996, New England Power Company tendered for filing two letter agreements providing for improvements to its G33 line, as requested by Central Vermont Public Service Corporation and Green Mountain Power Corporation.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER96–2042–000]

Take notice that on June 4, 1996, Entergy Services, Inc. (Entergy Services), acting as agent for Entergy Arkansas, Inc. (formerly Arkansas Power & Light Company), submitted for filing a Second Amendment (Amendment) to the Power Coordination, Interchange and Transmission Agreement between the City of Thayer (City) and Entergy Arkansas, Inc. Entergy Services requests waiver of the Commission's filing requirements to permit the Second Amendment to become effective May 1, 1996.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER96–2043–000]

Take notice that on June 4, 1996, Kentucky Utilities Company (KU), tendered for filing an amendment to its Market-Based Power Sales Tariff to eliminate language restricting sales to power from KU-owned generating resources.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER96–2044–000]

Take notice that on June 4, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 3, 1996, with South Carolina Electric & Gas Company (SCE&G) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds SCE&G as a customer under the Tariff.

PECO requests an effective date of May 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCE&G and to the Pennsylvania Public Utility Commission.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER96–2045–000]

Take notice that on June 4, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 5, 1996 with South Carolina Electric & Gas Company (SCE&G) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SCE&G as a customer under the Tariff.

PECO requests an effective date of May 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCE&G and to the Pennsylvania Public Utility Commission.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER96–2046–000]

Take notice that on June 5, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Firm Transmission Service Agreement with Citizens Lehman Power Sales (Citizens Lehman) dated May 31, 1996, and Non-Firm Transmission Service Agreement with Citizens Lehman dated May 31, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service

Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of May 31, 1996, for the Agreements with Citizens Lehman, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Citizens Lehman, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER96–2047–000]

Take notice that on June 5, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Federal Energy Sales, Inc.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Power Company

[Docket No. ER96–2048–000]

Take notice that on June 5, 1996, Duke Power Company (Duke), tendered for filing the following: (1) Service Agreement for Market Rate (Schedule MR) Sales between Duke and Virginia Electric and Power Company; (2) Service Agreement for Market Rate (Schedule MR) Sales between Duke and Tennessee Valley Authority; (3) Service Agreement for Market Rate (Schedule MR) Sales between Duke and City of Tallahassee, Florida; (4) Service Agreement for Market Rate (Schedule MR) Sales between Duke and South Carolina Public Service Authority; and (5) Service Agreement for Market Rate (Schedule MR) Sales between Duke and Jacksonville Electric Authority.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power Company

[Docket No. ER96–2049–000]

Take notice that on June 5, 1996, Duke Power Company (Duke), tendered for filing Schedule MR Transaction Sheets supplementing the Service Agreement for Market Rate (Schedule MR) Sales between Duke and Eastex Power Marketing, Inc. and Schedule MR Transaction Sheet thereunder.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Power Company

[Docket No. ER96–2050–000]

Take notice that on June 5, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Monongahela Power Company, Potomac Edison Company, and West Penn Power Company (collectively, Allegheny Power) and Schedule MR Transaction Sheet thereunder.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER96–2052–000]

Take notice that on June 6, 1996, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers:

Federal Energy Sales Inc.
Heartland Energy Services

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER96–2053–000]

Take notice that on June 6, 1996, New England Power Company, tendered for filing a supplemental Service Agreement between New England Power Company and Montaup Electric Company for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER96–2054–000]

Take notice that on June 6, 1996, New England Power Company (NEP), filed a Service Agreement with Global Petroleum Corp. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Company

[Docket No. ER96–2055–000]

Take notice that on June 6, 1996, New England Power Company (NEP), filed a Service Agreement with Unitil Resources, Inc. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Pool

[Docket No. ER96–2056–000]

Take notice that on June 6, 1996, the New England Power Pool Executive Committee, filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by TransCanada Power Corp. (TransCanada). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit TransCanada to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TransCanada a Participant in the Pool. NEPOOL requests an effective date of August 1, 1996 for commencement of participation in the Pool by TransCanada.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. The Cleveland Electric Illuminating Company

[Docket No. ER96–2057–000]

Take notice that on June 6, 1996, The Cleveland Electric Illuminating Company (CEI) filed pursuant to 205 of the Federal Power Act and Part 35 of the Commission Regulations thereunder electric power service agreements between CEI and AIG Trading Corporation and Northern Indiana Public Service Company.

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Portland General Electric Company

[Docket No. ES96–30–000]

Take notice that on June 12, 1996, Portland General Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of not more than $250 million outstanding at any one time, during the period August 1, 1996 through July 31, 1998, with a final maturity date no later than July 31, 1999.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15761 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Project No. 7481–068]

New York State Dam Limited Partnership; Notice of Availability of Draft Environmental Assessment

June 14, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for New York State Dam Limited Partnership (licensee) to provide passage for adult blueback herring at the New York State Dam Hydroelectric Project. In a letter dated April 9, 1993, the U.S. Fish and Wildlife Service (FWS) recommended that the licensee operate its existing fish bypass to provide downstream fish passage for migrating adult blueback herring in the Mohawk River.

Article 15 of the project license requires the licensee, for the conservation and development of fish resources, operate project facilities as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of Interior, after notice and opportunity for hearing.

In summary, the DEA examines the environmental impacts of four alternatives for providing downstream fish passage for adult blueback herring at the project: (1) continuous flow; (2) summer operation; (3) spill; and (4) no-action. These alternatives are described in detail on pages five and six of the DEA.

The DEA recommends that the licensee operate its fish bypass in accordance with the summer operation alternative. The DEA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of FWS's recommendation for downstream passage of adult blueback herring. No final conclusions have been made by the Commission regarding this matter. Any action, pursuant to article 15, will be initiated by the Commission only after notice and opportunity for hearing.

Should you wish to provide comments on the DEA, they should be filed within 60 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project number (7481–068) on any comments filed.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15691 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Intent to Prepare an Environmental Assessment

June 14, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Proposed Measures and Schedule for Improving the Seismic Stability of Butt Valley and Canyon Dams.

b. Project No: 2105–037.

c. Date Filed: June 13, 1996.

d. Licensee: Pacific Gas and Electric Company.

e. Name of Project: Upper North Fork Feather River Project.

f. Location: Butt Creek, Lake Alamanor, and Butt Valley Reservoir, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. License Contact: Mr. Jeffrey D. Butler, Manager—Hydro Generation, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code N11C, San Francisco, CA 94177, (415) 973–4603.

i. FERC Contact: Dr. John M. Mudre, (202) 219–1208.

j. Comment Date: July 5, 1996.

k. Project Description: Pacific Gas and Electric Company, licensee for the Upper North Fork Feather River Project (FERC No. 2105), has filed plans for remedial work to be conducted to improve the seismic stability of the project's Canyon and Butt Valley Dams. The filing includes a description of, and proposed measures to mitigate, the environmental impacts of the proposed work. These impacts may result from the temporary drawdown of Butt Valley Reservoir, temporary restrictions on public access to the area, and construction activities. Staff intends to prepare an environmental assessment (EA) on the licensee's plans for remedial work and environmental mitigation. Comments are invited on the licensee's plans and the appropriate scope of the EA.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15692 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM96–5–001]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act; Order Dismissing Requests for Rehearing

Issued: June 14, 1996.

On February 28, 1996, the Commission issued a Statement of Policy (policy statement) in this proceeding which reviewed issues concerning the status, scope and effect of its regulation of gathering and transportation on the Outer Continental Shelf (OCS).[1] The policy statement articulated, clarified and, to some extent, modified the criteria the Commission will use to determine whether pipeline facilities located on the OCS have a primary function of gathering or transmission. Specifically, the Commission added a new factor to its existing primary function test for facilities located in water depths of 200 meters or more. The Commission stated that such facilities would be presumed to have a primary purpose of gathering up to the point or points of potential connection with the interstate pipeline grid. From that point on, the Commission would continue to apply the existing primary function test.

Four parties filed requests for rehearing and/or clarification or reconsideration.[2] As discussed below, the Commission will dismiss the requests for rehearing, reconsideration or clarification.

Summary of the Requests

The following issues were raised by one or more of the parties in their requests for rehearing, reconsideration and/or clarification. The parties seek assurance that the Commission in the policy statement did not intend to create a presumption that all facilities located in water depths of less than 200 meters are transmission. They contend that the ''bright line'' test or new factor added to the primary function test for deep water facilities is inconsistent with Commission policy as articulated in *Amerada Hess Corporation (Amerada Hess).*[3] Additionally, some parties argue that any presumption or bright line test is inconsistent with *EP Operating Co.* v. *FERC,*[4] which mandates a case-by-case application of the physical factors of the primary function test. Some parties note that many certificated offshore facilities are not necessarily transmission facilities and that the Commission did not scrutinize the function of such facilities when certificating them. Thus, these parties argue that the Commission has no rational basis for determining that pipelines are transmission facilities because of their proximity to certificated interstate pipelines when the ''in-proximity'' facilities may be misfunctionalized.

The parties also contend that the distinction between deep and shallow-water facilities articulated in the policy statement results in determinations of primary function based on a pipeline's vintage (older offshore pipelines tend to be in shallower waters and were certificated) or geographical location, rather than on the physical factors applied in the traditional primary function test. Other parties express concern that the new approach outlined in the policy statement will result in the Commission's giving undue weight to certain factors of the primary function test, such as size, operating pressure and central point in the field, when attempting to determine the function of facilities located in shallower water. They posit that this occurred in *Shell Gas Pipeline Company,*[5] where the Commission applied the approach outlined in the policy statement for the first time. Overemphasizing these factors for offshore facilities, they argue, is inconsistent with *Amerada Hess* and subsequent cases where the sliding scale approach was used. Additionally, they argue that the new approach can result in a single line being considered both gathering and transmission, which would be arbitrary and capricious.

Some parties are primarily concerned that the policy statement did not resolve issues related to whether there is a level playing field for regulated and unregulated offshore pipelines. Columbia argues that the Commission erred by not deciding to regulate all offshore pipelines under the Outer Continental Shelf Lands Act and by leaving a dual regulatory scheme in place. Further, Columbia asserts that the Commission erred by not initiating a generic production area rate design proceeding to address the issues raised by the commenters in this proceeding. INGAA maintains that the ability of interstate pipelines to utilize alternative ratemaking approaches does not solve the problems of the dual regulatory scheme, and that the Commission erred in the policy statement by so suggesting.

Finally, clarification is sought that the policy statement was intended to provide guidance and not intended to have the force and effect of a rule.

Discussion

The purpose of the policy statement in this proceeding was to provide the natural gas industry with guidance by stating the criteria the Commission will use to determine the function of offshore pipelines, especially new facilities constructed in deep water producing areas. A policy statement is not a rule, and generally objections to such a statement are not directly reviewable.[6] Rather, such review must await implementation of the policy in a specific case.[7] Therefore, the Commission declines to consider at this time the issues raised in the requests for rehearing, reconsideration or clarification, but will consider such issues and arguments in the specific

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[1] 74 FERC ¶ 61,076 (1996), 61 FR 8611 (March 5, 1996).

[2] They are: BP Exploration & Oil, Inc. (BP), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) (filing jointly), the Interstate Natural Gas Association of America (INGAA), and Williams Field Services Group, Inc. and Transcontinental Gas Pipe Line Corporation (Williams) (filing jointly).

[3] 52 FERC ¶ 61,268 (1990). In *Amerada Hess,* the Commission stated it would consider the changing technical and geographic nature of exploration and production offshore when applying the primary function test to offshore facilities. *Amerada Hess* provided for a ''sliding scale'' approach where facilities with increasing length and diameters could still be classified as gathering where these physical factors are a function of the distance from shore and of the water depth of production areas.

[4] 876 F. 2d 46 (5th Cir. 1989).

[5] 74 FERC ¶ 61,219 (1996).

[6] *See, eg.,* Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 75 FERC ¶ 61,024 (1996).

[7] *See* American Gas Association v. FERC, 888 F. 2d 136 (D.C. Cir. 1989).

cases where the policy is applied. In this regard, we note that many of the issues raised in the requests for rehearing in this proceeding are raised in the rehearing requests filed in *Shell Gas Pipeline Company.*[8] Therefore, we are dismissing the requests for rehearing, reconsideration or clarification filed in this proceeding.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15688 Filed 6–19–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00434; FRL–5367–7]

Proposed Testing Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS), and is announcing the availability of proposed testing guidelines for Series 870–Health Effects Test Guidelines. These test guidelines have been updated and harmonized, to the extent possible, with the Organization for Economic Cooperation and Development (OECD) guidelines for testing of chemicals, and other relevant international standards. A FIFRA Scientific Advisory Panel (SAP) meeting to review the Series 870 test guidelines will be scheduled for this summer. Complete details of this meeting will be announced in a Federal Register notice.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Interested persons are invited to submit written comments in triplicate to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Bring comments to: Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: guidelines@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00434'' (FRL–5367–7). No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION.''

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Keifer, Office of Pollution Prevention and Toxics (7403), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260–1548; e-mail: keifer.leonard@epamail.epa.gov.

By mail: William Sette, Office of Pesticide Programs (7509C), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (703) 305–6375; e-mail: sette.william@epamail.epa.gov.

Copies of documents 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. In person or for courier pick-up: Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805. By internet: e-mail requests to: guidelines@epamail.epa.gov or via the EPA Public Access Gopher (gopher.epa.gov) under the heading ''Environmental Test Methods and Guidelines.''

SUPPLEMENTARY INFORMATION: The Agency is revising its test guidelines for Series 870—Health Effects Test Guidelines. Guidelines in the 870 Series are for use by the Office of Pesticide Programs (OPP) and the Office of Pollution Prevention and Toxics (OPPT) and have been harmonized with those of OECD. The proposed guidelines are being made available for comment. All interested parties are encouraged to submit comments on the proposed guidelines. Specific comments should reference the specific number and paragraph or subparagraph of the appropriate proposed guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration, and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied to allow their evaluation.

A record has been established for this notice under docket number ''OPP–00434'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

guidelines@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The following is the complete list of proposed guidelines being made available at this time:

[8] *Supra.* note 5.

Series 870—Health Effects Test Guidelines

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
	Group A—Acute Toxicity Test Guidelines.				
870.1000	Acute toxicity testing—background	none	none	none	96–189
870.1100	Acute oral toxicity	798.1175	81–1	401	96–190
870.1200	Acute dermal toxicity	798.1100	81–2	402	96–192
870.1300	Acute inhalation toxicity	798.1150	81–3	403	96–193
870.1350	Acute inhalation toxicity with histopathology	none	none	none	96–291
	Group B—Specific Organ/Tissue Toxicity Test Guidelines.				
870.2400	Acute eye irritation	798.4500	81–4	405	96–195
870.2500	Acute dermal irritation	798.4470	81–5	404	96–196
870.2600	Skin sensitization	798.4100	81–6	406	96–197
	Group C—Subchronic Toxicity Test Guidelines.				
870.3100	90-Day oral toxicity	798.2650	82–1	408	96–199
870.3150	Subchronic nonrodent oral toxicity—90-day	none	82–1	409	96–200
870.3200	Repeated dose dermal toxicity—21/28 days	none	82—2	410	96–201
870.3250	Subchronic dermal toxicity—90 days	798.2250	82–3	411	96–202
870.3465	Subchronic inhalation toxicity	798.2450	82–4	413	96–204
870.3500	Preliminary developmental toxicity screen	798.4420	none	none	96–205
870.3600	Inhalation developmental toxicity study	798.4350	none	none	96–206
870.3700	Prenatal developmental toxicity study[1]	798.4900	83–3	414	96–207
870.3800	Reproduction and fertility effects[1]	798.4700	83–4	416	96–208
	Group D—Chronic Toxicity Test Guidelines.				
870.4100	Chronic toxicity	798.3260	83–1	452	96–210
870.4200	Carcinogenicity	798.3300	83–2	451	96–211
870.4300	Combined chronic toxicity/carcinogenicity	798.3320	83–5	453	96–212
	Group E—Genetic Toxicity Test Guidelines.				
870.5100	Escherichia coli WP2 and WP2 uvrA reverse mutation assays	798.5100	84–2	471, 472	96–247
870.5140	Gene mutation in *Aspergillus nidulans*	798.5140	84–2	none	96–215
870.5195	Mouse biochemical specific locus test	798.5195	84–2	none	96–216
870.5200	Mouse visible specific locus test	798.5200	84–2	none	96–217
870.5250	Gene mutation in *Neurospora crassa*	798.5250	84–2	none	96–218
870.5265	*The Salmonella typhimurium* reverse mutation assay	798.5265	84–2	471, 472	96–219
870.5275	Sex-linked recessive lethal test in *Drosophila melanogaster*	798.5275	84–2	477	96–220
870.5300	Detection of gene mutations in somatic cells in culture	798.5300	84–2	476	96–221
870.5375	In vitro mammalian cytogenetics	798.5375	84–2	473	96–223
870.5380	In vivo mammalian cytogenetics tests: spermatogonial chromosomal aberrations	798.5380	84–2	none	96–224
870.5385	In vivo mammalian cytogenetics tests: Bone marrow chromosomal analysis	798.5385	84–2	475	96–225
870.5395	In vivo mammalian cytogenetics tests: Erythrocyte micronucleus assay	798.5395	84–2	474	96–226
870.5450	Rodent dominant lethal assay	798.5450	84–2	478	96–227
870.5460	Rodent heritable translocation assays	798.5460	84–2	485	96–228
870.5500	Bacterial DNA damage or repair tests	798.5500	84–2	none	96–229
870.5550	Unscheduled DNA synthesis in mammalian cells in culture	798.5550	84–2	482	96–230
870.5575	Mitotic gene conversion in *Saccharomyces cerevisiae*	798.5575	84–2	481	96–232
870.5900	In vitro sister chromatid exchange assay	798.5900	84–2	479	96–234
870.5915	In vivo sister chromatid exchange assay	798.5915	84–2	none	96–235
	Group F—Neurotoxicity Test Guidelines.				
870.6100	Delayed neurotoxicity of organophosphorus substances following acute and 28–day exposure	798.6450, .6540, .6560	81–7, 82–5, 82–6	418, 419	96–237
870.6200	Neurotoxicity screening battery	798.6050, .6200, .6400	81–8, 82–7, 83–1	none	96–238
870.6300	Developmental neurotoxicity study	none	83–6	none	96–239
870.6500	Schedule-controlled operant behavior	798.6500	85–5	none	96–240
870.6850	Peripheral nerve function	798.6850	85–6	none	96–241
870.6855	Neurophysiology: Sensory evoked potentials	798.6855	none	none	96–242
	Group G—Special Studies Test Guidelines.				

Series 870—Health Effects Test Guidelines—Continued

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
870.7200	Domestic animal safety	none	none	none	96–349
870.7485	Metabolism and pharmacokinetics[2]	798.7485	85–1	417	95–244
870.7600	Dermal penetration	none	85–3	none	96–350
870.7800	Immunotoxicity	none	85–7	none	96–351
	Group H—Health Effects Chemical-Specific Test Guidelines.				
870.8223	Pharmacokinetic test	795.223	none	none	96–250
870.8245	Dermal pharmacokinetics of DGBE and DGBA	795.225	none	none	96–251
870.8300	Dermal absorption for compounds that are volatile and metabolized to carbon dioxide	795.226	none	none	96–252
870.8320	Oral/dermal pharmacokinetics	795.228	none	none	96–253
870.8340	Oral and inhalation pharmacokinetic test	795.230	none	none	96–254
870.8360	Pharmacokinetics of isopropanol	795.231	none	none	96–255
870.8380	Inhalation and dermal pharmacokinetics of commercial hexane	795.232	none	none	96–256
870.8500	Toxicokinetic test	795.235	none	none	96–257
870.8600	Developmental neurotoxicity screen	795.250	none	none	96–258
870.8700	Subchronic oral toxicity test	795.260	none	none	96–259
870.8800	Morphologic transformation of cells in culture	795.285	none	none	96–260

[1]Notice of availability published at 61 FR 8282, March 4, 1996.
[2]Notice of availability published at 60 FR 45158, August 30, 1995.

List of Subjects

Environmental protection, Test guidelines.

Dated: June 12, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–15810 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2137]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

June 14, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the Federal Register. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), FM Broadcast Stations, Table of Allotments. (Raleigh, NC). (MM Docket No. 88–306). Number of Petition Filed: 1.

Subject: Amendment of Section 73.202(b), FM Broadcast Stations, Table of Allotments. (Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, FL) (MM Docket No. 92–195, RM–7091, RM–7146, RM–8123, RM–8124). Number of Petition Filed: 1.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266). Leased Commercial Access (CS Docket No. 96–60). Number of Petitions Filed: 3.

Subject: Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1993; Compatibility Between Cable System and Consumer Electronics Equipment (ET Docket No. 93–7). Number of Petitions Filed: 2.

Subject: Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems. (PR Docket No. 93–61). Number of Petitions Filed: 3.

Subject: Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications. (ET Docket No. 94–124, RM–8308). Number of Petitions Filed: 2.

Subject: Implementation of Sections 202(f), 202(i) and 301(i) of the Telecommunications Act of 1996; Cable Television Antitrafficking, Network and MMDS/SMATV Cross-ownership Rules (CS Docket No. 96–56). Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–15672 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. A proposed new collection of information is hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection

should be modified prior to submission to OMB for review and approval. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 19, 1996.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Outside Counsel Budget forms''. Comments may be hard-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the MOB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collection of Information

Title: Outside Counsel Budget Forms.

Frequency of Response: On occasion.

Affected Public: Law firms under contract with the FDIC to provide services.

Estimated Number of Respondents: 3,260.

Estimated Time per Response (including worksheets): Appellate—1 hour, Bankruptcy—2.5 hours, Litigation—2.5 hours, Non-litigation/transactional—1 hour.

Estimated Total Annual burden: 3,805 hours.

General Description of Collection: Outside counsel to the FDIC must submit detailed information about their budgets to the FDIC in order to receive reimbursement for services rendered.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the FDIC's requests to MOB for renewal of this collection. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of the forms of information technology as well as other aspects of the information collection request.

Dated at Washington, D.C., this 14th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[JR Doc. 96–15707 Filed 6–19–96; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE AND TIME: Tuesday, June 25, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 27, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1996–23: Jan Witold Baran on behalf of ITT Corporation
Advisory Opinion 1996–24: John A. DiLorenzo on behalf of Congressman Wester S. Cooley
Advisory Opinion 1996–25: Stanley M. Brand on behalf of Seafarers Political Activity Donation (''SPAD'')
Campaign Guide for Party Committees, Final Draft
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–15925 Filed 6–18–96; 3:04 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Continental Express International Corp., 5503 N.W. 72nd Avenue, Miami, FL 33166
Officer: Judith Castille, President

Rodi International Corporation, 7022 N.W. 50th Street, Miami, FL 33166
Officers: Dorian F. Rodriguez, President, Doris P. Del Castillo, Manager

Hanmi Shipping, Inc., 800 Greenleaf Avenue, Elk Grove Village, IL 60007
Officer: Keun Joong Jang, President

KWJ Forwarding Co., 1050 E. Dominguez St. #E, Carson, CA 90746
Kil Won Jin, Sole Proprietor.

Dated: June 14, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–15663 Filed 6–19–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles L. Spangler, Nixa, Missouri; to acquire an additional 30 percent, for a total of 35 percent, of the voting shares of Bates County Bancshares, Inc., Rich Hill, Missouri, and thereby indirectly acquire Security Bank, Rich Hill, Missouri.

Board of Governors of the Federal Reserve System, June 14, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15709 Filed 6–19–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq*.) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Valley View Bancshares, Inc., Overland Park, Kansas; to acquire 100 percent of the voting shares of Industrial Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Industrial State Bank, Kansas City, Kansas; Mission Bancshares, Inc., Mission, Kansas, and thereby indirectly acquire Mission Bank, Mission, Kansas; One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire Security Bank of Kansas City, Kansas City, Kansas; International Bancshares, Inc., Gladstone, Missouri, and thereby indirectly acquire First Bank of Missouri, Gladstone, Missouri.

Board of Governors of the Federal Reserve System, June 14, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15710 Filed 6–19–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 961–0057]

Raytheon Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Lexington, Massachusetts-based company to erect an information ''firewall'' between it and Chrysler Technologies Holding, Inc. (CTH). The consent agreement settles allegations that Raytheon's acquisition of CTH may compromise the competitiveness of an upcoming procurement for the Navy's Submarine High Data Rate system (Submarine HDR), on which Raytheon has bid. CTH is presently a second-tier subcontractor to GTE Corporation, which also bid on the Submarine HDR contract.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Holden, Federal Trade Commission, 6th and Pennsylvania Ave, NW., Washington, DC 20580, (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Raytheon Company (''Raytheon'') of Chrysler Technologies Holding, Inc. (''CTH''), and it now appearing that Raytheon, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an agreement containing an order to refrain from certain acts and to provide for certain other relief:

It is hereby agreed by and between Proposed Respondent Raytheon, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Raytheon is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 141 Spring Street, Lexington, Massachusetts 02173.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. Proposed Respondent shall submit within twenty (20) days of the date this agreement is signed by Proposed Respondent, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Proposed Respondent setting forth in detail the manner in which Proposed Respondent will comply with Paragraph II. of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to refrain from certain acts in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to Proposed Respondent's address as stated in the agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''Raytheon'' means Raytheon Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Raytheon Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. For purposes of Paragraph II. of this order, Raytheon does not include ESI.

B. ''CTH'' means Chrysler Technologies Holding, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located in 1000 Chrysler Drive, Auburn Hills, Michigan 48326–2766, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by CTH, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. ''ESI'' means Electrospace Systems, Inc., a wholly-owned subsidiary of Chrysler Technologies Holding, Inc., with its principal office and place of business located at 1301 East Collins Boulevard, Richardson, Texas 75083, or by any other entity within or controlled by Chrysler Technologies Holding, Inc. that is engaged in, among other things, the research, development, manufacture or sale of Antenna and Terminal Controls, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by ESI (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

D. ''Commission'' means the Federal Trade Commission.

E. ''Submarine High Data Rate Satellite Communications Terminal'' means the system to be procured in the United States Department of the Navy's scheduled competitive procurement of the Submarine High Data Rate Satellite Communications Terminal, a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals.

F. ''Antenna and Terminal Controls'' means any current or future equipment and services designed, developed, proposed or provided by ESI in connection with the United States Department of the Navy's procurement of the Submarine High Data Rate Satellite Communications Terminal.

G. ''Non-Public Information of Raytheon'' mean any information not in the public domain and in the possession or control of Raytheon relating to the Submarine High Data Rate Satellite Communications Terminal.

H. ''Non-Public Information of ESI'' means any information not in the public domain and in the possession or control of ESI relating to the Submarine High Data Rate Satellite Communications Terminal, and any information not in the public domain furnished by Rockwell International Corporation or GTE Corporation or any other company to ESI in its capacity as subcontractor to Rockwell International Corporation in connection with the U.S. Navy's procurement of the Submarine High Data Rate Satellite Communications Terminal.

I. ''Acquisition'' means Raytheon's acquisition of all of the voting securities of Chrysler Technologies Holding, Inc.

II

It is further ordered that:

A. Raytheon shall not provide, disclose or otherwise make available, directly or indirectly, to ESI any Non-Public Information of Raytheon until either: (1) The United States Department of the Navy selects only one supplier for the Submarine High Data Rate Satellite Communications Terminal; or (2) the

United States Department of the Navy cancels its procurement of the Submarine High Data Rate Satellite Communications Terminal entirely.

B. Raytheon shall not obtain or seek to obtain, directly or indirectly, any Non-Public Information of ESI until either: (1) the United States Department of the Navy selects only one supplier for the Submarine High Data Rate Satellite Communications Terminal; or (2) the United States Department of the Navy cancels its procurement of the Submarine High Data Rate Satellite Communications Terminal entirely.

III

It is further ordered that Respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraph II. of this order are complied with or until such other time as is stated in said Interim Agreement.

IV

It is further ordered that within twenty (20) days of the date this order becomes final, and annually on the anniversary of the date this order become final until either the United States Department of the Navy selects only one supplier for the Submarine High Data Rate Satellite Communications Terminal or cancels its procurement of the Submarine High Data Rate Satellite Communications Terminal entirely, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it complying with Paragraph II of this order.

V

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in the corporation, in each instance where such change may affect compliance obligations arising out of the order.

VI

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

VII

It is further ordered that Respondent's obligations under this order shall terminate when either: (1) the United States Department of the Navy selects only one supplier for the Submarine High Data Rate Satellite Communications Terminal; or (2) the United States Department of the Navy cancels its procurement of the Submarine High Data Rate Satellite Communications Terminal entirely.

Appendix I

Interim Agreement

This Interim Agreement is by and between Raytheon Company (''Raytheon''), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq.

Premises

Whereas, Raytheon has proposed to acquire all of the outstanding voting securities of Chrysler Technologies Holding, Inc., and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Agreement''), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Raytheon entering into this Interim Agreement shall in no way be construed as an admission by Raytheon that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Raytheon understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Raytheon agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Raytheon agrees to execute and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Raytheon signs the Consent Agreement.

2. Raytheon agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, Rockwell International Corporation, and GTE Corporation.

3. Raytheon agrees to submit, within twenty (20) days of the date the Consent Agreement is signed by Raytheon, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Raytheon setting forth in detail the manner in which Raytheon will comply with Paragraph II. of the Consent Agreement.

4. Raytheon agrees that, from the date Raytheon signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it will comply with the provisions of this interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the Commission finally issues its Compliant and its Decision and Order.

5. Raytheon waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, Raytheon shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of Raytheon and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Raytheon and without restraint or interference from it, to interview officers, directors, or employees of Raytheon, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted subject to final approval an agreement containing a proposed Consent Order from Raytheon Company (''Raytheon''), which prohibits Raytheon from gaining access to any non-public information in the possession of Electrospace Systems, Inc. (''ESI'') related to the Submarine High Data Rate Satellite Communications Terminal (''Submarine HDR Terminal'') to be procured by the United States Department of the Navy, or disclosing any such information in its possession to ESI. In addition, the Commission has accepted an Interim Agreement which prohibits Raytheon from receiving any non-public information related to the Submarine HDR Terminal from ESI, or giving any such non-public information in its possession to ESI.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a Stock Purchase Agreement dated April 4, 1996, Raytheon proposed to purchase all of the voting securities of Chrysler Technologies Holding, Inc. (''CTH'') for approximately $455 million. ESI is a wholly-owned subsidiary of CTH. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for the research, development, manufacture and sale of Submarine HDR Terminals.

The Submarine HDR Terminal is a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals. Initial proposals (bids) for the Navy's procurement of the Submarine HDR Terminal were due on April 15, 1996, and Raytheon submitted an initial proposal. An initial proposal was also submitted by GTE Corporation, for which ESI is a second-tier subcontractor supplying the antenna/terminal controls (an extremely small portion of the overall system). Having received initial proposals, the Navy now intends to hold discussions that may culminate in a ''Best And Final Offer'' competition. At this point in the competition for the Navy's Submarine HDR Terminal, the market is highly concentrated, and effective new entry is unlikely to occur in a timely manner.

In its capacity as supplier of the antenna/terminal controls for the GTE proposal, ESI already possesses a significant amount of competitively sensitive information concerning the GTE proposal, and may be in a position to acquire even more such information during the period from the present until the competition is concluded. The upcoming competition for the Navy's Submarine HDR Terminal could be jeopardized if either Raytheon or ESI gains access to competitively sensitive information in the other's possession as a result of the proposed acquisition. The proposed Consent Order remedies this antitrust concern by prohibiting the exchange of competitively sensitive information between Raytheon and ESI. Other than the exchange of information, the proposed acquisition is unlikely to have an anticompetitive effect due to, among other reasons, the fact that ESI's role on the GTE proposal is extremely small.

Under the provisions of the Consent Order, Raytheon is also required to provide the Commission with a report of compliance with the Order within twenty (20) days of the date the Order becomes final, and annually thereafter until the Navy either: (1) selects only one Submarine HDR Terminal supplier; or (2) cancels the Submarine HDR Terminal procurement entirely.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–15731 Filed 6–19–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–13]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on May 29, 1996.

Proposed Project

1. Assessment of the Training Needs of Clinical and Environmental Laboratories—New—The National Laboratory Training Network (NLTN) was established in 1989 through a cooperative agreement between the Centers for Disease Control and Prevention (CDC) and the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD). Its mission is to enhance the quality of laboratory testing in the nation's laboratories by providing training necessary for laboratory staff to improve their knowledge and skills in all aspects of the testing process. To accomplish

this mission, seven NLTN offices were established at various sites throughout the nation giving all states and territories access to laboratory training through this Network.

NLTN staff was charged with (1) Assessing the training needs (2) developing programs, (3) delivering training and, (4) evaluating the effectiveness of the training. Staff in the seven offices must meet unique needs in the geographical area for which they are responsible. Assessing need is particularly important because more than 100,000 laboratories are doing 16,380 different tests of 631 analytes. NLTN staff must determine the most efficient and effective means to provide training where the greatest need exits.

Need for training in laboratories may be dependent on where the laboratories are located and what population they serve. For example, small laboratories in physicians' offices (POLs) may have very different needs than large, independent laboratories, hospital or state laboratories. Manufacturers develop different products for laboratories that test in high volumes and can afford very sophisticated equipment than for small laboratories that do a limited number of tests. Education and training of personnel in the laboratories also very considerably. Current training needs are vastly different for people who have complete bachelor's degrees in medical technology or a science and those who have no formal laboratory education.

This information collection request is for clearance of a bank of questions from which NLTN staff may periodically select certain ones to use in survey to assess needs—and for flexibility to develop questions in specified formats to address specific practices related to the many tests available. This will allow the NLTN to focus on the appropriate lab type, target audience and test.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Laboratory	2,800	1	0.5

The total annual burden is 1400. Send comments to Desk officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: June 14, 1996.

Wilma G. Johnson,

Acting Associate Director of Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–15718 Filed 6–19–96; 8:45 am]

BILLING CODE 4163–18–P

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: July 10, 1996, 9:30 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open July 10, 9:30 a.m. to 9:45 a.m.
Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing medical effectiveness research. The three main areas of emphasis are: (1) Determining what clinical interventions are most effective, cost effective, and appropriate; (2) methods and data to advance effectiveness research; and (3) dissemination and evaluation of the impact of research findings on clinical practice and outcomes.

Agenda: The open session of the meeting on July 10, from 9:30 a.m. to 9:45 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. Appendix 2 and 5 U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437 x1603.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 12, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–15717 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–90–M

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: July 9, 1996, 9:30 a.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland 20852.

Open July 9, 9:30 a.m. to 9:45 a.m.
Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing medical effectiveness research. The three main areas of emphasis are: (1) Determining what clinical interventions are most effective, cost effective, and appropriate; (2) methods and data to advance effectiveness research; and (3) dissemination and evaluation of the impact of research findings on clinical practice and outcomes.

Agenda: The open session of the meeting on July 9, from 9:30 a.m. to 9:45 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437 x1603.

Agenda items for this meeting are subject to change as priorities dictate.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–15723 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[Announcement 601]

Prevention of HIV Infection in Youth at Risk: Developing Community-Level Strategies That Work

Introduction

The Centers for Disease Control and Prevention (CDC) announces the

availability of fiscal year (FY) 1996 funds for a cooperative agreement program for the prevention of HIV infection in youth at risk.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Human Immunodeficiency Virus (HIV) Infection. (For ordering a copy of ''Healthy People 2000,'' see the section ''**WHERE TO OBTAIN ADDITIONAL INFORMATION.**'')

Authority

This program is authorized under Sections 301 and 317(k)(2), of the Public Service Health Act (42 U.S.C. 241 and 247b(k)(2)) as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutes, hospitals, other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Each applicant must demonstrate collaboration with community-based organizations (CBOs) that have histories of familiarity with, access to, and success working with the target population. Collaboration with CBOs will be demonstrated through letters from the organizations stating their willingness to participate in the proposed project. It is the intention of this announcement to stimulate collaborative, interdisciplinary research between research institutions and public health agencies and CBOs; therefore, applications by agencies taking the lead with teams composed of collaborators from each of the other entities are encouraged. The application should be submitted by the lead institution, agency, or organization.

Applicants who have conducted formative research on the target population are encouraged to apply.

Note: Organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying are not eligible to receive Federal grant/cooperative agreement funds.

Availability of Funds

Approximately $2.8 million will be available in FY 1996 to fund approximately six awards. It is expected that the average award will be $500,000, ranging from $400,000 to $900,000. Awards are expected to begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of up to five years (two years for all Phase I recipients and three additional years for successful recipients of Phase II. Approximately three Phase I recipients will receive Phase II funding through a competitive announcement). Funding estimates may vary and are subject to change.

Phase II competition will in part include the following factors:

1. Have completed their formative research and summaries, pilot-testing, data reduction, and final Phase I report;
2. Have established access to the target population in sufficient numbers to provide meaningful sample sizes for intervention and control areas;
3. Have demonstrated that their proposed catchment areas are minimally affected by confounding factors of competing interventions and research;
4. Have demonstrated data collection and analysis capacity to execute the protocols for data analysis and evaluation of impact;
5. Be able to implement the common intervention selected through consensus, including having a sufficient number of trained staff to devote full-time to the intervention and;
6. Have written the final draft of at least one publication on Phase I data.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Definitions

Youths are defined as persons 15 to 25 years of age. Men who have sex with men (MSM) are men who have sex with men, regardless of their declared sexual identity. Young men who have sex with men (YMSM) are males 15 to 25 years of age who have sex with other males, express intention to have sex with other males, or acknowledge sexual attraction to other males. Communities can be groups defined by behavior (sexual orientation, IV drug use), by identification (ethnicity, sexual identity), by geographic boundaries, or by places where people are available for education (schools, prisons). Catchment area is the contiguous geographic area that encompasses at least one access site and that is distinct in geography and population membership. Access site is a location within a catchment area where the target population congregates and is available for intervention. Community-level intervention is an approach to HIV prevention that (1) Results from a mobilization of community members and institutions; (2) can be expected to reach a large proportion of the population at risk in their daily setting; (3) may involve the use of outreach and facility-based services; and (4) can be expected to alter individual behaviors and community norms. Community assessment is the systematic collection and critical analysis of data to determine the adequacy and effectiveness of specific services, infrastructure, and formal and informal resources available to a community. Multi-site is defined as the same or similar intervention, sampling methods and measurements used in multiple sites, but does not imply a nationally representative sample of sites.

Purpose

This program is to conduct research that will develop and evaluate approaches to encourage youth who engage in risky behaviors associated with HIV acquisition and transmission to change these behaviors. This program also seeks to develop methods that may build on evaluated, community-level intervention efforts, and where advisable, previous work, but will focus entirely on YMSM, including those who are members of racial or ethnic minorities.

Funds will be used in two phases to develop, implement, analyze, and evaluate an effective community-level behavioral change intervention, with potential for sustainability, to prevent HIV in YMSM who engage in high-risk behaviors related to the acquisition and transmission of HIV.

Phase I of the research program will focus on formative research to characterize populations, identify constraints on and opportunities for behavior change, and identify components of a targeted intervention and determine its feasibility. Approximately six awards will be made for a 12-month budget period within a project period of up to two years.

Phase II of the research program will focus on the implementation of a common intervention protocol, randomization of catchment areas, and

systematic analysis and evaluation of the intervention's impact. Eligible applicants for Phase II will be recipients of Phase I. Phase II will be competitively announced. Approximately three awards will be made for a 12-month budget period within a project period of up to three years.

The intervention for this project will be based on the combined formative research completed by award recipients in Phase I and will be implemented in Phase II. Although CDC is not requiring proposals for Phase II intervention activities at this time, a brief description of Phase II is included here for the applicants' information. In the first eight months of Phase II, recipients will conduct two to three baseline assessments. The recipients then will implement, analyze, and evaluate the impact of the community-level intervention. Examples of behaviors that may be appropriate for the intervention to address are:

1. Maintaining abstinence;
2. Reducing high-risk sexual behaviors among sexually active YMSM and;
3. Using barrier methods when engaging in sexual activity.

By the end of the 5-year project, recipients and participating agencies will produce guidelines for technology transfer of the intervention to control sites and other interested organizations. Recipients are also encouraged to assist participating agencies in developing the skills to sustain successful intervention components after the study.

Applicants must agree to follow the intervention and implementation protocol developed jointly by recipients with input from CDC project officers. It is anticipated that the Phase II protocol for intervention, analysis, and evaluation will be a common protocol with many components that are applicable to all study areas. Such a protocol also will permit tailoring to individual communities to accommodate variations (e.g., cultural, geographic) among them. YMSM representing diverse segments of the target population should participate actively in research and intervention design and review in Phase I and Phase II.

Program Requirements

Work performed under this agreement will be the result of collaborative efforts among recipients, resulting in common protocols and methods across sites. Individual recipients will be responsible for research design, intervention development and implementation, data collection and analysis, and publication. CDC will coordinate these collaborative efforts and expects to work closely with each award recipient.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Characterize the HIV risk of the target population and any subgroups in at least two matched catchment areas and prioritize the subgroups according to probable risk and other criteria.

a. The recipient will have proposed in their application at least two catchment areas that are matched in:

(1) Population demographic characteristics:
(2) Risk behaviors;
(3) Population sizes;
(4) Numbers of the same types of access sites (e.g., bars, bookstores, parks) and;
(5) Other relevant variables.

b. During Phase I, the recipient will further study the proposed catchment areas to finalize selection of catchment areas for conducting the Phase II intervention:

(1) The selected catchment areas must be geographically discrete and have less than 10% overlap of the target population in each area.

(2) The catchment areas will be places where (a) hundreds of eligible subjects can be reached, (b) that have an estimated high HIV seroprevalence rate among youth, and (c) that, ideally, have minimal confounding factors introduced by ongoing or proposed HIV prevention efforts.

(3) After Phase I, the catchment areas will be randomly assigned to a study condition—the intervention or comparison.

c. The recipient will characterize the target population and any of its subgroups in each catchment area.

d. The recipient will document, using whatever qualitative and quantitative data are available, that the targeted populations and any of their subgroups in the selected catchment areas are at risk for HIV infection and will prioritize the subgroups according to the relative risk.

e. The recipient will justify its identifications of catchment areas, access sites, subgroup, and YMSM accessible at those sites in terms of the potential to address the research goals of this program announcement and in terms of ultimately translating the research findings into HIV prevention activities among the target populations.

By the end of Phase I, the recipient will have finalized the selection of a minimum of two matched catchment areas and conducted research to justify the selection of catchment areas, determine the demographic characterization of the target population and any subgroups, and justify selection of a particular subgroup. The recipient also will have identified sites within the catchment areas where YMSM are accessible both for interviewing and for the intervention and will have secured commitment of collaborating organizations in these catchment areas and access sites to participate in Phase II and to be randomly assigned to a research condition.

2. Conduct qualitative and quantitative behavioral research of YMSM at risk in the study catchment areas.

a. The recipient will build a multi disciplinary research team and program support capability:

(1) A multi disciplinary team should be assembled with the appropriate expertise to undertake Phase I activities. Such a team will include experienced senior researchers, technical staff, and support staff and will be led by behavioral scientists;

(2) The team will have CBO members or collaborators and;

(3) The team will involve persons from the target population in research and intervention design.

b. The recipient will develop a common protocol to conduct the behavioral research:

(1) The research will include sexual behavior, partner characteristics, social networks, substance abuse behavior, trading sex for money or drugs, perceptions of social norms, attitudes, self-efficacy, perceptions of current HIV interventions, health-care-seeking behaviors, health-information-seeking behaviors, developmental issues influencing the above, and structural influences on behavior to identify which segments or subgroups of YMSM would be best served by the intervention;

(2) Questionnaires and survey instruments will be constructed at a literacy level appropriate to the target population;

(3) The research will involve members of the targeted population and other community partners in determining which types, designs, and deliveries of interventions would be (a) best accepted and most influential in their communities, (b) most likely to work synergistically with other community efforts, (c) most likely to stimulate changes in community norms, and (d) most likely to be sustained.

The recipient will demonstrate further understanding of factors influencing the

behavior of YMSM, document the participation of the target population in the formative research design and their contribution in development of the intervention to be pilot-tested, and propose a sound theoretical and data-driven approach to influencing behaviors of YMSM.

3. Use an existing or develop and conduct a community assessment and document HIV interventions and research involving the target population in the catchment areas.

a. The purpose of the community assessment is to determine:

(1) Community-wide needs for HIV/AIDS prevention among YMSM;

(2) Existing and potential capacity;

(3) Available resources and;

(4) Current prevention efforts and further understand key issues (e.g., identifying access sites, influences of political climate) relevant to intervening with the target population.

b. Recipients will:

(1) Review community needs assessments and community planning documents and;

(2) Summarize what is known about the proposed communities, and if necessary, recipients will develop, in collaboration with CDC and other recipients, a common assessment instrument to be implemented in Phase I.

c. Part of the community assessment must include:

(1) The current activities and functions of the health department's HIV program in the catchment areas;

(2) Implications of the formative research and potential interventions on those activities and functions and;

(3) The HIV community planning priorities related to YMSM.

The recipient will have produced a summary synthesizing knowledge of the community's HIV needs and planning, participated in cross-site implementation of the assessment instrument, as appropriate, and analyzed and reported the results of the assessment.

4. In partnership with persons from relevant communities, other recipients, and CDC project officers, develop an appropriate community-level intervention to reduce HIV risk behaviors in the target population.

a. Recipients will collaborate in developing a common intervention and research protocol for all recipients to implement in Phase II:

(1) The basis for the intervention should include (a) the recipient's experience with the target population, (b) formative research from Phase I, and (c) a review of current primary prevention strategies and research;

(2) The intervention selection should be a logical result of program requirements 4.a.(1)(a-c) above, but not be limited to their exclusive consideration;

(3) The intervention approach should be culturally sensitive, developmentally appropriate, and suitable for the target population's literacy level and should stimulate community action, mobilization, and adoption of a supportive environment and community norms and;

(4) An effective community-level intervention for these youth may combine several elements, e.g., (a) efficient targeting of outreach, (b) development of an environment supportive of long-term HIV/AIDS risk reduction, and (c) links to local resources that encourage healthy behaviors.

b. Local resources that encourage healthy behaviors may include:

(1) STD treatment and prevention services;

(2) Substance abuse treatment facilities;

(3) Shelters or drop-in facilities for runaway and homeless youth;

(4) Mental health clinics;

(5) Other health care facilities such as community health centers;

(6) Facilities ''without walls'' that provide outreach to street youth and;

(7) Providers of foster care and supervised independent living.

c. Recipients will participate in monthly conference calls with CDC project officers and other recipients.

d. Each recipient will travel to Atlanta or another location and participate with other recipients and CDC representatives in four meetings during Phase I. At one of these meetings, the Phase II intervention design and protocols for pilot testing will be established.

e. The protocols for the Phase II intervention will be finalized at a later meeting.

At the end of Phase I, the recipient will have summarized activities and participated in the development of a common intervention, research protocol, operational plan, process and impact objectives, analysis strategies, and evaluation instruments for Phase II.

5. Through pilot-testing, determine the feasibility and sustainability of implementing the proposed intervention, including cost, acceptance, and participation by the target population.

a. During the second year of Phase I, components of the collaboratively developed intervention will be pilot-tested by the recipients to determine modifications in design, implementation, and other relevant considerations.

These considerations may include:

(1) The likelihood that the intervention will change behavior among YMSM;

(2) The probable level of acceptability of the intervention to the target populations and to the communities around the intervention access sites;

(3) The recipient's potential for recruiting, training, and retaining intervention workers;

(4) The acceptability of intervention workers to the targeted population;

(5) The likelihood that the intervention will stimulate changes in community norms;

(6) Clarity of or difficulties with data collection instruments;

(7) The projected overall cost of the intervention component;

(8) The likelihood that the intervention can be maintained during the entirety of Phase II;

(9) The likelihood that successful components of the intervention will be institutionalized in the community after Phase II and;

(10) More effective ways for project staff to systematically focus resources (i.e., financial and personnel).

b. Recipients with substantial, previously collected formative data from their finalized catchment areas may pilot-test potential intervention components in the first year of Phase I instead of collecting additional formative data.

Recipients will have conducted and reported pilot-test results of one or more components of the common intervention. The primary expectation at the completion of Phase I is a finalized common protocol for implementation, analysis, and evaluation, including validated instruments, for a community-level intervention that can reasonably be expected to influence behaviors related to HIV transmission in the study population.

6. Recipients and CDC project officers collaboratively develop a common research protocol for the proposed intervention to be conducted during Phase II

a. The recipients, in collaboration with CDC, will select and develop a common research protocol, including:

(1) A common research design;

(2) Operational plan and;

(3) Analysis and evaluation methods and instruments.

b. The protocol will include a within-catchment-area sampling strategy and mechanisms for obtaining the consent and protecting the confidentiality of study subjects.

c. Analysis and evaluation plans will be developed concurrently with intervention plans.

d. Recipients will establish a set of outcomes to determine the effectiveness or impact of the intervention that are measurable, valid, and reliable in terms of behavioral and social science theories. It is expected that the evaluation will measure changes in behaviors, intentions, and attitudes and the target population's awareness and acceptance of the intervention.

e. To evaluate a common intervention, the recipients and CDC project officers must:

(1) Reach consensus concerning the specific outcomes to target;

(2) Develop methods of measuring these outcomes, including common data collection instruments and;

(3) Pilot-test measures and instruments.

Recipients will have established a common research protocol, operational plan, process and impact objectives, and instruments for systematically analyzing and evaluating the intervention in Phase II. Each recipient must agree, if selected for continuation into Phase II, to implement this common protocol and accept randomization of their selected catchment areas (as specified above).

7. Manage, analyze, and interpret data.

a. Data from the Phase I activities must be collected, managed, and stored securely and confidentially.

b. Recipients will use common computer and data management systems.

c. Recipients will be primarily responsible for site-specific analyses.

d. Recipients will share data for aggregate analyses with CDC project officers.

Recipients will have common computer and data management systems and will have submitted the cleaned data on their intervention trials to CDC project officers.

B. CDC Activities

1. Host a meeting of the recipients to plan the research program (e.g., the format for community assessments). CDC will host approximately three additional meetings of recipients during Phase I to promote progress toward national objectives.

2. Act as mediator on the recipients' collaborative design or selection of the assessment plan and instruments, research protocol, operational plan, objectives, analysis strategies, and evaluation instruments.

3. Provide technical assistance on pilot testing the common intervention, or elements thereof, and on tailoring the collaboratively designed, common intervention for local applications.

4. Provide scientific and technical coordination of the general operation of this HIV prevention project and of the specific Phase I activities in order to keep all recipients on track with the common protocols and their timelines.

5. Conduct the random selection of intervention and control catchment areas among those presented by each recipient, according to a randomization protocol collaboratively determined by the recipients.

6. Coordinate cross-site aggregation of data and its analysis.

7. Conduct site visits to assess program progress and mutually solve problems, as needed.

At approximately month 12 of the project, recipients and CDC project officers will meet to design the common intervention and pilot tests of its components. At approximately month 20 of the project, recipients and CDC project officers will meet to finalize the common intervention for Phase II. At approximately month 22 of the project, applications for a competing continuation award for the implementation and evaluation of community-level intervention (Phase II) will be due. Supplementary guidance for Phase II awards will be provided to the recipients of Phase I awards.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Applicant's Team (15 points)

The extent to which all items in the application content element are addressed, including the extent to which the applicant has:

a. Involved other key organizations on the project team;

b. Clearly defined the responsibilities of these other organizations;

c. Involved team members in planning and developing the application and demonstrated their commitment to the project (as evidenced by letters of support or memoranda of agreement) and;

d. Previously worked with other team members, including potential CBO collaborators if they are not part of the team.

2. Research and Intervention Capability (20 points)

The extent to which all items in the application content element are addressed:

a. Capacity of the applicant research team to conduct the proposed research as evidenced by their previous related research;

b. Experience with multisite research designs and formative research on MSM;

c. Extent of the team's familiarity with, access to, and good working relations with MSM, as evidenced by service or research involving this population and;

d. Capacity of the team to conduct behavioral interventions as evidenced by description of their previous experience.

3. Identification of Catchment Areas (20 points)

The extent to which all items in the application content element are addressed:

a. Extent to which the catchment areas meet matching criteria (e.g., matched population demographics, risk behaviors, population sizes that are similar and of sufficient size, access sites), and the extent to which the matching was based on available data;

b. Extent to which the target populations within the catchment areas have similar rates of HIV infection and the extent to which the rates are based on available data and;

c. Thoroughness of description of potential conflict between the proposed research and other research or prevention efforts in the catchment areas.

4. Proposed Research Plan—Formative and Intervention (25 points)

The extent to which all items in the application content element are addressed:

a. Quality of the proposed formative research plan, sampling strategies, sample size estimates, power analysis, and mechanisms to obtain subjects' consent and protect their confidentiality;

b. Appropriateness of the theoretical bases for the proposed intervention;

c. Quality of the type of multi-site intervention proposed and its likelihood to yield new insights on opportunities for long-term risk reduction among the targeted population and;

d. Feasibility of the strategy to involve the target population and affected communities in the research and intervention design and to inform them of research results:

(1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation;

(2) The proposed justification when representation is limited or absent;

(3) A statement as to whether the design of the study is adequate to measure differences when warranted and;

(4) A statement as to whether the plans for recruitment and outreach for

study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

5. Project Management (20 points):

The extent to which all items in the application content element are addressed:

a. Adequacy of staffing to carry out proposed activities (i.e., sufficient in number, percentage of time commitments, behavioral scientists in key project positions, and qualifications), as evidenced by their curriculum vitae and position descriptions;

b. Adequacy of facilities, data processing and analysis capacity, and systems for management of data security and participant confidentiality and;

c. Extent to which the applicant demonstrates assurance of compliance with the multisite research requirements (e.g., randomization of catchment areas and common protocol, data collection, and computer and data management systems).

6. Budget (Not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds.

7. Human Subjects (Not scored)

The applicant must clearly state whether or not human subjects will be used in research.

Funding Preferences

CDC's intention is to achieve a long-term health benefit for youth at risk for HIV infection. This announcement is exclusively for proposals that address HIV risk reduction for YMSM. Consideration will be given to obtaining diversity of target population sub-groups and geographic representation among proposals selected for funding. YMSM of color are of particular interest.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E15, Atlanta, GA 30305, no later than 30 days after the application deadline (the appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60-day State recommendation process period). The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to the CDC, they should forward them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E15, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.941.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that

inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

HIV/AIDS Requirements

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance for CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadlines

1. Preapplication Letter of Intent

A non-binding letter of intent-to-apply is required from potential applicants. An original and two copies of the letter should be submitted to the Grants Management Branch, CDC (see ''Applications'' for the address). It should be postmarked no later than July 19, 1996. The letter should identify the announcement number, name of principal investigator, and specify the activity(ies) to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

An original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, on or before August 21, 1996.

3. Deadlines

A. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Applications that do not meet the criteria in 3.A.1. or 3.A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcment 601. You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6634, email: <asm1@opspgo1.em.cdc.gov>. Programmatic technical assistance may be obtained from Robert Kohmescher, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–44, Atlanta, GA 30333, telephone (404) 639–8302, email: <rnk1@cidhiv2.em.cdc.gov>.

Please refer to Announcement 601 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000,'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000,'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION,'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Internet Home Page

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at <http://www.cdc.gov>, or at the Government Printing Office home page (including free access to the Federal Register) at <http://www.access.gpo.gov.>.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests using Internet, following all instructions in this announcement and leaving messages on the contact person's voice mail for more timely responses to any questions.

Dated: June 13, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–15570 Filed 6–19–96; 8:45 am]

BILLING CODE 4163–18–P

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Continuing Education and Development Cooperative Agreements

AGENCY: Health Resources and Services Administration (HRSA) DHHS.

ACTION: Pre-application technical assistance telephone conference.

SUMMARY: The HRSA is conducting a pre-application technical assistance telephone conference concerning the fiscal year 1996 funding available under Public Law 104–134 for Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS) Continuing Education and Development (CED) cooperative agreements. An Availability of Funds notice for these CED cooperative agreements was published in the Federal Register on April 26, 1996 at 61 FR 18613. These CED cooperative agreements are intended to support national education, information, and public policy projects in maternal and child health. Two categories of CED cooperative agreements will be awarded this year: 1 concerned with resource, educational and analytic activities; and the other concerned with population-focused analytic and related activities.

PURPOSE: To encourage and stimulate development of high quality applications. The telephone conference will offer programmatic and technical assistance and an overview of the requirements for funding projects in both categories. Further, it will provide an opportunity for prospective

applicants to ask questions of program officials.

CONTACT: Anyone interested in participating in this telephone conference should contact Mr. Pete Conway, Division of Maternal, Infant, Child and Adolescent Health, Room 18–A–39, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2250, fax: (301) 443–1296, e-mail: pconway@hrsa.ssw.dhhs.gov, by COB, June 21. Prospective participants must identify a telephone number where they can be reached by an operator for purposes of connecting to the telephone conference. They are also encouraged to submit questions in advance via fax or e-mail.

A copy of this announcement is available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb.

DATES AND TIMES: June 24, 1996, 2:00–4:00 p.m.

Dated: June 13, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–15677 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–15–P

Special Project Grants; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that applications will be accepted for fiscal year (FY) 1996 funds for Maternal and Child Health (MCH) Community Integrated Service Systems grants to support strategies for reducing infant mortality and improving the health of mothers and children through development and expansion of successful community integrated service systems. These systems are public-private partnerships of community health and other related organizations and individuals working collaboratively to use community resources to address community-identified health problems. Awards are made under the program authority of section 502(b)(1)(A) of the Social Security Act, the CISS Federal Set-Aside Program. Within the HRSA, CISS projects are administered by the Maternal and Child Health Bureau (MCHB).

Of the approximately $9.5 million available for CISS activities in FY 1996, about $7.0 million will be available to support approximately 132 new and competing renewal projects at an average of about $53,000 per award for a one-year period under the MCH CISS Federal Set-Aside Program. The remaining funds will be used to continue existing CISS projects and for other activities in support of overall CISS program goals. The actual amounts available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 4 years in duration. Funds for CISS awards are appropriated by Public Law 104–134.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Grant application materials for CISS awards must be obtained from and submitted to: Chief, Grants Management Branch, Office of Operations and Management, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: CISS, (301) 443–1440. Applicants will use Form PHS 5161–1, approved by OMB under control number 0937–0189. You must obtain application materials by mail.

Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) Wordperfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a Wordperfect 5.1 file. If you have difficulty accessing the MCHB Home Page via the Internet and need technical assistance, please contact Linda L. Schneider at 301–443–0767 or ''lschneider@hrsa.ssw.dhhs.gov''.

DATES: The deadline for receipt of applications for Health Systems Development Grants for Child Care is August 1; the deadline for all other CISS grants covered by this announcement is July 22, 1996. Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information from MCHB should be directed to Joe Zogby, Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–4393. Requests for information concerning business management issues should be directed to Arlethia Dawson, Grants Management Specialist, Grants Management Branch, Maternal and Child Health Bureau, at the address listed in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) provided for a new set-aside program under the MCH Block Grant that would be activated when the annual appropriation for Title V exceeds $600 million dollars. This has become known as the CISS program. The program seeks to reduce infant mortality and improve the health of mothers and children, including those living in rural areas and those having special health care needs, through project support for development and expansion of strategies which have proved successful

in helping communities to achieve integrated service systems.

OBRA 89 also provided the conceptual framework for strengthening Federal-State partnerships under the MCH Block Grant. States are now expected to work with their Federal and local partners to promote development of comprehensive, community-based systems of health and related services which can assure family-centered, culturally competent, coordinated care for children and their families.

CISS Phase I (FY 92–95) featured support of demonstrations of one or more Congressionally-designated service delivery strategies: home visiting activities; providers participation in publicly funded programs; one stop shopping services integration projects; not-for-profit hospital/community based initiatives; MCHB projects serving rural populations and outpatient and community based program alternatives to inpatient institutional care. These service delivery demonstrations served as focal points or platforms from which linkages were established with a variety of agencies, laying the foundation for a local system of delivery of services.

Initial CISS grants funded in FY 1992 were required to use at least one of the above-listed six strategies to achieve program objectives. In FY 1993, CISS grants were directed toward developing and/or expanding successful community integrated service systems using at least one of the six strategies. Priority was given to projects which could demonstrate a high likelihood of having continuing support beyond the federal grant period and strong community based public/private organizational collaboration, including participation of the local county/municipal health departments, the State MCH and CSHCN programs, and, where they exist, community and migrant health centers.

In FY 1994 and 1995 CISS grants supported Home Visiting for At-Risk Families (HVAF), in collaboration with the Administration for Children and Families' (ACF) Family Preservation and Support Program. The purpose of the CISS/HVAF was to assist State MCH programs to emphasize the home visiting model as an important component of care. The CISS/HVAF grants were used to support development of an enhanced health component in the ACF's Five Year State Plans for Family Preservation and Family Support Services.

Prior to establishing the CISS Phase II program priorities for FY 1996 and beyond, feedback was solicited from members of the MCH community, the 41 current CISS grantees, and the MCH–ACF Technical Assistance Group, a working group of senior State and Federal-level child health, welfare, social services, and child care officials. Beginning with FY 1996, CISS Phase II will carry on with the local systems integration activities developed in Phase I, using a variety of approaches to complement the grants announced below.

Special Concerns

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from racial and ethnic minority populations who have had limited access to care. This means that CISS projects are expected to serve and appropriately involve in project activities individuals from the populations to be served, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, a funding priority will be placed on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in both categories in this notice. An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 5 point range before funding decisions are made.

Evaluation Protocol

An MCH discretionary project, including a CISS, is expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the project activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities will not be funded.

Program Goal

The goal of the CISS program is to enhance development of service systems at the community level that are capable of addressing the physical, psychological, social well-being, and related needs of pregnant women, infants, and children, including children with special health care needs and their families. CISS projects assist communities to better meet consumer-identified needs, fill gaps in services, reduce duplication of effort, coordinate activities, increase availability of services, improve efficiency, and enhance quality of care. Programs must be developed in collaboration and coordination with the State MCH Services Block Grant programs and State efforts in community systems development.

Award Categories

Two categories of projects will be funded this year: (A) Community Organization Grants in 2 subcategories; and (B) Health System Development in Child Care Grants.

A. Community Organization Grants

These grants will support community organization activities in two priority areas: (1) local level agencies; and (2) State MCH agencies. Funds may be used to hire staff to assist in consortium building and to function as community organizers, to help formulate a plan for integrated service systems, to obtain and/or provide technical assistance, and to convene community or State networking meetings for information dissemination and replication of systems integration programs.

1. Local Level Community Organization Grants

Up to $2.5 million is available to support up to 50 new Local Level Community Organization Grants of up to $50,000 per year, beginning October 1, 1996. The project period is four years. This CISS program category provides direct support to individual communities for the purpose of arraying existing resources in the most beneficial fashion to serve the community's need. While not designed to support direct service delivery, these monies may be

used to modify functions of existing service organizations to better complement each other. The specific approach is at the discretion of each community. Because CISS projects are intended to facilitate the development of systems of services in communities, projects must be consistent with State systems development efforts. In the interest of equitable geographic distribution, special consideration for funding in this subcategory will be given to projects from communities without a currently-funded CISS project. Special consideration means that merit reviewers will assign scores based on the extent to which applicants address areas identified in this notice as meriting special consideration.

2. State Community Organization Grants

Up to $1 million will be available to support up to 20 State Community Organization Grants to State MCH agencies in an amount up to $50,000 per year, beginning October 1, 1996. The project period is four years. Preference for funding of these grants will be given to State MCH agencies. The purpose of these grants is to strengthen ties between MCHB's community and State-level system development initiatives since FY 1992, thus reinforcing the benefits of the substantial investment in State and local infrastructure-building represented by ongoing SPRANS State Systems Development Initiative (SSDI) grants as well as CISS initiatives. Among State networking activities which may be supported by these grants are: providing technical assistance to community and local organizations needing help in systems development; convening statewide meetings; and disseminating and replicating successful local/community strategies.

B. Health System Development in Child Care

Up to $2.5 million is available to support up to 59 Health Systems Development projects in an amount up to $50,000 per year, beginning October 1, 1996. The project period is three years. The purpose of these grants is to support child care systems development and improvements through collaboration and integration of health care, child care, and social support services at State and community levels. Each project will serve as a vehicle for State and community investments in systems development, service integration, and child care capacity development. Proposed systems improvements must identify and address appropriate *Healthy People 2000* health status indicators and be consistent with the *Blueprint for Action* of the Healthy Child Care America Campaign. The Healthy Child Care America Campaign is a nationally-focused initiative, co-sponsored by the MCHB and the ACF's Child Care Bureau. The campaign supports the principle that, in partnership, families, health care providers, and child care providers can promote healthy development; and increase access to preventive health services and safe physical environments for all children, including children with special health needs. Because the program is aimed at building a unified, statewide systems approach to child care service integration, preference for funding will be given to the 59 States and/or territories participating under Title V or to entities designated to assume the lead in a State or territory's child care development and service integration efforts. Proposals must show evidence of support by and collaboration between the State Title V and Child Care Directors.

Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of Title V of the Social Security Act, with special emphasis on improving service delivery to women and children from culturally distinct populations; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

Criteria for Review

The criteria which follow are derived from MCH project grant regulations at 42 CFR Part 51a or from HRSA administrative policies that apply to all MCHB discretionary grant projects. These criteria are used, as pertinent, to review and evaluate applications for awards under all CISS grant categories announced in this notice. Further guidance in this regard is supplied in application guidance materials, which may specify other criteria:

Regulatory Criteria

—The quality of the project plan or methodology.

—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.

—The extent to which the project personnel are well qualified by training and experience for their roles in the project and the applicant organization has adequate facilities and personnel.

—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

Administrative Policy Criteria

—The strength of the project's plans for evaluation.

—The extent to which the project will be integrated with the administration of the MCH Block Grant, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).

—The extent to which the application is responsive to the special concerns and program priorities specified elsewhere in this notice.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for CISS grants.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: June 17, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–15788 Filed 6–19–96; 8:45 am]

BILLING CODE 4160–19–P

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Meeting:

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Support for Enhancement of Institutional Capability.
Date: July 8–9, 1996.
Time: 8:30 a.m.–6:00 p.m.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Dr. Helen R. Sunshine, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13f, Bethesda, MD 20892–6200, Telephone: (301) 594–2881.
Purpose: To review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research: 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]

Dated: June 12, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–15775 Filed 6–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute on Drug Abuse Initial Review Group.

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: Basic Behavioral Science Research Subcommittee.
Date: July 9–11, 1996.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: AIDS Biomedical and Clinical Research Subcommittee.
Date: July 16–17, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Health Services Research Subcommittee.
Date: July 16–17, 1996.
Time: 8:30 a.m.
Place: Ritz Carlton Hotel-Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Treatment Research Subcommittee.
Date: July 16–18, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: AIDS Behavioral Research Subcommittee.
Date: July 22–23, 1996.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers; 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Program)

Dated: June 12, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–15776 Filed 6–19–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3719–N–03]

Announcement of Funding Awards for Technical Assistance and Training for Public and Indian Housing for Youth Leadership Development Project, Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Public and Indian Housing Technical Assistance and Training for Youth Leadership Development Project. This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Mike Main, Office of Crime Prevention and Security, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 (this is not a toll free telephone number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Youth Leadership funding under this notice is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1994, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million was for funding drug elimination technical assistance and training. The $500,000 available under the August 31, 1994 (59 FR 45154)

NOFA is a part of that technical assistance and training funding.

A FY 1994 NOFA published on August 31, 1994 (59 FR 45154) made up to $500,000 available for Youth Leadership grants. Due to the large number of applicants and the strong interest shown in that NOFA, the Department decided to add an additional $500,000 of funding to increase the number of awards under the NOFA. Accordingly, a Notice of Additional Funding was published on January 17, 1995 (60 FR 3434) making an additional $500,000 of funding available, for a total of up to $1 million, available under the NOFA for Training and Technical Assistance for Public and Indian Housing Youth Leadership Development Project.

This Notice announces FY 1994 funding of $1 million for grants to provide technical assistance and training to public housing agencies and Indian housing authorities in the development and training of housing authorities staff and residents to assist them in developing youth programs which focus on the enhancement of youth leadership development based on successful models which develop and build the capacity of young peoples' leadership skills. The FY 1994 awards announced in this Notice were selected for funding consistent with the provisions in the NOFA published in the Federal Register on August 31, 1994 (59 FR 45154) and the Notice of Additional Funding published on January 17, 1995 (60 FR 3434).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: June 14, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A—Fiscal Year 1994, Public and Indian Housing, Recipients of Final Funding Decisions

Program Name: Technical Assistance and Training for Public and Indian Housing for Youth Leadership Development Project

Funding recipient (name and address)	Amount approved
WAVE, 501 School Street, S.W., Suite 600, Washington, DC 20024–2754	$365,669
PRIDE, 3610 DeKalb Technology Parkway, Suite 105, Atlanta, GA 30340	299,388
DCCCA, 3312 Clinton Parkway, Lawrence, KS 66047	481,207

[FR Doc. 96–15768 Filed 6–19–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1996 Funding Opportunity for a Cooperative Agreement from the Center for Mental Health Services

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), announces that FY 1996 funds are available for a cooperative agreement for the activity discussed under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) for this activity before preparing an application.

Activity	TA Center on Evaluation.
Application deadline	07/22/96.
Estimated funds available.	$600,000.
Estimated No. of awards.	1.
Project period	3 yrs.

FY 1996 funds for this activity were appropriated by the Congress under Public Law No. 104–134. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the Federal Register (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Center's activities address issues related to Healthy People 2000 objectives: to promote the physical, social, psychological, and economic well-being of adults with mental disorders and children and adolescents with or at risk for a serious emotional, behavioral, or mental disorder. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 7/92; OMB No. 0937–0189). The Application Kit contains the GFA, the PHS 5161–1, Standard Form 424 (Face Page), and *complete instructions* for preparing and submitting applications. The Kit may be obtained from the contact person identified in Section 4.

The full text of the activity (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: HTTP://WWW.SAMHSA.GOV); SAMHSA's Bulletin Board (800–424–2294 or 301–443–0040); and the Center for Mental Health Services' Knowledge Exchange Network (KEN) (voice line 800–789–2647 or Electronic Bulletin Board 800–790–2647).

APPLICATION SUBMISSION: Applications must be submitted to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: GFA No. SM 96–03.

APPLICATION DEADLINES: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the receipt date or those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for technical information should be directed to the contact person identified in Section 4.

Requests for information concerning business management issues should be directed to: Stephen Hudak -(301) 443–4456.

SUPPLEMENTARY INFORMATION: To facilitate the use of this notice of funding availability, information has

been organized, as outlined in the Table of Contents below:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Amounts.
- Catalog of Federal Domestic Assistance Number.
- Program Contact.

Table of Contents

1. Program Background and Objectives
2. Special Concerns
3. Criteria for Review and Funding
3.1 General Review Criteria
3.2 Funding Criteria for Approved Applications
4. Specific FY 1996 Activity
5. Public Health System Reporting Requirements
6. PHS Non-use of Tobacco Policy Statement
7. Executive Order 12372

1. Program Background and Objectives

The Center for Mental Health Services (CMHS) has been given a statutory mandate to take a national leadership role in the development and demonstration of improved mental health services. Toward that end, the Center facilitates the application of scientifically established findings and practice-based knowledge to prevent and treat mental disorders, improve access, reduce barriers and promote high quality, effective programs and services for people with, or at risk for, these disorders.

2. Special Concerns

None.

3. Criteria for Review and Funding

Competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Applications will be recommended for approval or disapproval on the basis of merit. Applications recommended for approval will be assigned scores according to level of merit.

3.1 General Criteria

As published in the Federal Register on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Approved Applications

Applications recommended for approval by the peer review group and the CMHS National Advisory Council (if applicable) will be considered for funding on the basis of their overall technical merit as determined through the review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Specific FY 1996 Activity

Technical Assistance Center for the Evaluation of Mental Health Systems Change.

This activity will be conducted as a cooperative agreement program. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guiding, coordinating, and participating in programmatic activities (e.g., participation in publication of findings) and on steering committees. Periodic meetings, conferences, and/or communications with the award recipients may be held to review mutually agreed upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

- Application Deadline: July 22, 1996.
- Purpose: A cooperative agreement will be awarded to support a Technical Assistance Center (TA Center) for the Evaluation of Mental Health Systems Change. The goal of the TA Center will be to provide technical assistance in the area of evaluation to State and local public entities as well as private nonprofit entities within the States with a primary focus on adult mental health systems. Broadly speaking, the TA Center should accomplish this goal through increasing the capacity of its customers to conduct evaluations; through direct and indirect technical assistance activities; through encouraging the evaluation of systems implementation strategies and changes at State and sub-State levels that have the potential for providing useful knowledge to organizations considering similar changes in other areas; and through consensus building within States and local communities about ''best practices'' based on the results of these, and related, evaluations. Funds will be awarded through a cooperative agreement mechanism to allow CMHS staff to coordinate this effort with related technical assistance and information dissemination efforts. These efforts include the CMHS Knowledge Exchange Network, the TA Center for State Mental Health Planning, and the National TA Center for Children's Mental Health.
- Priorities: None.
- Eligible Applicants: Applications may be submitted by public organizations, such as units of State or local governments and by private nonprofit and for-profit organizations such as community-based organizations, universities, colleges and hospitals, including active CMHS Division of Demonstration Program TA Center grantees.
- Grants/Amounts: 1 award estimated at approximately $600,000 in the first year.
- Catalog of Federal Domestic Assistance Number: 93.119.
- Program Contact: Roger Straw, Ph.D., Division of Demonstration Programs, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3606.

5. Public Health System Reporting Requirements

This activity is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the

physical and mental health of the American people.

7. Executive Order 12372

This activity is not subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100.

Dated: June 14, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–15678 Filed 6–19–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Reinstatement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the collection of information requirement described below to OMB for reinstatement approval under the provisions of the Paperwork Reduction Act. Copies of the collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer or the survey coordinator at the phone numbers and/or addresses listed below.

DATES: Comments must be submitted on or before August 19, 1996.

ADDRESSES: Harvest Data Coordinator, Alaska Subsistence Office, 1011 East Tudor Road, Anchorage, Alaska 99503. Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Miller, Alaska Subsistence Office, 907/786–3863.

Title: Federal Subsistence Hunt Application ad Report OMB Approval Number: 1018–0075.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) allows the taking of fish and wildlife on public lands in Alaska for subsistence use. Where the Federal Subsistence Board (Board), as described in 50 CFR 100.10, has made a customary and traditional use determination regarding subsistence of a specific fish stock or wildlife population, only those Alaskans who are residents of rural areas or communities so designated are eligible for subsistence taking of that population, on public lands for subsistence uses. Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board, all Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in 50 CFR 100.

The Board requires information on animals harvested, days hunted, success rate, transportation, harvest date, etc., so that it may make recommendations on subsistence use. Such information is used in determining priorities for subsistence uses among rural Alaskan residents.

Description of Respondents: Individuals and households.

Completion Time: The reporting burden is estimated to be .025 hours (15 minutes) per response.

Annual Responses: 4,500.

Annual Burden Hours: 112.5.

Dated: June 11, 1996.

Phyllis H. Cook,

Service Information Collection Clearance Officer.

[FR Doc. 96–15741 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–55–M

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Alaska Subsistence Office is planning to submit a proposal for the collection of information listed below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer or the Alaska Subsistence Office at the phone numbers and/or addresses listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer.

DATES: Comments must be submitted on or before August 19, 1996.

ADDRESSES: Alaska Subsistence Office, (Attention: Harvest Data Coordinator), 1011 East Tudor Road, Anchorage, Alaska 99503. Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Miller, Harvest Data Coordinator, 907/786–3863 or Phyllis H. Cook, 703/358–1943.

SUPPLEMENTARY INFORMATION:

Title: Federal Subsistence Designated Hunter Permit Application.

OMB Approval Number: (To be Assigned).

Abstract: Under the Alaska National Interest Lands Conservation Act (ANILCA) allows the taking of fish and wildlife on public lands in Alaska for subsistence use. In order to take fish and wildlife in public lands for subsistence uses, users must possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State, or Federal permits, harvest tickets or tags as required by the Federal Subsistence Board (Board). Where the Board, as described in 50 CFR 100.10, has made a customary and traditional use determination regarding subsistence of a specific fish stock or wildlife population, only those Alaskans who are residents or rural areas or communities so designated are eligible for subsistence taking of that population, on public lands for subsistence uses. Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board. All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in 50 CFR 100.

Information on the hunter, qualified subsistence users hunted for and their animals harvested, location, and sex is needed by the Board in making recommendations on subsistence use. The information is used to determine priorities for subsistence among rural Alaskan residents.

Frequency: On occasion.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to be .025 hours (15 minutes) per response.

Annual Responses: 7,000.

Annual Burden Hours: 175.

Dated: June 12, 1996.

Phyllis H. Cook,

Service Information Collection Clearance Officer.

[FR Doc. 96–15742 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WY–060–1620–01, WYW136142, WYW136458]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Scoping on two coal lease applications in the decertified Powder River Basin Federal Coal Production Region, Wyoming. The Bureau of Land Management (BLM) is conducting a public scoping period to identify issues and concerns related to two separate coal lease applications received from Powder River Coal Company (PRCC) and Kerr-McGee (K–M) Coal Corporation.

SUMMARY: BLM received a coal lease application (LBA) from PRCC on March 23, 1995, for approximately 4,020 acres (and an estimated 500 million tons of coal, in an area adjacent to the company's North Antelope and Rochelle Mines in Campbell County, Wyoming (WYW136142). BLM received a coal lease application (LBA) from K–M Coal Corporation on April 14, 1995, for approximately 4,000 acres and an estimated 432 millions tons of coal, in an area adjacent to the company's Jacobs Ranch Mine in Campbell County, Wyoming (WYW136458). Both applications were filed as maintenance tract lease-by-applications (LBAs) under the provisions of 43 Code of Federal Regulations (CFR) 3425.1. The Powder River Regional Coal Team (RCT) reviewed both lease applications at their April 23, 1996, meeting in Cheyenne, Wyoming and recommended that both be processed.

BLM is considering several options to satisfy the requirements of the National Environmental Policy Act (NEPA) in processing these two leases: preparing separate NEPA documents for each lease application or preparing one NEPA document to analyze the impacts of both lease applications. The RCT recommended that BLM include a request for comments from the public on which of these options would best satisfy NEPA as part of the scoping process. An updated cumulative impact analysis for the southern group of mines in the Wyoming Powder River Basin will be included under either NEPA option. Under the LBA process, most of the Federal coal leased in the Wyoming portion of the Powder River Basin Federal Coal Region has been leased by the southern grouping of mines, which consists of the Jacobs Ranch, Black Thunder, North Rochelle, Rochelle, North Antelope, and Antelope mines.

After reviewing the comments received during the scoping period, BLM will make a decision on how to address NEPA for these two applications, and inform the public of what that decision is. The U.S. Forest Service and Office of Surface Mining will be cooperating agencies on the document or documents. DATES: As part of the public scoping process, a public scoping meeting is scheduled on June 27, 1996, at 7:00 PM, at the Holiday Inn, 2009 South Douglas Highway, in Gillette, Wyoming. If you have concerns or issues that the BLM should address in processing these two leases, you can express them verbally at the scoping meeting in Gillette or send them in writing to BLM by July 31, 1996, at the address given below.

ADDRESSES: Please address questions, comments or concerns to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On March 23, 1995, PRCC filed a coal lease application WYW136142 with the BLM for a maintenance tract LBA for the following lands, which contain an estimated 550 million tons of coal:

T. 41 N., R. 70 W., 6th P.M., Wyoming

Section 6: Lots 10 thru 13, and 18 thru 21;
Section 7: Lots 6, 11, 14, and 19;
Section 18: Lots 5, 12, 13, and 20;

T. 42 N., R. 70 W., 6th P.M., Wyoming

Section 31: Lots 5 thru 20;
Section 32: Lots 1 thru 16;
Section 33: Lots 1 thru 16;
Section 34: Lots 1 thru 16;
Section 35: Lots 1 thru 16;

T. 41 N., R. 71 W., 6th P.M., Wyoming

Section 1: Lots 5, 6, 11, and 12;
Containing 4,022.960 acres more or less.

The North Antelope and Rochelle Mines are contiguous mines which are both adjacent to the lease application area. Both mines have approved mining and reclamation plans. The Rochelle Mine has an air quality permit approved by the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD) to mine up to 30 million tons of coal per year. The North Antelope Mine has an air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to PRCC, no increase in planned production would occur at either mine solely from the acquisition of the proposed lease; the additional tonnage would extend the life of both mines.

PRCC previously acquired Federal coal lease WYW122586, containing approximately 3,493 acres adjacent to the North Antelope and Rochelle Mines, using the competitive LBA process, effective 10/1/92.

On April 14, 1995, K–M Coal Corporation filed an LBA WYW136458 with the BLM for a maintenance tract for the following lands, which contain an estimated 432 million tons of coal:

T. 43 N., R. 70 W., 6th P.M., Wyoming

Section 4: Lots 8, 9, and 15 thru 18;
Section 5: Lots 5 thru 20;
Section 6: Lots 8 thru 23;
Section 7: Lots 5 thru 7; Lot 8 (N½); Lots 9 thru 12; Lot 13 (N½ and SE¼); Lot 19 (NE¼);
Section 8: Lots 1 thru 16;
Section 9: Lots 3 thru 6 and Lots 11 thru 13;

T. 43 N., R. 71 W., 6th P.M., Wyoming

Section 1: Lots 5 thru 15, 19, and SE¼NE¼;
Containing 3,354.265 acres more or less.

The acreage applied for in K–M's application is known as the Thundercloud tract. It is described in a 1983 BLM document entitled ''Powder River Coal Region Tract Summaries'', which was prepared in anticipation of a Federal coal sale proposed for 1984 that did not take place.

The Jacobs Ranch Mine has a air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to K–M, the additional coal reserves would extend the life of the current mining operations at the Jacobs Ranch Mine.

K–M previously acquired Federal coal lease WYW117924, containing approximately 1,079 acres adjacent to the Jacobs Ranch Mine, under the competitive LBA process, effective 10/1/92.

The major issues related to these to leases applications that have been identified to date include the potential increases in impacts to air quality, groundwater, and wildlife that may occur if these leases are issued. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing these leases, or if you have comments on whether BLM should prepare one NEPA document or two, please address them in writing to the above individuals or state them verbally at the public scoping meeting scheduled for June 27, 1996, in Gillette, Wyoming. BLM will accept written comments at the address should above through July 31, 1996.

Dated: June 10, 1996.

Robert A. Bennett,

Deputy State Director, Minerals & Lands.

[FR Doc. 96–15377 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–22–M

[CA–990–0777–68]

Relocation/Change of Address/Office Closure; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On June 27, 1996, the Bureau of Land Management's (BLM) California State Office will move to a new location. This notice provides information regarding that move.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Lou West, BLM California State Office (CA–912), 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889; telephone number 916–979–2835.

SUPPLEMENTARY INFORMATION: Beginning on June 27, 1996, BLM's California State Office will be moving to a new location. The move will affect the following activities or considerations as follows:

(A). Public Access to Records

During the period of June 17 through July 10, 1996, none of the records maintained by that office will be available for public inspection. However, the Public Room will remain open during the move to provide the following limited services: (1) Provide general or recreational information, (2) Distribute forms for mining claim maintenance fee/waiver filing, (3) Process maintenance fees for existing mining claims, (4) Process new mining claim locations, and (5) Sell maps. It is anticipated that the entire office will be operational, at the new location, on July 15, 1996.

(B). New Street Address and New Mailing Address

2135 Butano Drive, Sacramento, California 95825–0451; please address all correspondence to the new address after July 15, 1996.

(C). Telephone Numbers

Existing telephone numbers will remain unchanged after the move.

Dated: June 13, 1996.

Ronald R. Fox,

Deputy State Director, Administration.

[FR Doc. 96–15700 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–40–P

(AZ–933–05–5410–00–A018; AZA 26580)

Arizona, Conveyance of Federally-Owned Mineral Interests, Yavapai County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: (1) Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), Rex G. and Ruth G. Maughan applied in 1992 to purchase the mineral estate on lands in Yavapai County. The mineral interests were first segregated on June 24, 1992 (57 FR 28184) and again on June 23, 1994 (59 FR 32459). Some mineral interests were added on June 7, 1995, and some of the segregations were terminated (60 FR 35421). The application currently contains mineral interests on the following lands:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 2 W.,
  Sec. 8, SW¼SW¼.
T. 10 N., R. 3 W.,
  Sec. 10, NE¼SW¼, SW¼SE¼;
  Sec. 11, SE¼SE¼;
  Sec. 12, SW¼SW¼;
  Sec. 14, NW¼NW¼, S½NW¼;
  Sec. 24, NE¼;
  Sec. 25, lots 3–4, S½N½, S½ EXCEPT a tract of land located in the W½ described as follows: BEGINNING at the South quarter corner of said sec. 25; thence S. 89°56′ W., 2643.30 feet to the Southwest corner of said sec. 25; thence N. 00°05′ W., 5582.28 feet to the Northwest corner of said sec. 25; thence N. 88°17′ E., 859.12 feet along the North line of said sec. 25; thence S. 00°05′ E., 850.0 feet; thence S. 40°11′10″ E.; 2768.04 feet, more or less, to the center of said sec. 25; thence S. 0°06′50″ E., 2640 feet, more or less, to the South quarter corner of said sec. 25 and the POINT OF BEGINNING. (In lot 3, SE¼NW¼, E½SW¼, the United States only reserved oil and gas.)
T. 11 N., R. 3 W.,
  Sec. 8, lots 1, 10, N½NE¼, NW¼SW¼, E½SE¼;
  Sec. 9, W½, W½SE¼;
  Sec. 12, NE¼.
  Sec. 17, lot 2, SW¼NW¼;
  Sec. 19, E½;
  Sec. 20, W½, SE¼;
  Sec. 21, W½;
  Sec. 29, NW¼;
  Sec. 30, NE¼.
T. 11 N., R. 4 W.,
  Sec. 3, S½N½, NW¼SW¼;
  Sec. 4, SE¼SE¼;
  Sec. 9, NE¼NE¼, S½N½;
  Sec. 10, lot 2, SW¼NW¼, E½SW¼, NW¼SE¼;
  Sec. 15, E½NW¼, SW¼;
  Sec. 22, NW¼;
  Sec. 26, NW¼SW¼;
  Sec. 29, lots 1–12, inclusive, NW¼.

The areas described aggregate 4,838.37 acres.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office, P.O. Box 16563, Phoenix, AZ 85011–6563, (602) 650–0518.

Dated: June 11, 1996.

Mary Jo Yoas,

Chief, Lands and Minerals Adjudication Section

[FR Doc. 96–15740 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–32–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of plats of survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next Federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridan, California

T. 6 N., R. 13 E.,—Supplemental plat of section 8, accepted May 7, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area
T. 2 S., R. 6 W.,—Resurvey, meets-and-bounds survey, and corrective resurvey, (Group 1024) accepted May 24, 1996, to meet certain administrative needs of the National Park Service, Golden Gate National Recreation Area (GGNRA) Boundary
T. 26 S., R. 11 E.,—Supplemental plat of the W½ of Section 7, accepted May 29, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area

San Bernardino Meridian, California

T. 9 N., R. 1 W.,—Supplemental plat of portions of sections 19 and 20, accepted May 24, 1996, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats are related field notes will

be furnished to the public upon payment of the appropriate fee.

Dated: June 11, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–15739 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–40–M

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

May 24, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., May 24, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plats (in 2 sheets) representing the dependent resurvey of a portion of the north and south center line, portions of certain mineral claims, a portion of the I.O.O.F. cemetery, and the Metes-and-Bounds survey of certain irregular lot lines in section 11, T. 3 S., R. 73 W., Sixth Principal Meridian, Group 1121, Colorado, were accepted April 30, 1996.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 21, T. 51 N., R. 8 E., New Mexico Principal Meridian, Group 1046, Colorado, was accepted April 23, 1996.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines and the survey of the subdivision of certain sections in T. 3 S., R. 92 W., Sixth Principal Meridian, Group 1093, Colorado, was accepted April 15, 1996.

This survey was executed to meet certain administrative needs of the U. S. Forest Service, Rocky Mountain Region.

The plat representing the dependent resurvey of a portion of the Colorado-New Mexico State Line through Range 2 West, a portion of the west boundary and the subdivisional lines, and the subdivision of sections 18 and 19, T. 32 N., R. 2 W., New Mexico Principal Meridian, Group 1049, Colorado was approved April 18, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the north boundary (north boundary Southern Ute Indian Reservation) and a portion of the subdivisional lines, T. 34 N., R. 9 W., (South of the Ute Line), New Mexico Principal Meridian, Group 1127, Colorado, was approved April 30, 1996.

The plats (in 17 sheets) representing the metes-and-bounds survey of a portion of the north and south boundaries of the Highline Canal (Tracts 1–58), and the dependent resurvey of portions of the west boundary and certain subdivisional lines, and the subdivision of certain sections, T. 11 S., R. 98 W., Sixth Principal Meridian, Group 1102, Colorado, were approved April 22, 1996.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

Barry G. Krebs,

Acting Chief Cadastral Surveyor for Colorado

[FR Doc. 96–15512 Filed 6–20–96; 8:45 am]

BILLING CODE 4310–JB–P

[WY–989–1050–P]

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. 49 N., R. 72 W., accepted May 20, 1996
T. 15 N., R. 76 W., accepted June 6, 1996
T. 53 N., R. 101 W., accepted May 20, 1996
T. 56 N., R. 103 W., accepted May 20, 1996

Sixth Principal Meridian, Nebraska

T. 25 N., R. 10 E., accepted May 31, 1996
T. 33 N., R. 4 W., accepted May 31, 1996

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 protests(s) and or appeals(s). A plat will not be officially filed until after disposition of protest(s) or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, 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, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: June 11, 1996.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 96–15747 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–22–M

[UT–942–1430–06; UTU–74247]

Proposed Withdrawal; Notification of Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior .

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 3,385.9 acres of public land near Moab, Utah, to protect the recreational, scenic, geologic, cultural, and fish and wildlife values of Westwater Canyon of the Colorado River. This notice closes these lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing. A public meeting, in connection with the proposed withdrawal, will be held on October 16, 1996 at 7:00 p.m. in the BLM Conference Room, 82 East Dogwood Avenue, Moab, Utah.

DATES: Comments on the proposed withdrawal and public meeting should be received on or before September 18, 1996.

ADDRESSES: Comments should be sent to the Utah State Director, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Karl Fridberg, Utah State Office, (801) 539–4101.

SUPPLEMENTARY INFORMATION: On May 29, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Salt Lake Meridian

T. 20 S., R. 25 E.,
Section 23, Lots 3–5, SW¼NE¼, SE¼NW¼, S½SW¼; SW¼SE¼;

Section 25, S½NW¼, NW¼SW¼, W½NE¼SW¼;
Section 26, NW¼NE¼, S½NE¼, NE¼NW¼, E½SE¼NW¼, E½E½SE¼, SE¼;
Section 33, N½SW¼NE¼, NE¼SE¼NW¼;
Section 34, S½NE¼SE¼, S½SE¼;
Section 35, NE¼NE¼NE¼, W½NE¼NE¼, W½NE¼, W½SE½NE¼, E¼NE¼NW¼, SE¼NW¼, W½SW¼, W½E½SW¼, NE¼NE¼SW¼, N¼NW¼SE¼, NW¼NE¼SE¼;
T. 21 S., R.25 E.,
Section 2, NW¼, N¼NE¼SW¼, SW¼NE¼SW¼, NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼;
Section 3, N½NE¼, SE¼NE¼, E½E½SE¼;
Section 7, E½E½SE¼;
Section 8, SE¼SW¼NW¼NE¼, SW¼SE¼NW¼NE¼, SW¼NE¼, S½SW¼NW¼, SE¼NW¼, SW¼, W½SE¼;
Section 9, SW¼SE¼, S½SE¼SE¼;
Section 10, E½NE¼NE¼, NE¼SW¼NE¼, S½SW¼NE¼, SE¼NE¼, E½NE¼SW¼, S½SW¼SW¼, SE¼SW¼, SE¼;
Section 11, NW¼, N½N½SW¼, SW¼NW¼SW¼, W½SW¼SW¼, NW¼NW¼SE¼;
Section 14, W½NW¼NW¼;
Section 15, N½NE¼, W½SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼;
Section 17, Lot 4, S½N½SE¼, S½SE¼;
Section 18, E½NE¼NE¼;
Section 19, N½SE¼SE¼;
Section 20, NE¼NE¼, N½SE¼NE¼, E½NE¼NW¼, NW¼NW¼SW¼;
Section 21, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, NW¼SE¼NW¼.

The area described contains approximately 3, 385.9 acres in Grand County, Utah.

The purpose of the proposed withdrawal is to protect the recreational values of Westwater Canyon. Westwater Canyon has long been one of the most popular white water rafting areas in the Western United States. In addition to its recreational values, Westwater has other significant resource values. Six threatened or endangers species of animals are present in the corridor and it contains outstanding geologic features, scenery, and important historic and cultural sites.

For a period of 90 days from the date of publication of this notice, all persons wishing to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that a public meeting, in connection with the proposed withdrawal, is scheduled for October 16, 1996 at 7:00 p.m. in the BLM Conference Room, 82 East Dogwood Avenue, Moab, Utah.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during the segregative period are leases, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: June 12, 1996.

Roger D. Zortman,

Acting State Director.

[FR Doc. 96–15699 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of renewal of information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend a currently approved collection of information for abandonment of wells on the Outer Continental Shelf (OCS). The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by August 19, 1996.

ADDRESSES: Direct all written comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Minerals Management Service, telephone (703) 787–1562.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart G, Abandonment of Wells Abstract: The Outer Continental Shelf Lands Act (OCSLA) gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on resources of the OCS; and preserve and maintain free enterprise competition. The OCSLA Amendment of 1978 amended section 3(6) of the OCSLA to state that ''operations in the outer Continental Shelf should be conducted * * * using technology, precautions, and techniques sufficient to prevent or minimize * * * physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

To do this, the Secretary has authorized the Director of MMS to issue regulations governing OCS oil and gas and sulphur lease operations. The rules governing temporary abandonment of a drilling well are prescribed in 30 CFR Part 250, Subpart, G Abandonment of Wells.

In order for MMS to decide the necessity for allowing a well to be temporarily abandoned, the lessee/operator must show that there is a reason for not permanently abandoning the well and that the temporary abandonment is not a significant threat to fishing, navigation, or other uses of the seabed. If MMS did not collect the information, MMS could not determine: (a) The intent of the lessee, (b) if the final disposition of the well is being diligently pursued, (c) any deviations from the approved Exploration or Development and Production Plan, and (d) if the lessee/operator has documented the temporary plugging of the well and has marked the location.

Lessees' proprietary information submitted with an abandonment plan will be protected according to the Freedom of Information Act and 30 CFR 250.18. The collection does not include items of a sensitive nature. The requirement to respond is mandatory.

Description of Respondents: Federal OCS oil and gas lessees.

Frequency: On occasion.

Estimated Number of Respondents: 130 lessees making an estimated 1,550 annual reports per year.

Estimate of Burden: Average of one-half hour per response.

Estimate of Total Annual Burden Hours: 775 burden hours.

Estimate of Total Annual Cost to Respondents for Burden Hours: Based on $35 per hour, the total cost to lessees is estimated to be $27,125.

Estimate of Total Other Annual Costs to Respondents:

There are no other known cost burdens to the respondents.

Type of Request: Extension of currently approved collection.

OMB Number: 1010–0079.

Form Number: N/A.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval.

All comments will become a matter of public record.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total Capital and startup cost component and

(b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collection information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not association with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Bureau Clearance Officer: Carole A. deWitt, (703) 787–1242.

Dated: June 13, 1996.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 96–15746 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–MR–M

Using Third Parties to Certify Training Programs for Lessee and Contractor Employees Working in Outer Continental Shelf (OCS) Oil, Gas, and Sulfur Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS requires certain people who work on the OCS to complete training programs certified by MMS. The MMS is considering having one or more third parties administer the training program certification process and has proposed a revision of MMS regulations to provide for this. The MMS, while not yet looking for third parties, invites questions on or comments about the role a third party might play in training program certification, should a decision be made to use them.

DATES: The public is invited to comment on this notice. The MMS will consider all comments we receive by July 22, 1996.

ADDRESSES: You may mail or hand-carry your written comments on this notice to the Department of the Interior; Minerals Management Service, Mail Stop 4810; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Information and Training Branch.

FOR MORE INFORMATION CONTACT: Mr. Joseph Levine, Chief, Information and Training Branch, telephone (703) 787–1033 or fax (703) 787–1575.

SUPPLEMENTARY INFORMATION: The MMS has two principal objectives for using third parties—

- improving workplace safety, worker training, and preventing pollution through the innovation third parties could bring by serving as ''think tanks'' for improved training; and
- reducing government costs by shifting them to the regulated industry.

The MMS has included a provision allowing the use of third parties in the proposed revisions (Federal Register, vol. 60, p. 55683, 11/2/95) to its OCS worker training regulations (30 CFR 250, Subpart O, Training). The MMS decision to use third parties depends, in part, on whether MMS can identify and secure one or more suitable third parties. When released, the final rule will reflect whether MMS believes it will be able to do this. If MMS decides not to use third parties to do certification work, it would continue its role as certifier, and it might begin to recover costs from organizations seeking training program certification. This would not provide all the benefits of using a third party, but it would shift certification costs away from MMS.

Current Program

Certain OCS oil and gas workers must pass job-specific training as required by the Subpart O regulations. The organization that provides the training gives each worker who passes it an MMS training certificate. Workers must be re-certified from time to time through additional training. The training organization provides MMS with information on worker certification within 30 days after a worker successfully completes training. The MMS monitors worker training and certification in a database. Each year MMS must update about 20 percent of the database's approximate 40,000 records.

A training organization that teaches Subpart O training must have its programs reviewed periodically by MMS to determine whether they meet all regulatory requirements. If they do, MMS certifies the training programs conditionally, pending a successful onsite evaluation by MMS. Certification to teach a Subpart O training program is valid for 4 years. A training organization may request a 4-year renewal of a certified program at any time expect during the last 90 days of the initial certification period. The MMS treats a renewal application the same as it does an application for a new program.

There are about 60 training organizations teaching MMS-approved programs in drilling, well-completion, well-workover, and well-servicing well control operations. The MMS processes an average of 15 requests for training program certification or re-certification each year.

The MMS conducts unannounced training site evaluations on 10 percent of all certified training programs each year. These evaluations, which follow standard procedures (i.e., appropriate entrance and exit interviews with students, instructors, and administrative staff, and good record checking) ensure that organization—

- adhere to their approved training plans and technical manuals; and
- maintain a proper learning atmosphere with regard to classroom instruction, hands-on instruction, and testing.

The MMS also conducts unannounced audits on 25 percent of all certified training programs each year. These audits emphasize program record maintenance, classroom layout and function, and classroom or hands-on instruction. Finally, MMS tests students at the training site on a random basis to verify that they understand the curriculum.

Duties of a Third Party

If adopted, third parties would continue much of what MMS does under the current program. They would also report periodically to MMS on their activities. These reports would include any significant certification or monitoring issues, ideas for improving training programs and techniques, and recommendations for enhancing worker safety and protecting the environment.

Some specifics may include—

- reporting to MMS on the certified training programs and the associated training organizations;
- evaluating and reporting to the MMS the relationships between training program requirements and incidents that occur at offshore facilities (e.g., analyses of offshore operators' ''near-miss'' and well ''kick'' data and well blowout prevention equipment); and
- recommending changes to the certification process or MMS training program requirements.

Qualifications of a Third Party

The MMS will consider several factors in choosing a third party.

Certification fee structure. MMS would not pay third parties to do certification work. Instead, third parties would charge training organizations a service fee. The MMS would determine whether a fee is reasonable and equitable.

Certifier's credentials. Third parties should have knowledge of and practical experience with oil and gas drilling, well-completion, well-workover, well-supervising, and/or production activities. They also should be experienced at assessing teaching credentials and curricula. Training programs may include traditional instructor/classroom training as well as other training techniques (e.g., team-based or computer-based).

Reliability and responsiveness. Third parties would have to dedicate sufficient staff and resources to handle anticipated workloads; demonstrate that they can process certification requests competently and promptly; and install a system to maintain complete, up-to-date, and accessible records.

Objectively. To avoid conflicts of interest, third parties could not consider certification requests from training organizations in which either the third party or the organization held a financial or business interest in the other. Third parties would honor certification requests from any other training organization. The MMS would expect third parties to develop a process for objectively reviewing training organization appeals.

Training program assessment capabilities. Third parties would have to demonstrate they can assess training program performance. While MMS would not insist that third parties use the current monitoring techniques, MMS would expect a comparable program to be in place. Also, third parties would have to emphasize ''after-the-school'' workforce performance appraisals. In particular, MMS is interested in methods that assess knowledge retention, and how the training is applied in the workplace. Third parties would provide MMS with feedback on worker training improvements.

MMS oversight. Third parties would assist MMS in its oversight role by helping investigate complaints about certification determinations and cooperating in MMS audits. The MMS also would expect third parties to grant MMS *ex officio* status on any of its governing boards or executive/management committees. Third parties would consult with the MMS on concerns over whether a proposed program meets MMS requirements. This might be important when third parties have to certify programs that involve new, unusual, or alternative techniques.

Dated: June 10, 1996.

Thomas A. Readinger,

Acting Associate Director for Offshore Mineral Management.

[FR Doc. 96–15554 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Dayton Aviation Heritage Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESS: Monday, July 22, 1996; 2 to 4 p.m., Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA: This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: June 5, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–15716 Filed 6–19–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1996 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to hire and/or rehire additional sworn law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or jurisdictions to establish a policing agency. Eligible applicants include State, local, and Indian policing agencies, jurisdictions seeking to establish a new policing agency and other agencies serving specialized jurisdictions, such as transit, housing, college, school, or natural resources.

DATES: COPS Universal Hiring Program Application Kits will be available in mid-June 1996. There will be three application deadlines for the Universal Hiring Program: July 15, 1996, for Round 1; August 15, 1996, for Round 2; and September 15, 1996, for Round 3. Applications not funded in Rounds 1 and 2 will be carried over to subsequent rounds.

ADDRESSES: COPS Universal Hiring Program Application Kits will be mailed

to all eligible agencies or may be obtained by writing to COPS Universal Hiring Program, 1100 Vermont Avenue, NW, Washington, DC 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed applications should be sent to COPS Universal Hiring Program, COPS Office, 1100 Vermont Avenue, N.W., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or to establish a new policing agency, through grants for up to three years. All policing agencies, as well as jurisdictions considering establishing new policing agencies, are eligible to apply for this program. In addition, policing agencies serving specialized jurisdictions, such as transit, housing, college, school, natural resources, and others, are eligible to apply for this program.

There are three application deadlines for this program: July 15, 1996, for Round 1; August 15, 1996, for Round 2; and September 15, 1996, for Round 3. Departments may apply before any one of the deadlines and equal consideration will be given to applications in any round. Applications which are not funded in Round 1 or 2 will be carried over the subsequent rounds.

All applicants will be asked to provide basic community policing and planning information for their area of jurisdiction. In addition, new applicants serving jurisdictions of 50,000 and over, as well as all those jurisdictions seeking to establish a department and agencies serving specialized jurisdictions (such as transit, housing, college, school, or natural resources), will be asked to provide additional information relating to the applicant's community policing plan, local community policing initiatives and strategies, local community support for the applicant's community policing plans, and plans for retaining the officers at the end of the grant period. In addition to the requested community policing information, all applicants will be asked to submit a streamlined budget summary containing information relating to planned hiring levels, salary and fringe benefits, and decreasing federal share requirements. The COPS Universal Hiring Program Application offers two alternative budget worksheets which are tailored to the number of officers requested by each applicant; applicants requesting five or fewer officers will complete one budget worksheet for each officer, while applicants requesting more than five officers will complete a single budget worksheet based on the average yearly cost per officer.

Grants will be made for up to 75 percent of the total entry-level salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state of local funds. Waivers of the non-federal matching requirement may be requested under this program, but will be granted only upon a showing of extraordinary fiscal hardship. Grant funds may be used only for entry-level salaries and benefits. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant.

In hiring new officers with a COPS Universal Hiring Program grant, grantees must follow standard local recruitment and selection procedures. All personnel hired under this program will be required to be trained in community policing. In addition, all personnel hired under this program must be *in addition to*, and not in lieu of, other hiring plans of the grantees.

An award under the COPS Universal Hiring Program will not affect the eligibility of an agency for a grant under any other COPS program

The Catalog of Federal Domestic Assistance reference number for this program is 16.710.

Dated: June 7, 1996.

Joseph E. Brann,

Director.

[FR Doc. 96–15701 Filed 6–19–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Community Oriented Policing Services; Police Corps, Notice of Availability

AGENCY: Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice invites the submission of State Plans for the implementation of the Police Corps. The Police Corp provides scholarships and financial assistance for educational expenses to qualified individuals in participating States in return for a commitment to devote four years of service as a member of a State or local police force. All States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible to submit a State Plan.

DATES: Invitations to submit a State Plan and background materials will be mailed to the chief executives of eligible States and other jurisdictions during the week of June 10, 1996. State Plans for the FY 1996 Police Corps pilot project should be submitted by July 31, 1996.

ADDRESSES: State Plans should be submitted to Joseph E. Brann, Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Avenue, N.W., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Questions regarding preparation of a State Plan should be directed to L. Anthony Sutin, Deputy Director, at (202) 514–3750. General inquiries regarding the Police Corps should be directed to the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

Dated: June 10, 1996.

Joseph E. Brann,

Director.

[FR Doc. 96–15702 Filed 6–19–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Dominion Semiconductor

Notice is hereby given that, on March 13, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Dominion Semiconductor, L.L.C. (''Dominion'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of

the parties are: Virginia L.L.C. Holding, Inc., Armonk, NY; and Toshiba America Electronic Components, Inc., Irvine, CA.

The nature and objectives of the joint venture are the development, construction, ownership and joint operation of a manufacturing facility in Manassas, Virginia to manufacture semiconductor products.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–15703 Filed 6–19–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Devicenet Vendor Association, Inc.

Notice is hereby given that, on May 28, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Open DeviceNet Vendor Association, Inc. (''ODVA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: Advanced Micro Controls, Inc., Terryville, CT; Advantech Co., Ltd., Taipei, TAIWAN; Caterpillar, Inc., Peoria, IN; Danfoss, Rockford, IL; Danfoss A/S Nordborg, DENMARK; Elektro Beckhoff GmbH, Verl, GERMANY; Exxact, Hückelhoven, GERMANY; Granville-Phillips Co., Boulder, CO; Hewlett-Packard Company, San Jose, CA; High Country Tek, Inc., Nevada City, CA; HMS Fieldbus Systems AB, Halmstad, SWEDEN; Hassbjer Micro Systems AB, Halmstad, SWEDEN; Horner Electric, Inc., Indianapolis, IN; IMI Norgren Limited, Lichfield, ENGLAND; IMI PCC, Birmingham, ENGLAND; Industrial Indexing Systems, Inc., Victor, NY; ARO Fluid Products Division of Ingersoll-Rand, Inc., Woodcliff Lake, NJ; Institut für Elektriche MeBtechnik und Grundlagen der Elektrotechnik, Braunschweig, GERMANY; Intellution, Inc., Norwood, MA; Emerson Electric, St. Louis, MO; International Motion Controls, Chicago, IL; Kollmorgen Industrial Drives, Radford, VA; Kollmorgen Corporation, New York, NY; National Instruments Corporation, Austin, TX; NetSafety Monitoring, Inc., Calgary, Alberta, CANADA; New Technology, Inc., Aurora, CO; PAC Enterprises, Denver, CO; OASYS Group, Inc., Naperville, IL; Olflex Wire & Cable, Inc., Fairfield, NJ; U.I. Lapp GmbH & Co. KG, Stuttgart, GERMANY; OPTO 22, Temecula, CA; Robicon, New Kensington, PA; High Voltage Engineering, Inc. Wakefield, MA; S.E. Peterlongon, Gerenbano, ITALY; Steeplechase Software, Inc., Ann Arbor, MI; Steinbeis Transferzentrum Prozessaubomatiesierung, Weingarten, GERMANY; Steinbeis Stiffung für Wirtschaflsfoscheiung, Stuttgart, GERMANY; Tait Control Systems, Ltd., Hamilton, NEW ZEALAND; Ten X Technology, Inc., Austin, TX; Toyoda Machine Works, Ltd., Aichi, JAPAN Unitrode, Inc., Merrimack, NH; Vorne Industries, Inc., Itasca, IL; Warwick Manufacturing Group, Coventry, ENGLAND; University of Warwick, Coventry, ENGLAND; Wonderware Corporation, Irvine, CA; and Wizdom Controls, Inc., Naperville, IL.

The name of the following member has changed: Reliance Electric Industrial Company is now Rockwell Automation/Reliance electric Industrial Company. Control of the following member has changed: Socapel SA has been acquired by Atlas Copco Controls, SA, Penthaz, SWITZERLAND.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this venture remains open. ODVA intends to file additional written notifications disclosing all membership changes.

On June 21, 1995, the Open DeviceNet Vendor Association, Inc., filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on February 15, 1996 (61 Fed. Reg. 6039).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–15704 Filed 6–19–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: capital punishment annual data collection.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. This process is in accordance with the Paperwork Reduction Act of 1995.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Dr. Jan M. Chaiken, at 202–307–0765 or write to Director, Bureau of Justice Statistics, United States Department of Justice, Room 1142B, Indiana Building, 633 Indiana Avenue, NW., Washington, DC, 20531.

Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time should also be directed to Dr. Jan M. Chaiken.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms: NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty—No Statute in Force; NPS–8C Status of Death Penalty—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who are asked or required to respond, as well as a brief abstract: Primary:* State or Local governments, *Others:* Federal government.

Approximately 52 Attorneys General and 52 designated officials responsible for keeping records of inmates under sentence of death will be asked to provide information on condemned inmate's demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal if no longer under sentence of death, method of execution, and cause of death other than by execution. This program analyzes capital punishment statutes, and persons under sentence of death in State and Federal correctional institutions. The Bureau of Justice Statistics uses this information in published reports, and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others in the criminal justice community.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 304 responses at 1 hour each for the NPS–8; 2,890 responses at ½ hour each for the NPS–8A; and 52 responses at ½ hour each for the NPS–8B or NPS–8C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,775 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20503.

Dated: June 14, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–15664 Filed 6–19–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,117; Hubbell Lighting, Inc., Christiansburg, VA

TA–W–32,249; J & W Garment Manufacturing, Scotts Hill, TN

TA–W–32,256; Colgate—Palmolive Co., Jeffersonville Plant, Jeffersonville, IN

TA–W–32,123; Magnolia Hosiery Mill, Inc., Corinth, MS

TA–W–32,222; American Screen Printers, Inc., Mt Pleasant, NC

TA–W–32,198 & A, TA–W–32,199; E.I. Du Pont De Nemours & Co., Inc, Dupont Nylon, Wilmington, DE, Seaford, DE, Martinsville, VA

TA–W–32,200, TA–W–32,201, TA–W–32,202; E. I. De Pont De Nemours & Co., Inc, Lugoff, SC, Athens, GA, Chattanooga, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,230; Rexam Graphics, South Hadley, MA

TA–W–32,192; Stafford Blaine Designs LTD, Minneapolis, MN

TA–W–32,126; The New Cherokee Corp., Spindale, NC

TA–W–32,068; American Tape Co., North Bergen, NJ

TA–W–32,214; Layne, Inc., Christensen Mining Products (AKA Boyles Brothers Drilling Co., Acker Div.), Chinchilla, PA

TA–W–32,275 & A; American Stud Co, American Timber Co., Olney, MT

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,243; Pepe International, Inc., Houston, TX

TA–W–32,135; Siecor Corp., San Diego, CA

TA–W–32,191; General Electric Appliances, Little Rock Distribution Center, Little Rock, AR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,158; Redco Foods, Inc., Little Falls, NY

TA–W–32,144; Plastic Manufacturing Co., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–32,270; Ithaca Industries, Inc., Vidalia, GA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,281; Williams Advanced Materials, Buffalo, NY: March 30, 1995

TA–W–32,346; Addison & Leyen, Inc., Williston, ND: May 9, 1995.

TA–W–32,248; Capital Management (AKA Davis Bros. L.L.C.), Tulsa, OK: March 13, 1995.

TA–W–32,288; Continental General Tire Co., Inc., Mayfield, KY: April 16, 1995.

TA–W–32,311; United Technologies, Automotive Wiring Systems Div., El Paso, TX: April 19, 1995.

TA–W–32,168; Salant/Thomson, Thomson, GA: March 26, 1995.

TA–W–32,314; Madeira Twin Fashions, Inc., New Bedford, MA: April 23, 1995.

TA–W–32,187; Benkel Mfg Co., Brooklyn, NY: April 2, 1995.

TA–W–32,286; Metric Products, Inc., Calver City, CA: April 17, 1995.

TA–W–32,359; 3 M Co., Rochester, NY: May 15, 1995.

TA–W–32,310; Crown Pacific Limited Partnership, Albeni Falls, Oldtown, ID: April 22, 1995.

TA–W–32,242; H.I.P. Industries, Inc., (Hatboro Industrial Park), Hatboro, PA: April 8, 1995.
TA–W–32,241; H.I.P. Industries, Inc., (Hatboro Industrial Park), Hatboro, PA: April 8, 1995.
TA–W–32,269; Sylray, Inc., Orwigsburg, PA: April 15, 1995.
TA–W–32,076; Holson Burnes Group, North Smithfield, RI: March 14, 1995.
TA–W–32,093; Rodney L. Yetter, Inc., Saylorsburg, PA: March 14, 1995.
TA–W–32,292; Quaker State Corp., Natural Gas Exploration & Production Div., Belpre Production Div., Belpre, OH: April 18, 1995.
TA–W–32,224; A & C Enterprises, Inc., Carthage, TN: March 8, 1995.
TA–W–32,344; Stone Apparel, Lavonia Plant, Lavonia, GA: May 8, 1995.
TA–W–32,358; Gould Shawmut, a/k/a Gould Electronics, Inc., Marble Falls, TX: May 26, 1996.
TA–W–32,091; Alcatel Wire & Cable, Inc., Chester, NY: March 12, 1995.
TA–W–32,352; Allied Signal, Inc., Automotive Safety Restraints Systems, Greenville, AL: April 22, 1995.
TA–W–32,333; Toombs County Manufacturing Co., Inc., Lyons, GA: May 3, 1995.
TA–W–32,134; Scotts Hill Leisurewear, Inc., Scotts Hill, TN: March 13, 1995.
TA–W–32,061; Kentucky Apparel LLP, El Paso, TX: March 7, 1995.
TA–W–32,061A; Kentucky Apparel & Laundry, Glasgow, KY: March 14, 1995.
TA–W–32,315; Poughkeepsie Finishing Corp., Paterson, NJ: April 24, 1995.
TA–W–32,086; OSRAM Sylvania, Inc., Wellsboro, PA: March 14, 1995.
TA–W–32,152; Weyerhaeuser Western Lumber, Kamiah, ID: March 1, 1995.
TA–W–32,108; Bonnell Manufacturing Co., Mt. Laurel, NY: March 20, 1995.
TA–W–32,066; Grassroots USA, Inc., Corinth, MS: March 7, 1995.
TA–W–32,294; Holston Garment Manufacturing Co., Inc., Bristol, TN: April 19, 1995.
TA–W–32,121; LAT Sportswear, Fyffe, AL: March 22, 1995.
TA–W–32,164; Square Sales Corp., New York, NY: February 27, 1995.
TA–W–32,165; Merit Mills, Inc., Eastchester, NY: February 27, 1995.
TA–W–32,330; Kinney Shoe Corp., Manufacturing Div., Carlisle, PA: April 30, 1995.
TA–W–32,234; The Carborundum Co., W.H. Wendel Technology Center, Niagara Falls, NY: March 29, 1995.
TA–W–32,234A; The Carborundum Co., Corporate Headquarters, Niagara Falls, NY: March 29, 1995.
TA–W–32,090; Chicago Pneumatic Tool Co., Industrial Tool Div., Utica, NY: March 11, 1995.

All workers engaged in the production of hammers separated from employment on or after March 11, 1995 are eligible to apply for adjustment assistance.

Also, all workers engaged in the production of industrial tools are denied.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00981 & A; American Stud Co, Olney, MT & American Timber Co., Olney, MT
NAFTA–TAA–00974; J&W Garment Factory, Scotts Hill, TN
NAFTA–TAA–00980 & A; H.I.P. Industries, Inc., (Hatboro Industrial Park), Hatboro, PA., Philadelphia, PA
NAFTA–TAA–00988; K.N. Energy, Lakewood, CO
NAFTA–TAA–00951; Clear Pine Moulding, Prineville, OR
NAFTA–TAA–00996; Willianson-Dickie Manufacturing Co., Eagle Pass, TX
NAFTA–TAA–00960; Layne, Inc., Christensen Mining Products (aka Boyles Brothers Drilling Co., Acker Div.), Chinchilla, PA
NAFTA–TAA–01002; JP Apparel, Inc., Hardyville, KY
NAFTA–TAA–00991; Marplex Industries, Sawyer Industrial Park, Gwinn, MI.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00969; El Paso Natural Gas Co., El Paso, TX
NAFTA–TAA–01032; Consumer Credit Union (Inside Philips Consumer Electronics Co), Arden, NC
NAFTA–TAA–01024; VIP/Vanguard Industrial Products, Inc., Brighton, MI.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00964; Blue Mountain Forest Products, Pendelton, OR: April 9, 1995.
NAFTA–TAA–01016; Thomas & Betts Corp., Electrical Components, Strongsville, OH: May 2, 1995.
NAFTA–TAA–01010; Mallory & Church Corp., Chula Vista, CA: May 6, 1995.
NAFTA–TAA–00995: Early Manufacturing Co., Inc., Blakely, GA: April 18, 1995.
NAFTA–TAA–01012; Red Kap Industries, Vienna, GA: April 7, 1995.
NAFTA–TAA–01001; Unisys Corp., Midwest Operations, Roseville, MN: April 29, 1995.
NAFTA–TAA–01007; Alcoa Fujikura, Ltd. North American Automotive Operations, Dearborn Heights, MI: April 12, 1995.

NAFTA–TAA–00972; Sara Lee Knit Products, Lumberton Sewing, Lumberton, NC: March 19, 1996.

NAFTA–TAA–00986; Border Apparel, El Paso, TX: April 24, 1995.

I hereby certify that the aforementioned determinations were issued during the month of June 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 12, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–15757 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of May 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 05/28/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,359	3M Company (Comp)	Rochester, NY	05/15/96	Graphic Arts Film, Polyester Print Plate.
32,360	A A Production, Inc. (Comp)	Lubbock, TX	05/08/96	Oil, Gas & Hydrocarbons.
32,361	A A Production, Inc. (Comp)	Sacramento, CA	05/08/96	Oil, Gas & Hydrocarbons (Headquarters).
32,362	A A Production, Inc. (Comp)	Grand Junction CO	05/08/96	Oil, Gas & Hydrocarbons.
32,363	Alcan Foil Products (Wkrs)	LaGrange, GA	05/01/96	Aluminum Foil and Film.
32,364	American Steel Foundries (Comp)	Alliance, OH	05/13/96	Steel Castings.
32,365	B.P. Oil, Inc (OCAW)	Paulsboro, NJ	05/14/96	Distribution Terminal for Petroleum Prod.
32,366	Badger Paper Mills (GCIU)	Peshtigo, WI	05/11/96	Pulp.
32,367	Carolina Lace Corp. (Wkrs)	Robbins, NC	05/09/96	Unfinished Greige Goods (Lace Material).
32,368	Champion Products, Inc. (Comp)	Fitzgerald, GA	05/08/96	Fleece & Other Fibers.
32,369	Command Enterprise Corp. (Wkrs)	Monticello, FL	05/14/96	Cobblers.
32,370	Derby Apparel Inc. (Wkrs)	Marion, VA	05/13/96	Children's, Ladies' & Mens' Wear.
32,371	Design Apparel by Gale (UNITE)	New York, NY	05/16/96	Ladies' Sportswear.
32,372	Eagle-Picher Plastics Div (Comp)	Huntington, IN	05/15/96	Automobile Components.
32,373	Flexitallic Gasket Co. (IUE)	Pennsauken, NJ	05/10/96	Gaskets.
32,374	General Electric Super (Wkrs)	Worthington, OH	05/17/96	Tooling Blanks, Wire Dies.
32,375	Host Apparel (Wkrs)	New York, NY	05/08/96	Bath Robes & Nightwear.
32,376	IPC Corinth Division, Inc (Wkrs)	Corinth, MS	05/14/96	Vinyl Sheeting Rolls.
32,377	James Hardie Irrigation (Comp)	El Paso, TX	05/09/96	Valves, Sprinklers, XL Rotor, Nozzles.
32,378	Kendall Co/Kendall Health (Wkrs)	El Paso, TX	05/14/96	Distribution of Medical Products.
32,379	Magic Circle Energy Corp (Comp)	Oklahoma City, OK	05/15/96	Crude Oil & Natural Gas.
32,380	Mullen Lumber (Wkrs)	Molalla, OR	05/08/96	Remanufactured Wood.
32,381	NAC Carbon Products (Wkrs)	Punxsutawney, PA	05/13/96	Flashlight Battery Carbon.
32,382	Nazareth/Century Mills (Comp)	Bay Springs, MS	05/15/96	Tank Tops & Pocket T-Shirts.
32,383	Osh Kosh B'Gosh (Wkrs)	Red Boiling Spg, TN	05/08/96	Men's Work Wear, Childrens' Wear.
32,384	Roadmaster Corp (UNITE)	Delavan, WI	05/07/96	Bicycles.
32,385	Rocky Mount Mills (Comp)	Rocky Mount, NC	05/10/96	Cotton Yarns.
32,386	Sew Fine, Inc. (Comp)	Maryville, TN	05/08/96	Ladies' Denim Jeans.
32,387	Shepard's/McGraw-Hill (Comp)	Colorado Sprgs, CO	05/10/96	Information Media Products.
32,388	Snap-On Inc. (IAM)	Mt. Carmel, IL	05/15/96	Hand Tools.
32,389	Swapp Tool & Die Inc. (Comp)	El Paso, TX	04/26/96	Wiring Harneses Test Fixtures.
32,390	Spartus Corp. (Wkrs)	Louisville, MS	05/07/96	Decorative Wall & Alarm Clocks.
32,391	Telex Communications (Comp)	LeSueur, MN	05/09/96	Microphones for Computer.
32,392	Tennessee River Mfg. (Wkrs)	Adamsville, TN	05/08/96	Men's Shirts.
32,393	Todd Uniform (Wkrs)	Maury City, TN	05/07/96	Work Uniforms.

[FR Doc. 96–15751 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 655]

Fruit of the Loom Albemarle Spinning Mills, Albemarle, North Carolina; Notice of Revised Determination on Reopening

On January 24, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Fruit of the Loom, Albemarle Spinning Mills, located in Albemarle, North Carolina. The notice was published in the Federal Register on February 6, 1996 (FR 61 4486).

Based on new information received from petitioners, the Department, on its own motion, reviewed the findings of the investigation. New findings show that the yarn and fabric produced by workers of the subject firm supported production of t-shirts, briefs and fleecewear at other Fruit of the Loom production facilities. TAA certifications have been issued for workers of Fruit of the Loom production facilities in various States.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with yarn and textiles contributed importantly to the declines in sales or production and to the total or partial separation of workers of Fruit of the Loom, Albemarle Spinning Mills, Albemarle, North Carolina. In accordance with the provisions of the Act, I make the following certification:

''All workers of Fruit of the Loom, Albemarle Spinning Mills, Albemarle, North Carolina who became totally or partially separated from employment on or after November 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 11th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–15753 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 056]

Phillips Laser Magnetic Storage, Including Leased Workers of Accel Temporary Services, Colorado Springs, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on July 19, 1995, applicable to all workers at Phillips Laser Magnetic Storage located in Colorado Springs, Colorado. The notice was published in the Federal Register on August 9, 1995 (60 FR 40613).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Based on the new findings, the Department is amending the certification to include leased workers from Accel Temporary Services, Colorado Springs, Colorado. Phillips Laser Magnetic Storage, a CD ROM drive producer, contracted with Accel Temporary Services for workers.

The intent of the Department's certification is to include all workers of Phillips Laser Magnetic Storage adversely affected by imports.

The amended notice applicable to TA–W–31,056 is hereby issued as follows:

''All workers of Phillips Laser Magnetic Storage, and workers from Accel Temporary Services contracted by Phillips Laser Magnetic Storage, Colorado Springs, Colorado, engaged in employment related to the production of CD ROM drives who became totally or partially separated from employment on or after May 8, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of June 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–15756 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than July 1, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than July 1, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received at Governor's Office	Petition No.	Articles produced
Algatel Wire and Cable, Inc. (Wkrs)	Chester, NY	05/10/96	NAFTA–01022	Wire and cable.
Alcan Aluminum; Alcan foil Products (Wkrs).	Lagrange, GA	05/13/96	NAFTA–01023	Food service equipment.
VIP/Vanguard Industrial Products, Inc. (Wkrs).	Brighton, MI	04/30/96	NAFTA–01024	Sales and warehousing functions.
Mullen Lumber (Wkrs)	Molalla, OR	05/13/96	NAFTA–01025	Interior finish wood.
Roadmaster (UNITE)	Delavan, WI	05/13/96	NAFTA–01026	Bicycles.
Rocky Mount Mills (Co.)	Rocky Mount, NC	05/14/96	NAFTA–01027	Cotton sweaters.
Badger Paper Mills, Inc. (GCIU)	Peshtigo, WI	05/14/96	NAFTA–01028	Pulp stock.
Snapp Tool and Die Inc. (Co.)	El Paso, TX	05/14/96	NAFTA–01029	Wiring harnesses test fixtures and mechanical dies and tooling.
Greenfield Research, Inc. (Wkrs)	Hermann, MO	05/16/96	NAFTA–01030	Molds and foams for car seats.
HARTMarx Corporation (UNITE)	Chicago, IL	05/16/96	NAFTA–01031	Dress slacks/suit pants.
Consumer Credit Union; Inside Philips Consumer Electronics Co. (Co.).	Arden, NC	05/13/96	NAFTA–01032	Sole employee.
Western Energy Co. (Wkrs)	Colstrip, MT	05/16/96	NAFTA–01033	Electricity.
IDEAssociates (Co.)	Bedford, MA	05/17/96	NAFTA–01034	Computer board.
Kendall Professional Medical Products (Wkrs).	El Paso, TX	05/16/96	NAFTA–01035	Distribution and Warehouse.
James Hardie Irrigation (Co.)	El Paso, TX	05/17/96	NAFTA–01036	Valve, Sprinkler, XL Rotor and Nozzle Assembly.
Eagle-Picher Industries, Inc. (Co.)	Huntington, IN	05/17/96	NAFTA–01037	Engine Cover.
Sunbeam Outdoor Products (USWA)	Neasho, MO	05/17/96	NAFTA–01038	Wrought Iron Furniture.
Huntsman Chemical (Wkrs)	Rome, GA	05/17/96	NAFTA–01039	Chemical.
Kaufman Footwear Corp. (Wkrs)	Batavia, NY	05/17/96	NAFTA–01040	Sorel felt liners.
Quaker Maid Kitchens ( )	Leesport, PA	05/21/96	NAFTA–01041	Kitchen cabinets.
SMK Manufacturing (Co.)	Placentia, CA	05/16/96	NAFTA–01042	Electro-mechanical parts.
Harvard Sports (Wkrs)	Compton, CA	05/20/96	NAFTA–01043	Dartboard cabinets, ping pong table.
Pictsweet Mushroom Farm (Wkrs)	Salem, OR	05/31/96	NAFTA–01044	Mushrooms.
Pioneer Manufacturing (Wkrs)	Salisbury, NC	05/31/96	NAFTA–01045	Boy's and young men's suits.
Pioneer Balloon Company (USWA)	Willard, OH	06/04/96	NAFTA–01046	Balloons.
Medley Company Cedars, Inc. (Wkrs)	Santa, ID	05/28/96	NAFTA–01047	Split cedar rail finding cedar posts.
American Steel Foundries (USWA)	Alliance, OH	05/24/96	NAFTA–01048	Castings.
Goodyear Airsprings (USWA)	Green, OH	05/28/96	NAFTA–01049	Air springs.
Motor Coach Industries International (Co.)	Roswell, NM	05/20/96	NAFTA–01050	Publications of service and parts manuals.
Robertshaw Controls Company (IBU)	Grove City, OH	05/31/96	NAFTA–01051	Electronic controls.
Carolina Dress Corporation (Co.)	Hayesville, NC	05/31/96	NAFTA–01052	Ladies clothing.
Aquila, Inc. (Wkrs)	Superior, WI	05/28/96	NAFTA–01053	
Fleer/Sky Box (Wkrs)	Mt. Laura, NJ	06/03/96	NAFTA–01054	Razzle gum.
Sunbeam Household Products (Wkrs)	Cookeville, TN	06/03/96	NAFTA–01055	Motor brackets.
Triangle Auto Spring Company (Co.)	Columbia, TN	06/03/96	NAFTA–01056	Leaf Springs.
JAMA/Southside Apparel (Wkrs)	Petersburg, TN	06/03/96	NAFTA–01057	Ladies apparel; pants, skirts.
Elcam, Inc. (Co.)	St. Marys, PA	06/04/96	NAFTA–01058	Packaging light bulbs.
Rissler and McMurry Company (Wkrs)	Casper, WY	06/04/96	NAFTA–01059	Building mining equipment.
Mini World (Wkrs)	Provo, UT	06/03/96	NAFTA–01060	Infant and Girls clothing.
Ochoco Lumber Company (Wkrs)	Princeton, ID	06/03/96	NAFTA–01061	Dimension and shop pine lumber.
Pine River Lumber Co., Ltd. (Wkrs)	Kenton, MI	06/06/96	NAFTA–01062	Logs and lumber.
Midwestern Industries, Inc. (Wkrs)	Tulsa, OK	06/04/96	NAFTA–01063	Children's clothes.

[FR Doc. 96–15752 Filed 6–19–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00979]

Haggar Clothing Company, Weslaco Sewing, Incorporated, Weslaco, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 27, 1996 in response to a petition filed on behalf of workers at Haggar Clothing Company, Weslaco Sewing, Incorporated, Weslaco, Texas.

The petitioning group of workers are eligible for NAFTA/Transitional Adjustment Assistance benefits under an existing certification that is still active (NAFTA–444B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 13th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–15754 Filed 6–19–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00819 & 00819A]

Thomas & Betts Corporation Electrical Department, PA; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 6, 1996, applicable to workers of Thomas & Betts Corporation, Electrical Department, located in Montgomeryville, Pennsylvania. The notice was published in the Federal Register on March 25, 1996 (61 FR 12101).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show that workers of the subject firms' North Wales production facility were inadvertently excluded from the certification. The workers produce injection molded electrical fittings, components and accessories.

The intent of the Department's certification is to include all workers of Thomas & Betts Corporation, Electrical Department who where adversely affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the certification to include workers of Thomas & Betts located in North Wales.

The amended notice applicable to NAFTA–00819 is hereby issued as follows:

''All workers of Thomas & Betts Corporation, Electrical Department, Montgomeryville (NAFTA–00819) and North Wales (NAFTA-00819A), Pennsylvania, who became totally or partially separated from employment on or after February 8, 1995, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of June 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–15758 Filed 6–19–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Sunshine Act Meetings

TIME AND DATE: 9:30 a.m., Wednesday, June 26, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke St., Alexandria, VA 22314–3428.

STATUS: Open.

Board Briefing

1. Insurance Fund Report.

Matters To Be Considered

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Amendment to Section 745.200, NCUA's Rules and Regulations, Share Insurance.
3. Request from CPM Federal Credit Union to Expand its Field of Membership to Include a Low-Income Community.
4. Appeal from CINCO Federal Credit Union of Regional Director's denial of a Field of Membership Expansion Request.

RECESS: 10:30 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, June 26, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke St., Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Request from Federal Credit Union to Convert to a Community Charter. Closed pursuant to exemption (8).
4. Appeal from Federal Credit Union of Regional Director's Denial of Request for Expansion to its Field of Membership. Closed pursuant to exemption (8).
5. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6300.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–15952 Filed 6–18–96; 3:41 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 2:00 p.m., Tuesday, June 11, 1996.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action . . .).

MATTERS TO BE CONSIDERED: Personnel.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1940.

Dated, Washington, DC, June 12, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–15855 Filed 6–18–96; 2:15 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors (1115).

Date and Time: July 8, 1996—8:30 a.m.–5:00 p.m.; July 9, 1996—8:30 a.m.–12:00 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Jan Gatton, National Science Foundation, 4201 Wilson Boulevard, Room 1145 Arlington, VA 22230. Telephone: (703) 306–1910.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review for programs in the Division of Computer and Computation Research.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15783 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers.

Date/Time: July 9–10, 1996, 8:00 a.m.–5:30 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning concept papers submitted to NSF for financial support.

Agenda: To review and evaluate concept papers submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The concept papers 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: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15784 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Geosciences; Notice of meeting

In according with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences; Committee of Visitors for the Geology and Paleontology, Petrology and Geochemistry and Hydrological Sciences Programs (1755).

Date and Time: July 10, 11, & 12, 1996; 8:00 a.m.–6:00 p.m.

Place: Room 730, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1553.

Purpose of Meeting: To carry out Committee on Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Geology and Paleontology, Petrology and Geochemistry and Hydrological Sciences Programs.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15785 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date & Time: July 9 and July 10, 1996; 8:30 a.m. to 5:00 p.m.

Place: Room 680, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard A. Behnke, Head, Upper Atmosphere Research Section; Division of Atmospheric Sciences; Room 775; 4201 Wilson Boulevard; Arlington, VA 22230; telephone number (703) 306–1518.

Purpose of Meeting: To provide and make recommendations concerning the National Space Weather Program (NSWP) proposals.

Agenda: To review and evaluate the National Space Weather Program (NSWP) proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15780 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure (#1207).

Date and Time: June 10–11, 1996; 8:30 a.m. to 5:00 p.m.

Place: Room 1175.

Type of Meeting: Closed.

Contact Person(s): Mark Luker, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703–306–1950.

Purpose of Meeting: The Network Access Point/Routing Arbiters (NAP/RA) Reverse Site Visit is to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Network Access Point/Routing Arbiters (NAP/RA) proposals as part of the selection process for continuing awards.

Reason for Closing: The meeting is closed to the public because the panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15782 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral & Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Social, Behavioral & Economic Sciences (#1171).

Date and Time: July 10–11, 1996, 9:00 a.m. to 5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Paul G. Chapin, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 305–1731.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Linguistic Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–15781 Filed 6–19–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–243

Northeast Nuclear Energy Company et al., Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company, et al. (the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise Technical Specifications (TS) Table 3.3–1 to allow Millstone Unit No. 3 to change operational modes with both Shutdown Margin Monitors inoperable, and to revise Action Statements 5(a) and 5(b) to reference the locked valve list in TS 4.1.1.2.2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a [significant hazards consideration] SHC because the changes would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes to Technical Specification 3.3.1, Table 3.3–1, Action 5(b) would allow Millstone Unit No. 3 to change Modes with the Shutdown Margin Monitors (SMMs) inoperable while in compliance with the Limiting Condition for Operation (LCO) governing this condition.

The SMMs are used only for the purpose of providing an alarm to allow the operator time to mitigate a boron dilution accident.

The LCO action to lock all dilution flow paths provides adequate protection to preclude a boron dilution event from occurring. The administrative controls placed upon the dilution flow paths per Technical Specification 4.1.1.2.2 are the basis for not having to analyze for a BDE in Mode 6. Consequently, the SMMs are not required to be operable in Mode 6.

With the dilution flow paths locked closed, the SMMs are not required to provide an alarm to the operators to allow them to mitigate the event, and their continued operation provides no added safety benefit. The LCO for both SMMs being inoperable does not require the plant to change Modes and therefore permits continued operation of the facility for an unlimited period of time. The proposed Technical Specification change will allow the plant to invoke Technical Specification 3.0.4 and increase modes while complying with the LCO action statements. These action statements are summarized below:

Positive reactivity operations via dilutions and rod withdrawal are suspended. The intent of this action is to stop any planned dilutions of the RCS [reactor coolant system]. The SMMs are not intended to monitor core reactivity associated with RCS temperature changes. The alarm set point is routinely re-set during the plant heat up due to the increasing count rate. During cooldowns as the count rate decreases, baseline count rates are continually lowered automatically by the SMMs. The Millstone Unit No. 3 boron dilution analysis assumes steady state RCS temperature operation. Plant cool downs, although considered positive reactivity additions, are allowed to be performed with the SMMs inoperable as the SMMs provide no protection during an RCS cool down. The SMMs are designed to monitor for dilution events, not reactivity additions as a result of cool downs. Prohibiting an RCS cool down as a result of entrance into this LCO action statement could prevent the operator from placing the plant into an overall safer condition. As such, all RCS cool downs will be allowed when the plant has entered this action statement in an effort to place the plant in a safer condition. With the administrative controls placed on the dilution flow paths, the BDE [boron dilution event] is precluded and the effects of the cool down are normal, anticipated core reactivity changes are offset by higher RCS boron concentrations.

All dilution flow paths are isolated and placed under administrative control (locked closed). This action provides redundant protection and defense in depth (safety overlap) to the SMMs. In this configuration, a BDE cannot occur. This is the basis for not having to analyze for a BDE in Mode 6. Since the BDE cannot occur with the dilution flow paths isolated, the SMMs are not required to be operable as the event cannot occur and operable SMMs provide no benefit.

Increase the shutdown margin surveillance frequency from every 24 hours to every 12 hours. This action, in combination with the above, provides defense in depth and overlap to the loss of the SMMs.

It is concluded that Millstones Unit No. 3 can heat up from Mode 5 to Mode 3 while complying with the technical specification action statements of Technical Specification 3.3.1, Table 3.3–1, safely and without increasing the probability or consequences of an accident previously evaluated.

Thus, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will allow Millstone Unit No. 3 to change modes while complying with the LCO action statements. These action statements provide adequate protection to preclude a BDE from occurring. Changing Modes without the SMM OPERABLE will not create a new or different accident from any previously analyzed. The SMMs are used solely for the purpose of detecting a BDE by providing the operator with 15 minutes of mitigation response time. With the event precluded, (the dilution flow paths locked closed) the SMMs provide no additional safety benefit while in operation. Since their only function is to provide a 15 minute response time, their inoperablity [cannot] create the possibility of a different accident from occurring.

Based on the nature of the change, the change does not introduce any new failure modes or malfunctions and it does not create the potential for a new unanalyzed accident. Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not reduce the margin of safety. The proposed change will allow Millstone Unit No. 3 to increase Modes without the SMMs OPERABLE. However the plant would only perform the Mode increase with Technical Specification administrative controls in place that essentially preclude that accident from occurring. In the proposed plant configuration, there is no added safety benefit from having the SMMs OPERABLE during the Mode increase. As such, there is no reduction in the margin of safety.

Thus, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, 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, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 22, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 3, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 11th day of June 1996.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Northeast Utilities Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15730 Filed 6–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its October 17, 1995, application for proposed amendment to Facility Operating License No. NPF–7 for the North Anna Power Station, Unit No. 2, located in Louisa County, Virginia.

The proposed amendment would have revised the Technical Specifications pertaining to the minimum number of steam generators required to be inspected during the first inservice inspection following steam generator replacement.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on November 27, 1995 (60 FR 58406). However, by letter dated February 19, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 17, 1995, and the licensee's letter dated February 19, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 7th day of June 1996.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15729 Filed 6–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit No. 1; 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. DPR–40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed action would issue an amendment to allow an increase in the initial nominal Uranium-235 (U–235) enrichment limit for fuel assemblies which may be stored in the spent fuel pool. This action would allow the licensee to extend the biennial interval until the first quarter of 1996. The proposed action is in accordance with the licensee's application for amendment dated February 1, 1996.

The Need for the Proposed Action

The licensee intends to store unirradiated fuel with a maximum initial enrichment of 4.5 w/o U–235 in Region 1 of the spent fuel pool during the next refueling outage (Refuel 17). Spent fuel will be stored in Region 2 of the spent fuel pool. At present, fuel with a maximum initial enrichment up to 4.2 weight percent of U–235 can be stored in Region 1 and Region 2 of the spent fuel pool.

Environmental Impact of the Proposed Action:

The Commission has completed its evaluation of the proposed revision to the technical specifications (TSs) and concludes that the use of fuel with a maximum enrichment of 4.5 w/o U–235 would not significantly increase the probability or consequences of any accident previously analyzed. The proposed amendment would increase the allowable fuel enrichment from 4.2 w/o to 4.5 w/o U–235 in Region 1 of the spent fuel pool and modify the burnup/enrichment restrictions imposed on fuel stored in Region 2 to include fuel with an enrichment up to 4.5 w/o.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation.'' This assessment was published in the Federal Register on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendment for the Ft. Calhoun Station, Unit 1. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with this action was published in the Federal Register on March 13, 1996 (61 FR 10396).

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit 1, dated August 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on June 13, 1996, the staff consulted with the Nebraska State official, Ms. Cheryl Rodgers of the Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes 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 action.

For further details with respect to the proposed action, see the licensee's letter dated February 1, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 14th day of June 1996.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15728 Filed 6–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–302]

Florida Power Corporation, Crystal River Nuclear Generating Plant (License No. DPR–72); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has received a petition dated March 28, 1996, filed by Louis D. Putney, Esq., on behalf of Barry L. Bennett (petitioner). The petition requests, pursuant to section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), that the NRC investigate concerns regarding security deficiencies at Florida Power Corporation's Crystal River Nuclear Generating Plant (Crystal River). The petition also requests that, upon a determination that these concerns are valid, the NRC institute a proceeding to suspend or revoke the operating license of Crystal River pursuant to 10 CFR 2.202 until such time as these concerns are corrected.

As the basis for his petition, Mr. Bennett claims that during his employment with SBI Inc., a company that provided contract nuclear security services for Florida Power Corporation, he observed various security deficiencies at Crystal River.

The petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on the petition within a reasonable time.

A copy of the petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 14th day of June 1996.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15727 Filed 6–19–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of modifications to an existing system of records.

SUMMARY: This document publishes notice of modifications to Privacy Act System of Records USPS 120.070, Personnel Records-General Personnel Folder (Official Personnel Folders and Records Related Thereto). The proposed modifications expand the categories of records covered by the system, add a system manager, and enhance the system description, especially with regard to procedures for filing and retaining records.

DATES: Any interested party may submit written comments on the proposed modifications. This proposal will become effective without further notice on July 30, 1996, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting and Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: Privacy Act System of Records USPS 120.070, Personnel Records-General Personnel Folder (Official Personnel Folders and Records Related Thereto) collects information contained within employees' official personnel folders and related information. Such information consists of documents that reflect an employee's status, salary, benefits, service, and career history.

This notice enhances the categories of records in the system by including further examples of records historically covered by the system. It expands the categories to the extent that reference copies of discipline or adverse action records are kept for a period beyond the copy historically kept within the official personnel folder. Such maintenance is also reflected in a revision to the retention and disposal segment of the system notice. Because these records are kept within Labor Relations offices, the Vice President, Labor Relations has been added as a System Manager.

All records within this system continue to be kept in a secured environment. The system modifications do not alter the character of information contained in the system or the safeguards applied in the maintenance of that information.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 120.070 was last published in its entirety in the Federal Register on June 19, 1991 (56 FR 28181) and amended on December 4, 1992 (57 FR 57515) and on November 24, 1993 (58 FR 62171). The Postal Service proposes amending that system as shown below.

USPS 120.070

SYSTEM NAME:

Personnel Records-General Personnel Folder (Official Personnel Folders and Records Related Thereto), 120.070.

SYSTEM LOCATIONS:

[CHANGE TO READ] Personnel Offices of all USPS facilities; National Personnel Records Center, St. Louis, MO; Human Resources Information Systems, Headquarters; Information Systems Service Centers; National Test Administration Center, Merrifield, VA; and selected contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Postal Service employees; and current employees' children or former spouses and former employees' family members or former spouses who qualify and apply for Federal Employees Health Benefits coverage under Pub. Ls. 98–615 or 100–654.

CATEGORIES OF RECORDS COVERED IN THE SYSTEM:

[CHANGE TO READ]

1. *Contents of Official Personnel Folders.* These include documents pertaining to preemployment, prior federal employment, and current service as prescribed by Postal Service directives, including but not limited to: applications; resumes; merit evaluations; promotions; salary changes, and other personnel actions; letters of commendation; records of disciplinary actions (which include letters of warning; notices of removal, suspension, reduction in grade or pay; letters of decision; and documents relating to these actions); health benefits, retirement, flexible spending account, and life insurance elections.

2. *Automated employee data contained within records maintained in Official Personnel Folders (OPFs), especially from Form 50, Notification of Personnel Action.* These include social security number, date of birth; mailing address; occupation title; OPF location; duty station; employment status; level of education; prior employment; leave, retirement, and anniversary dates; tax, retirement, salary, and military service information. Some of this information is part of USPS 050.020, Finance Records-Payroll System.

3. *Reference copies of all discipline or adverse actions.* These include letters of warning; notices of removal, suspension, reduction in grade or pay; letters of decisions; and documents relating to these actions. These are used only to refute inaccurate statements by witnesses before a judicial or administrative body.

Note: This system also has an automated tracking system that is used primarily to control and document disciplinary actions and to provide statistical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 1005; 42 U.S.C. 2000e–16; Executive Orders 11478 and 11590.

PURPOSE:

Used by administrators, managers, selection review committees, and individual employee supervisors to perform routine personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. To disclose to prospective employers the following information about a specifically identified current or former postal employee: (a) grade, (b) duty status, (c) length of service, (d) job title, (e) salary, and (f) date and reason for separation, limited to one of the following terms: retired, resigned, or separated.

2. To provide statistical reports to Congress, agencies, and the public on characteristics of the Postal Service work force.

3. To provide data for the compilation of a local seniority list that is used by management to make decisions pertaining to appointment and assignments among craft personnel. The list is posted in local facilities where it may be reviewed by Postal Service employees.

4. To transfer to the Office of Personnel Management on retirement of an employee information necessary for processing retirement benefits.

5. Disclosure of relevant and necessary information pertaining to an employee's participation in health, life insurance, and retirement programs may be made to the Office of Personnel Management and private carriers for the provision of related benefits to the participant (also see USPS 050.020).

6. Disclosure of minority designation codes may be made to the Equal Employment Opportunity Commission for the oversight and enforcement of federal EEO regulations.

7. Disclosure of records of discipline relating to individual employees may be made to State Employment Security Agencies at the initial determination level of the unemployment compensation claim process.

8. Information pertaining to an employee who is a retired military officer will be furnished to the appropriate service finance center as required under the provisions of the Dual Compensation Act.

9. May be disclosed to a federal or state agency, providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

10. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, preprinted forms, official personnel folders, and magnetic tape and other computer storage devices.

RETRIEVABILITY:

Employee name and location of employment and Social Security number.

SAFEGUARDS:

Folders are maintained in locked cabinets to which only authorized personnel have access; automated records are protected by computer passwords and tape or disk library physical security.

RETENTION AND DISPOSAL:

[CHANGE TO READ]

1. *Official Personnel Folder (OPF) Records.* Records maintained on the right side of the OPF are considered to be permanent and are maintained until the employee is separated. They are then sent to the National Personnel Records Center, St. Louis, MO for storage or to the federal agency to which the individual transfers employment.

2. *Temporary Records of Individual Employees.* These records are maintained on the left side of the OPF and are destroyed when two years old, upon separation, or upon transfer of employee if the temporary record is relevant only to the losing postal installation, whichever is sooner.

3. *Original or copies of discipline or adverse actions.* These are maintained on the left side of the OPF for up to two years or longer if additional or more recent disciplinary action has been taken. After two years the employee may request the disciplinary record be purged from the OPF. Records that support a Form 50, Notification of Personnel Action, that documents the separation of an employee for cause, or the resignation of an employee pending charges, are considered permanent records and are maintained on the right side of the OPF. These records may not be purged at the request of an employee.

4. *Reference copies of discipline or adverse actions.* These records are kept for historical purposes and are not to be used for decisions about the employee.

The retention of these records may not exceed ten years beyond the employee's separation date. The records are maintained longer if the employee is rehired during the ten year period.

5. *Disciplinary Tracking System Records.* These are maintained until research purposes are served, not to exceed thirty years. Destruction is by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–4200

Vice President, Labor Relations, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–4100

NOTIFICATION PROCEDURE:

[Change to Read] Current employees wishing to gain access to records within this system should submit requests to the facility head where currently employed. Requests should include their name and Social Security number. Former employees should submit requests to the facility head where last employed. Requests should include name, Social Security number, date of birth, name and address of office where last employed, and the begin and end dates of postal employment. Former Post Office Department employees having no Postal Service employment (prior to July 1971) must submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission) at:

Office of Personnel Management, Compliance and Investigations Group, 1900 E Street NW, Washington DC 20415–0001

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedure above and Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

[CHANGE TO READ] Individual employee, personal references, former employers, and other Postal Service personnel records systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Postal Service has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system must continue to apply to the incorporated records.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–15779 Filed 6–19–96; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22017; 812–9830]

National Financial Services Corporation, et al.; Notice of Application

June 14, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: National Financial Services Corporation (the ''Sponsor'') and Fidelity Unit Investment Trusts, Fidelity Defined Trusts, Series 1 and Subsequent Series (the ''Trust'').

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d), and 26(a)(2) of the Act and rules 19b–1 and 22c–1 thereunder; pursuant to section 11(a) for an exemption from section 11(c); and pursuant to sections 6(c) and 17(b) for an exeption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to allow: (a) the Trust and any future unit investment trust sponsored by the Sponsor (collectively, the ''Trusts'') to implement a deferred sales charge program; (b) the exchange of units of different series of the Trusts (each, a ''Series'') and, in addition, certain exchange transactions made in connection with the termination of a Series into a new Series of the same Trust; (c) units of the Trusts to be publicly offered without requiring the Sponsor to take for its own account or place with others $100,000 worth of units in those Trusts; (d) certain Trusts to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt; and (e) a terminating Series of a Trust to sell portfolio securities to a new Series of that Trust.

FILING DATES: The application was filed on October 26, 1995, and amended and fully restated applications were filed on February 26 and June 7, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 9, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Sponsor, a registered broker-dealer, is a wholly-owned subsidiary of Fidelity Global Brokerage Group, Inc., which in turn is a wholly-owned subsidiary of FMR Corp. The Sponsor engages in various securities trading, brokerage and clearing activities as well as serving as sponsor of the Trust.

2. The Trust is a unit investment trust registered as an investment company under the Act, and any future Trust sponsored by the Sponsor similarly will be a registered unit investment trust. Fidelity Defined Trusts, Series 1, consists of three underlying portfolios: Laddered Government Series 1, Short Treasury Portfolio; Laddered Government Series 2, Short/Intermediate Treasury Portfolio; and Rolling Government Series 1, Short Treasury Portfolios.

3. Each of the Trusts is or will be sponsored by the Sponsor and is or will be made up of one or more Series issuing securities registered or to be registered under the Securities Act of 1933. Each Series is or will be created by a Trust Indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator.

4. While the structure of particular Trusts and particular Series may differ in various respects depending on the nature of the underlying portfolios, the Sponsor in each case will acquire a portfolio of securities which it deposits with the trustee in exchange for certificates representing units of fractional undivided interest in the deposited portfolio (''Units''). The Sponsor in each case will deposit substantially more than $100,000 of debt or equity securities, or a combination thereof, depending on the investment objective of the particular Series, for each Series. The Units are then offered to the public through the Sponsor and dealers at a public offering price which, during the initial offering period, is based upon the aggregate offering side evaluation of the underlying securities plus a sales charge.

5. The Sponsor maintains a secondary market for Units of outstanding Series and continually offers to purchase these Units at prices based upon the bid side evaluation of the underlying securities. If the Sponsor discontinues maintaining such a market at any time for any Series, holders of Units (''Unitholders'') of such a Series may redeem their Units through the trustee.

6. Distribution payments of tax-exempt or taxable income, depending on a particular Trust's investment objective, will be made to Unitholders on an annual, semi-annual, quarterly or monthly basis. The Trusts generally will distribute to Unitholders any capital gains realized in connection with the sale of portfolio securities along with the Trust's regular distributions in reliance on paragraph (c) of rule 19b–1.

A. Deferred Sales Charge Program

1. Applicants request an exemption to permit them to impose a deferred sales charge (''DSC'') on Units, and to reduce or waive the DSC under certain circumstances. Under applicants' proposal, the Sponsor will determine both the amount of the sales charge per Unit and whether to defer the collection of all or part of such charge over a period (the ''Collection Period'') subsequent to the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount of the sales charge any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

2. The Sponsor anticipates collecting a portion of the total sales charge immediately upon purchase of Trust Units. The balance of the sales charge will be collected in installments over the Collection Period for the particular Trust Series. To the extent that distribution income is sufficient to pay a DSC installment, such deductions will be collected from distributions on a holder's Units (''Distribution Deductions''). If distribution income is insufficient to pay a DSC installment, the trustee, pursuant to the terms of the trust indenture, may sell portfolio securities in an amount necessary to provide the requisite payments. If a Unitholder redeems or sells to the Sponsor his or her Units before the total sales charge has been collected from installment payments, the Sponsor intends to deduct any unpaid DSC expense from sale or redemption proceeds.

3. For purposes of calculating the amount of the DSC due upon redemption or sale of Units, the Sponsor will assume that Units on which the sales charge has been paid in full are liquidated first. Any Units liquidated over and above such amounts will be subject to the DSC, which will be applied on the assumption that Units held for the longest time are redeemed first. The Sponsor may adopt a procedure of waiving the DSC in connection with redemptions or sales of Units under certain circumstances. Any such waiver will be disclosed in the prospectus for each Series subject to the waiver, and will be implemented in accordance with rule 22d–1.

4. The Sponsor believes the DSC program will be adequately disclosed to potential investors as well as Unitholders. The prospectus for each Trust Series will describe the operation of the DSC, including the amount and date of each Distribution Deduction and the duration of the Collection Period. The prospectus will also disclose that the trustee may sell portfolio securities in the event that income generated by the portfolio is insufficient to pay for DSC expenses. The securities confirmation statement for each Unitholder's purchase transaction will state both the front-end sales charge imposed, if any, and the amount of the DSC to be deducted in regular installments.

B. The Exchange and Rollover Options

1. Applicants propose to permit certain offers of exchange among the Series of the Trusts (the ''Exchange Option'') and to permit certain offers of exchange made in connection with the termination of certain Trust Series (the ''Rollover Option''). The Exchange Option will extend to exchanges of Units sold either with a front-end sales charge or with DSC for Units of another Trust Series sold either with a front-end sales charge or with a DSC. The Rollover Option will extend to exchanges of Units in certain terminating Series of a Trust (the ''Rollover Trusts'') for Units of a new Trust Series of the same type (the ''New Trusts'').

2. An investor who purchases Units under either the Exchange or the Rollover Option will pay a lower sales charge than that which would be paid by a new investor. The reduced sales charge imposed will be reasonably related to the expenses incurred in connection with the administration of the program, which may include an amount that will fairly and adequately compensate the Sponsor and the participating underwriters and brokers for their services in providing the program.

3. The sales charge on Units acquired pursuant to the Exchange Option generally will be reduced from the normally higher sales charge on secondary market transactions to a flat fee of $25 per Unit (for Units of a Series whose initial cost was approximately $1,000 per Unit), or its equivalent, depending on the cost of Units in a particular Series. An adjustment will be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (the ''Five Months Adjustment''). An adjustment also will be made if Units that impose Distribution Deductions are exchanged for Units of a Series that imposes a front-end sales charge at any time before the Distribution Deductions (plus any portion of the sales charge on the exchanged Units collected up front) have at least equaled the per Unit sales charge then applicable on the acquired Units (the ''DSC Front-end Exchange Adjustment''). In cases involving either the Five Months or the DSC Front-end Exchange Adjustment, the exchange fee will be the greater of $25 per Unit (or its equivalent) or an amount which, together with the sales charge already paid on the Units being exchanged, equals the normal sales charge on the acquired Units.

4. Under the Exchange Option, if DSC Units are exchanged for DSC Units or another Series, the reduced sales charge will be collected in connection with such an exchange. The Distribution Deductions will continue to be taken from the investment income generated by the newly acquired Units, or proceeds from the sale of Trust portfolio securities, as the case may be, until the original balance of the sales charge owed on the initial investment has been collected. The DSC due on the initial investment will not be collected at the time of exchange.

5. Under the Rollover Option, Unitholders of Rollover Trusts may elect by a certain date (the ''Rollover Notification Date'') to redeem their Units in the terminating Rollover Trust and invest in Units in the New Trust, which is created on or about the Rollover Notification Date, at a reduced sales charge. The applicable sales charge upon the initial investment in the Rollover Trust typically is 2.9% of the public offering price, while the reduced sales charge applicable to investment in the New Trust by Unitholders electing the Rollover Option usually will be 1.9% of the public offering price.

C. Purchase and Sale Transactions Between Series

1. Applicants also request an exemption to permit the Rollover Trusts to sell their portfolio securities to the New Trusts. Each of the Rollover Trusts will contain a portfolio of equity securities (the ''Equity Securities'') representing a portion of a specific published index (an ''Index''). The Equity Securities in each portfolio will be (a) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on (i) an exchange (an ''Exchange'') which is either a national securities exchange that meets the qualifications of section 6 of the Securities Exchange Act of 1934 or a foreign securities exchange that meets the qualifications set forth in a proposed amendment to rule 12d3–1(d)(6) under the Act [1] and which releases daily closing prices, or (ii) the Nasdaq National Market System and (b) included in an Index. The investment objective of each Rollover Trust will be to seek a greater total return than that achieved by the stocks constituting the entire Index over the life of the Rollover Trust. To achieve this objective, each Rollover Trust will consist of a specified number of the highest dividend yielding stocks in such Trusts' respective Index.

2. Each Rollover Trust will hold its securities for a specified period, generally one year. As the Rollover Trust terminates, the Sponsor intends to create a New Trust for the next period. With respect to the Rollover Trusts, the New Trust will be based on the same Index, using the same number of current top dividend yielding stocks in the Index.

3. In connection with its termination, each Rollover Trust will sell all of its portfolio securities as quickly as practicable in the applicable market, but over a period of time so as to minimize any adverse impact on the market price. Similarly, a New Trust will acquire its portfolio securities in market purchase transactions. Because there normally will be some overlap between the portfolios of each Rollover Trust and the corresponding New Trust, this procedure will result in substantial brokerage commissions on portfolio securities of the same issue that are borne by the Rollover Trust and the New Trust.

4. In light of these costs, applicants request exemptive relief to allow any Rollover Trust to sell Equity Securities that are listed on an Exchange or Nasdaq-NMS and actively traded (as described above) to their respective New Trusts, and to permit the New trusts to purchase such securities at the closing sale prices of the securities on the applicable Exchange or on Nasdaq-NMS on the ''Sale Date.'' The Sale Date for securities sold to a New Trust will be, with respect to Units that will be exchanged under the Rollover Option, the first day of the period between the Rollover Notification Date and the date specified for termination of the Rollover Trust. With respect to other sales to the New Trust, the Sale Date will be the date the Sponsor deposits cash or a letter of credit in a New Trust with instructions to purchase securities, to the extent appropriate Equity Securities are available from a Rollover Trust by reason of Units tendered for redemption that day or termination of the Rollover Trust.

5. Each sale of Equity Securities by a Rollover Trust to a New Trust will satisfy all of the requirements of rule 17a–7, except for paragraph (e) thereof. To minimize overreaching, the Sponsor will certify to the trustee, within five days of each sale from a Rollover Trust to a New Trust, (a) that the transaction is consistent with the policy of both the Rollover Trust and the New Trust, (b) the date of such transaction and (c) the closing sales prices on the Exchange or Nasdag-NMS for the Sale Date of the securities subject to such sale. The trustee will countersign the certificate, unless the trustee disagrees with the price listed on the certificate, in which event the trustee will immediately notify the Sponsor. If the Sponsor can verify the corrected price, the Sponsor will ensure that the price of Units of the New Trust, and distribution to Unitholders of the Rollover Trust, accurately reflect the corrected price. If the Sponsor disagrees with the trustee's corrected price, the Sponsor and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Applicants request and exemption under section 6(c) granting relief from sections 2(a)(32), 2(a)(35), 22(d) and 26(a)(2) and rule 22c-1 to permit them to assess a DSC, and to waive the DSC under certain circumstances. Applicants also request SEC approval under sections 11(a) and 11(c) to enable them to implement the Exchange and Rollover Options. In addition, applicants request and exemption under sections 6(c) and 17(b) granting relief from section 17(a) to permit Rollover Trusts to sell portfolio securities to a New Trust and to permit the New Trusts to purchase such securities. Finally, applicants seek an exemption under section 6(c) granting relief from sections 14(a) and 19(b) and rule 19b–1 to the extent described below.

2. Section 2(a)(32) defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of a DSC may cause a redeeming Unitholder to receive an amount less than the net asset value of the redeemed Units, applicants request an exemption from section 2(a)(32) so that Units subject to a DSC are considered redeemable securities for purposes of the Act.[2]

3. Section 2(a)(35), in relevant part, defines the term ''sales load'' to be the difference between the public selling price of a security and that portion of the sale proceeds invested or held for investment by the depositor or trustee. Because a DSC is not charged at the time of purchase, applicants request an exemption from section 2(a)(35).

4. Rule 22c–1 requires that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value. Because the imposition of a DSC may cause a redeeming Unitholder to receive an amount less than the net asset value of the redeemed Units,

[1] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amendment defined a ''Qualified Foreign Exchange'' to mean a foreign stock exchange meeting certain standards with respect to trading volume and other matters. As subsequently amended, however, the rule omitted that proposed definition.

[2] Without an exemption, a Trust selling units subject to a DSC could not meet the definition of a unit investment trust under section 4(2) of the Act. As here relevant, section 4(2) defined a unit investment trust as an investment company that issues only ''redeemable securities.''

applicants request an exemption from this rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealers to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d–1 was adopted to permit the sale of redeemable securities with scheduled variations in the sales load. Because rule 22d–1 does not extend to scheduled variations in DSCs, applicants seek relief from section 22(d) to permit them to waive or reduce their DSC in certain instances.

6. Section 26(a)(2), in relevant part, prohibits a trustee or custodian of a unit investment trust from collecting from the Trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from Distribution Deductions or Trust assets and disburse them to the Sponsor.

7. Section 6(c) provides, in relevant part, that the SEC, by order upon application may exempt any person or transaction, or any class or classes of persons or transactions, from any provision of the Act or any rule thereunder if such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the Unitholders of the Trusts. Thus, granting the requested relief from sections 2(a)(32), 2(a)(35), 22(d), and 26(a)(2) and rule 22c–1 would meet the requirements for an exemption established by section 6(c).

8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC under section 11(a). Applicants believe that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expenses to be allocated for the professional assistance and operational expenses incurred in connection with either the Exchange or Rollover Option. Applicants further believe that the requirement that a person who has acquired Units at a lower sales charge pay the difference, if greater than the reduced fixed charge, upon exercising the Exchange Option when the Five Months Adjustment or the DSC Front-end Exchange Adjustment applies is appropriate in order to maintain the equitable treatment of various investors in each Trust Series.

9. Section 17(a) generally makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Investment companies under common control may be considered affiliated persons of one another. Each Series will have an identical or common Sponsor, National Financial Services Corporation. Since the Sponsor of each Series may be considered to control each Series, it is likely that each Series would be considered an affiliated person of the other Series.

10. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. As noted above, section 6(c) authorizes the SEC to exempt classes of transactions. Applicants believe the proposed sales of portfolio securities from a Rollover Trust to a New Trust as described above satisfy the requirements set forth in sections 6(c) and 17(b).

11. Rule 17a–7 permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

12. Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Series, as only securities that otherwise would be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions. Further, applicants submit that requiring the Series to buy and sell on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

13. Section 14(a) requires in substance that investment companies have $100,000 of net worth prior to making a public offering. The Sponsor will deposit substantially more than $100,000 of securities for each Series. As the Sponsor intends to sell all of a Trust Series' Units to the public, however, representing the entire beneficial ownership of the Trust, applicants request an exemption under section 6(c) from the net worth requirement of section 14(a). Applicants will comply in all respects with rule 14a–3, which provides an exemption from section 14(a), except that certain future Trusts (the ''Equity Trusts'') will not restrict their portfolio investments to ''eligible trust securities'' as required by the rule.

14. Section 19(b) and rule 19b–1 make it unlawful, except under limited circumstances, for a registered investment company to distribute long-term capital gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a unit investment trust investing in ''eligible trust securities'' (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Trusts will not restrict their investments to ''eligible trust securities,'' such Trusts will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit any capital gains earned in connection with the sale of portfolios securities to be distributed to Unitholders along with the Equity Trust's regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

15. Applicants believe that the dangers which section 19(b) and rule 19b–1 are designed to prevent do not exist in the Equity Trusts. Any gains from the sale of portfolio securities would be triggered by the need to meet Trust expenses, DSC installments, or by requests to redeem Units, events over which the Sponsor and the Equity Trusts have no control. Moreover, since principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the application will be made subject to the following conditions:

A. Conditions With Respect to DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *provided* that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Service which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Trust under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Trust offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or the Rollover Option will disclose that such Option is subject to modification, termination or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a DSC will include in its prospectus the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

B. Condition for Exemption From Section 14(a)

Applications will comply in all respects with the requirements of rule 14a–3, except that the Equity Trusts will not restrict their portfolio investments to ''eligible trust securities.''

C. Conditions for Exemption From Section 17(a)

1. Each sale of Equity Securities by a Rollover Trust to a New Trust will be effected at the closing price of the securities sold on the applicable Exchange or the Nasdaq-NMS on the Sale Date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Trust and New Trust.

3. The trustee of each Rollover Trust and New Trust will (a) review the procedures discussed in the application relating to the sale of securities from a Rollover Trust and the purchase of those securities for deposit in a New Trust and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to any order granting the application will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15774 Filed 6–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26533]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

June 14, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 8, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70–7926)

General Public utilities Corporation (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, and its subsidiaries, Jersey Central Power & Light Company (JCP&L''), 300 Madison Avenue, Morristown, New Jersey 07962, Metropolitan Edison Company (''Met-Ed''), P.O. Box 16001, Reading, Pennsylvania 19640, and Pennsylvania Electric Company (''Penelec''), P.O. Box 16001, Reading, Pennsylvania 19640 (together, ''GPU Companies''), have filed a post-effective amendment to their declaration under Sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated October 26, 1994 (HCAR No. 26150) (''Order''), the Commission, among other things, authorized the GPU Companies to enter into an amendment to their Credit Agreement, dated as of March 19, 1992, with a group of commercial banks for which Citibank, N.A. and Chemical Bank act as co-agents and Chemical Bank acts as the administrative agent, in order to extend through December 31, 1997 the period during which the GPU Companies were authorized to issue, sell and renew their unsecured promissory notes (''Notes'') from time-to-time in amounts up to $250 million outstanding at any time. In addition, on October 24, 1995, the GPU Companies entered into a Second Amendment to the Credit Agreement which modified certain negative covenants in the Credit Agreement (''Prior Credit Agreement'').

Under the Order, the aggregate principal amount of Notes outstanding at any time under the Prior Credit Agreement, together with all other unsecured debt then outstanding, may not exceed the limitations on such indebtedness imposed by the charters of each of JCP&L, Met-Ed and Penelec, and $200 million in the case of GPU. As of March 31, 1996, the charter limitations on such indebtedness for JCP&L, Met-Ed and Penelec were $290 million, $133 million and $145 million, respectively. At May 1, 1996, the GPU Companies

had unsecured indebtedness outstanding as follows:

GPU—$102.7 million
JCP&L—$213.4 million
Med-Ed—$26.0 million
Penelec—$111.2 million

The Notes issued under the Prior Credit Agreement mature not more than six months from their date of issue and the annual interest rate on each borrowing is either: (1) the Alternate Base Rate, as in effect from time-to-time; (2) the CD Rate, as in effect from time-to-time, plus an amount (''CD Applicable Margin'') ranging from .375% to .625% depending on the senior secured non-credit enhanced long-term debt rating (''Debt Rating'') of the borrower or, in the case of GPU, the Debt Rating of JCP&L; or (3) the Eurodollar Rate, as in effect from time-to-time, plus an amount (''Eurodollar Applicable Margin'') ranging from .25% to .50% depending upon the Debt Rating of the borrower or, in the case of GPU, the Debt Rating of JCP&L. In addition, the GPU Companies pay a facility fee ranging from .125% to .375% per annum, depending on the Debt Ratings of JCP&L, MetEd and Penelec, of the total amount of the commitments, a competitive bid fee of $2,500 for each request for a competitive bid, and an annual administrative fee of $15,000. The GPU Companies also paid aggregate agency fees of $50,000 upon signing of the First Amendment to the Credit Agreement.

On May 6, 1996, the GPU Companies entered into an Amended and Restated Credit Agreement with the banks named therein (and banks that may subsequently become parties thereto) and The Chase Manhattan Bank, N.A. (successor to Chemical Bank), as Administrative Agent, and Citibank, N.A., as Syndication Agent (''Restated Credit Agreement''), which, subject to receipt of the authorization herein requested, permits borrowings thereunder through May 6, 2001 and increases the amount that GPU may borrow thereunder to up to $250 million outstanding at any time. The Restated Credit Agreement also modified in material respects a number of the covenants contained in the Prior Credit Agreement. Accordingly, the GPU Companies have agreed, subject to Commission authorization, to an increased facility fee equal to .50% (rather than .375%) per annum of the total amount of the commitments under the Restated Credit Agreement in the event that the applicable Debt Rating is BB or below as rated by Standard & Poor's or Duff & Phelps, or Ba or below as rated by Moody's Investor Services, or if these is no Debt Rating.

The CD Applicable Margin will be .75% (rather than .625%) if the applicable Debt Rating is BB+ as rated by Standard & Poor's or Duff & Phelps, or Ba1 as rated by Moody's Investor Services, and 1.37% (rather than .625%) if the applicable Debt Rating is BB or below as rated by Standard & Poor's or Duff & Phelps, or Ba or below as rated by Moody's Investor Services, or if there is no Debt Rating. The Eurodollar Applicable Margin will be .625% (rather than .50%) if the applicable Debt Rating is BB+ as rated by Standard & Poor's or Duff & Phelps, or Ba1 as rated by Moody's Investor Services, and 1.25% (rather than .50%) if the applicable Debt Rating is BB or below as rated by Standard & Poor's or Duff & Phelps, or Ba or below as rated by Moody's Investor Services, or if there is no Debt Rating. All other CD and Eurodollar Applicable Margins and all other fees remain unchanged, except that there are no new agency fees payable by the GPU Companies in connection with the Restated Credit Agreement. Other provisions, including those relating to conditions to borrowing, acceleration and prepayment, also remain unchanged.

At the date of filing of the post-effective amendment, the Debt Ratings of JCP&L, Met-Ed and Penelec were as follows (neither GPU nor El Energy, Inc. presently has a Debt Rating):

	Stand-ard & Poor's	Duff & Phelps	Moody's
JCP&L	BBB+	BBB+	Baa1
Met-Ed	BBB+	A–	Baa1
Penelec	A–	A–	A3

As a result, the higher facility fee and the higher CD and Eurodollar Applicable Margins would not now be applicable.

New England Electric System, et al. (70–7950)

New England Electric System (''NEES''), a registered holding company, its service company subsidiary, New England Power Service Company (''NEPSCO'') and its nonutility subsidiary company, New England Electric Resources, Inc. (''NEERI'') (together, ''Applicants''), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 45, 54, 87, 90 and 91 thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) and rules 45, 87, 90 and 91 thereunder.

By order dated September 4, 1992 (HCAR No. 25621), the Commission authorized NEERI to perform consulting services on electric utility matters for nonassociates, through December 31, 1997. By order dated April 1, 1994 (HCAR No. 26017), the Commission authorized NEERI to undertake electrical related services and consulting contracts, through December 31, 1997. Both orders permitted NEPSCO to provide certain overhead services for NEERI at cost and for NEES to make capital contributions to NEERI in amounts of up to $2 million. The types of services NEERI was authorized to perform include designing, engineering, assisting in licensing and permitting, procuring materials and equipment, and installing, removing or constructing electrical related materials.

The Applicants are now requesting authority, through December 31, 1999: (1) To expand the services NEERI may perform for nonassociate entities; (2) to have NEPSCO continue to provide services for NEERI at cost; and (3 to have NEES continue to provide capital contributions to NEERI in an increased amount of up to $10 million.

Following is a list of the types of new services NEERI proposes to perform:

(1) Sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel and other goods and services procurement, delivery, and management; environmental licensing, testing, and remediation; and other similar areas, including, without limitation, transmission line services, environmental control services, maintenance and construction services, engineering services, mechanical and repair services, structural services, construction contract administration and support services;

(2) Energy conservation and demand-side management services;

(3) Sale, installation, and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment; and

(4) Sale, installation, and servicing of electric and gas appliances for residential, commercial, and industrial heating and lighting.

No system employees will be assigned to a NEERI services project if such assignment would interfere with the normal operation of the system. Utility

operating companies within the system will at all times have first priority in the use of system employees, including employees of NEPSCO. During the course of a calender year, the system will not assign more than the full-time equivalent of five percent of its employees to service projects for NEERI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15773 Filed 6–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37311; File No. SR–CTA–96–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the First Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

June 14, 1996.

Pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on May 30, 1996, the Consolidated Tape Association (''CTA'') Plan Participants filed [1] with the Securities and Exchange Commission (''Commission'' or ''SEC'') amendments to the second Restatement of the CTA Plan increasing CTA charges to ticker subscribers. The new rates are effective as of July 1, 1996.

CTA has designated the proposals as changing a charge collected on behalf of all participants, permitting them to become effective upon filing, pursuant to the terms of Rule 11Aa3–2(c)(3)(i) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

The purpose of the amendment is to recover the ticker network expense increases that common carriers have recently imposed on the CTA Plan Participants. The present fees of $160.00 per connection for Network A and $130.00 for Network B have been in effect since January, 1995. Since January, 1995, each of the Networks has absorbed a number of increases in common carrier costs. The CTA has determined to pass the increased costs along to customers. Effective July 1, 1996, Network A charges will increase to $200.00 for those subscribers in the continental USA that are serviced via the AT&T leased lines. Rates for subscribers located south of Chambers Street in New York City, where facilities are leased from NYNEX, and for customers presently receiving the signal via satellite, remain unchanged. Network B charges will increase to $200.00 per unit, effective July 1, 1996, for all customers presently receiving service in the continental USA, including subscribers in downtown New York City and those currently receiving the ticker signal via satellite.

II. Solicitation of Comments

Rule 11Aa3–2(c)(3) under the Act provides that the proposed amendment may be put into effect upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–15772 Filed 6–19–96; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37312; File No. SR-Amex-96–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on The Morgan Stanley Commodity Related Equity Index

June 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 1996, the American Stock Exchange, Inc. (''Amex'' 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 Exchange proposes to list and trade options on the Morgan Stanley Commodity Related Equity Index (''Index''), a new stock index developed by Morgan Stanley & Co. Incorporated (''Morgan Stanley'') based on stocks (or American Depository Receipts (''ADRs'') thereon) of commodity related companies. In addition, the Amex proposes to amend Exchange Rule 901C, Commentary .01 to reflect that 90 percent of the Index's numerical index value will be accounted for by component securities that meet the current criteria and guidelines set forth in Exchange Rule 915.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

[1] The proposed amendment was originally filed with the Commission on May 9, 1996. On May 30, 1996, the Commission received minor technical amendments from the CTA to conform the references in the filing to Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996), approving Restatements and Amendments to the Restated Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[2] 17 CFR 200.30–3(a)(27) (1989).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

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

Morgan Stanley has developed a new Index, based on the shares of widely held companies involved in commodity related industries such as energy (*e.g.*, oil and gas production and oilfield services and equipment), non-ferrous metals, precious metals, agriculture, and forest products.[3] Each of the component securities is traded on the Amex, the New York Stock Exchange, Inc. (''NYSE''), or through the facilities of the National Association of Securities Dealers (''NASD'') Automated Quotation system (''Nasdaq'') and are reported national market system securities (''Nasdaq/NMS''). The Amex intends to trade standardized option contracts on the newly developed Index. The Amex is filing this proposal pursuant to Exchange Rule 901C, Commentary .02, which provides for the commencement of trading of options on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Commentary .02 as well as the Commission's order approving generic listing standards for options on narrow-based indexes, as outlined below.[4]

Eligibility Standards for Index Components

Pursuant to Commentary .02 to Exchange Rule 901C: (1) all of the component securities are listed on the NYSE; (2) each component security has a minimum market capitalization of at least $75 million;[5] (3) each component security has had a monthly trading volume of at least one million shares during the previous six months; (4) all of the component securities currently meet the eligibility criteria for standardized options trading set forth in Exchange Rule 915;[6] (5) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represents more than 20 percent of the weight of the Index; and (6) the Index is equal-dollar weighted, with no component security representing more than 25 percent of the weight of the Index, and the five highest weighted component securities not constituting more than 60 percent of the weight of the Index.

Maintenance of the Index

The Amex will maintain the Index in accordance with Exchange Rule 901C, Commentary .02 so that: (1) the total number of component securities will not increase or decrease by more than 33⅓ percent from the number of component securities in the Index at the time of its initial listing, and in no event will the Index have less the nine component securities; (2) the component securities constituting the top 90 percent of the Index by weight must have a minimum market capitalization of $75 million, and the component securities constituting the bottom 10 percent of the Index by weight must have a minimum market capitalization of $50 million; (3) the monthly trading volume of each component security must be at least 500,000 shares, or for each of the lowest weighted component securities that in the aggregate account for no more than 10 percent of the weight of the Index, the monthly trading volume must be at least 400,000 shares; (4) the Index must meet the criteria that no single component security represents more than 25 percent of the weight of the Index and that the five highest weighted component securities represent no more than 60 percent of the weight of the Index; and (5) 90 percent of the Index's numerical index value and at least 80 percent of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915.

The Exchange will not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of the Index option has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

The Index will be calculated and maintained by the Amex. A component security may only be removed from the Index when: (1) the component security no longer meets the objective maintenance criteria set forth above; (2) as the result of a corporate event involving the issuer of a component security, the component security is delisted (*e.g.*, the takeover or merger of the issuer of a component security); or (3) the component security no longer represents the commodity related industry it was intended to represent or another appropriate commodity related industry. In all three situations, the Amex will be responsible for removing the component security and choosing a replacement. In addition, to properly reflect the changing conditions in the commodity related industries, the Amex will evaluate the component securities to determine whether to add or to delete an industry subcategory, or to change the number of component securities in an industry subcategory. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever practicable. As with all options currently trading on the Amex, the Exchange will make this information available to the public through the dissemination of an information circular. It is expected that the Index will remain at the current number of component securities. If, however, the number of component securities increases or decreases by more than one-third, the Exchange will submit a rule filing to the Commission to obtain the necessary approval.

Morgan Stanley will have no role in maintaining the Index and generally will not be consulted by the Amex regarding potential changes to the Index. In rare circumstances, however, the Amex may require assistance and may wish to consult with employees of Morgan Stanley. Therefore, since Morgan Stanley may be consulted regarding the maintenance of the Index, a ''chinese wall'' has been erected around the personnel at Morgan Stanley who have access to information concerning changes and adjustments to the Index. Details of Morgan Stanley's chinese wall procedures, which are closely modeled on existing procedures for other Morgan Stanley indexes underlying standardized options, have

[3] The Index's component securities are as follows: Amerada Hess Corporation; Anadarko Petroleum Corporation; Apache Corporation; Atlantic Richfield Company; Baker-Hughes Inc.; Burlington Resources Inc.; Schlumberger Ltd.; Aluminum Company of America; Cyprus Amax Minerals Company; Phelps Dodge Corporation; Reynolds Metal Company; USX–US Steel Group; Homestake Mining; Newmont Mining Corporation; Placer Dome Inc.; Archer-Daniels-Midland Company; Conagra Inc.; IBP Inc.; Potash Corporation Sask Inc.; and Weyerhaeuser Company.

[4] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (''Generic Index Approval Order'') (File No. SR–Amex-92–35). The Commission notes, however, that pursuant to the Generic Index Approval Order, the Exchange must provide to the Commission written representations that both the Amex and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to support the new series of options before the Amex may list and trade options on the Index.

[5] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[6] Telephone Conversation between Claire P. McGrath, Managing Director and Special Counsel, Amex, and Matthew S. Morris, Attorney, Division of Market Regulation, Commission, on June 12, 1996.

been submitted to the Commission under separate cover.

Index Calculation

The Index is calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount in the Index. The following is a description of how the equal-dollar weighting calculation method works. As of the market close on March 15, 1996, a portfolio of stocks was established representing an investment of $1,000,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the component securities in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 200.00 at the close of trading on March 15, 1996. Quarterly thereafter, following the close of trading on the third Friday of March, June, September, and December, the Index portfolio will be adjusted by changing the number of whole shares of each component security so that each company is again represented in ''equal'' dollar amounts. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component security in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution , stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event. In a merger or consolidation of an issuer of a component security, if the stock remains in the Index, the number of shares of that security in the portfolio will be adjusted, if necessary, to the nearest whole share, to maintain the component security's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the dollar value of the security being replaced will be calculated and that amount invested in the stock of the new component security, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European-style (*i.e.*, exercises are permitted at expiration only), and cash-settled. Standard option trading hours (9:30 a.m. to 4:10 p.m., New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series will expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term options series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or a reduced value long-term option will not be less than six months. The trading of any long-term option would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures, and all options will have European-style exercise. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options.[7]

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component securities. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component security does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options

Exchange Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a Stock Index Option under Exchange Rule 901C(a) and a Stock Index Industry Group under Exchange Rule 900C(b)(1). With respect to Exchange Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Exchange Rule 904C(c) will result in a position limit of 12,000 contracts with respect to options on the Index.

2. Statutory Basis

The Amex 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order, it has become effective pursuant to

[7] For example, if the position limit for the full value options is 12,000 contracts on the same-side of the market, then the position limit for the reduced value options will be 120,000 contracts on the same-side of the market.

Section 19(b)(3)(A) of the Act.[8] Pursuant to the Generic Index Approval Order, the Amex may not list options for trading on the Index prior to thirty days after June 3, 1996, the date the proposed rule change was filed with the Commission.[9] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–20 and should be submitted by July 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–15771 Filed 6–19–96; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A) (1988).

[9] As noted above, *see* supra note 4, pursuant to the Generic Index Approval Order, the Exchange must provide to the Commission written representations that both the Amex and the OPRA have the necessary systems capacity to support the new series of options before the Amex may list and trade options on the Index.

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–37308; File No. SR–BSE–96–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

June 12, 1996.

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 June 11, 1996, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities 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. On June 11, 1996 the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 thereto from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to amend its Specialist Performance Evaluation Program (''SPEP'').[2]

[1] *See* Letter from Karen Aluise, Assistant Vice President, BSE, to Sharon Lawson, Senior Special Counsel, SEC, dated June 11, 1996 (''Amendment No. 1''). Amendment No. 1 corrects typographical errors in the original filing as to the existing and proposed program weight assigned to the Turnaround Time measure. Amendment No. 1 also adds a proposal to raise the overall score at which a specialist will be deemed to have adequately performed from 5.80 to 6.70 in order to account for the proposed changes to the threshold levels and weights.

[2] The SEC initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR–BSE–84–04). The SEC subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR–BSE–92–04), at which point the initial pilot program ceased to exist as a separate program. The current pilot program was subsequently extended in Securities Exchange Act Release Nos. 33341 (December 15, 1993), 58 FR 67875 (December 22, 1993) (File No. SR–BSE–93–16); 35187 (December 30, 1994), 60 FR 2406 (January 9, 1995) (File No. SR–BSE–94–12); and 36668 (January 2, 1996), 61 FR 672 (January 9, 1996) (File No. SR–BSE–95–16) (''January 1996 Approval Order''). SEC approval of the current pilot program expires on December 31, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The purpose of the proposed rule change is to modify the current SPEP measures' threshold levels, weights, and review standards.[3] The Exchange has been continuously monitoring the performance of its specialists in relation to the current SPEP standards, and has determined the following:

(1) The Trading Between the Quote threshold level, currently at 26.0, should be raised to 31.0;

(2) Executions in Size Greater Than BBO threshold level, currently at 76.0, should be raised to 81.0;

(3) The Turnaround Time program weight, currently at 15%, should be increased to 20%;

(4) The Holding Orders Without Action program weight, currently at 15%, should be decreased to 5%;

(5) The Trading Between the Quote program weight, currently at 25%, should be increased to 35%;

(6) The Executions in Size Greater Than BBO program weight, currently at 25%, should be increased to 35%;

(7) The Questionnaire program weight, currently at 20%, should be decreased to 5%;

(8) The standard for Performance Improvement Action Committee review for

[3] The BSE's SPEP currently consists of five measures of performance, each accounting for a certain percentage of a specialist's overall evaluation score: Turnaround Time (15%); Holding Orders Without Action (15%); Trading Between the Quote (25%); Executions in Size Greater Than BBO (25%) and Questionnaire (20%). The Exchange has set thresholds at which a specialist will have been deemed to have adequately performed overall, and with regard to each measure, on the SPEP: Overall Evaluation Score—at or above weighted score of 5.80; Turnaround Time—below 21 seconds (8 points); Holding Orders Without Action—below 21% (7 points); Trading Between the Quote—at or above 26.0% (5 points); Executions in Size Greater Than BBO—at or above 76% (6 points); and Questionnaire—at or above weighted score of 50.0 (4 points). For a detailed description of each of the measures of performance and the review standards applicable to specialists performing below the set thresholds, see January 1996 Approval Order, *supra* note 2.

substandard performance in any one objective measure, currently set at two out of three consecutive review periods, will be changed to the first instance of substandard performance;

(9) The standard for Market Performance Committee review for substandard performance in any one objective measure, currently set at three out of four consecutive review periods, will be changed to two out of three consecutive review periods;

(10) The standard for Market Performance Committee review for substandard performance on the overall program, currently set at two out of three consecutive review periods, will be changed to the first instance of substandard performance; and

(11) The Overall Program score, currently at 5.80, should be increased to 6.70 to account for the proposed changes to the threshold levels and weights.

The threshold levels for Turnaround Time, Holding Orders Without Action and the Questionnaire, as well as the staff review standards, will remain unchanged. The Exchange believes that together, these modifications will enhance the SPEP by providing:

(A) More appropriate threshold levels when overall performance has improved beyond the current limits;

(B) More effective measure weightings which reflect the industry's current market quality focus; and,

(C) A more realistic approach to committee review in view of the time horizon required to address substandard performance.

In addition, the Exchange is currently reviewing additional market quality statistics in an effort to develop other measures of performance for inclusion in the SPEP, and hopes to file for additional modifications to the program in the near future.

2. Statutory Basis

The basis under the Act for the proposed rule change is Section 6(b)(5) of the Act [4] in that the SPEP results weigh heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary and appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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 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 the 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–05 and should be submitted by July 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15664 Filed 6–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37302; File No. SR-NASD–95–42, Amendment No. 2]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the NAqcess System and Accompanying Rules of Fair Practice

June 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 6, 1996,[2] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') an amended version of the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Pursuant to Section 19(b)(1) of the Act, the NASD and The Nasdaq Stock Market, Inc. (''Nasdaq'') propose to amend the proposed rules governing the operation of Nasdaq's NAqcess system, a new system that would offer nationwide limit order protection and price improvement [3] opportunities for orders entered in the proposed system. Specifically, the NASD is proposing several amendments to NAqcess designed to allow the entry into NAqcess of: (1) Proprietary orders by registered Nasdaq market makers and

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The NASD initially filed the proposed rule change on September 22, 1995 and, on November 9, 1995, the NASD filed Amendment No. 1. Notice of the original filing and Amendment No. 1 was provided by publication in the Federal Register. Securities Exchange Act Release No. 36548 (Dec. 1, 1995), 60 FR 63092 (Dec. 8, 1995).

[3] Commission Note: The NASD's use of the term ''price improvement'' in this proposal differs from the use of the term in recent Commission releases. Specifically, the Commission has used the term when referring to the opportunity to receive a price that is superior to best bid or offer. *See, e.g.*, 17 CFR 11Ac1–3(a)(2); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994) at text accompanying n. 32. The NASD's use of the term in this proposal, on the other hand, refers to the opportunity to receive a price that is better than the best market maker quotation, which may not be the best bid or offer to the extent NAqcess limit orders are included. In its recent rule proposal concerning the obligations of market makers executing customer orders, the Commission asked for comment on whether automated systems that include the possibility of the interaction of market orders with limit orders should be deemed to satisfy the proposal's requirement that market orders be provided with an opportunity for price improvement. Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792 (Oct. 10, 1995).

other specific categories of broker-dealers performing a registered market making function (collectively, ''market makers''); and (2) limit orders by investors and market makers of up to 9,900 shares in the 250 most active Nasdaq National Market Securities as measured by median daily dollar volume during the most recent calendar quarter; and (3) other technical changes to the proposed rule language. The NASD also proposes to revise the opening process for NAqcess. Finally, in conjunction with the approval of an expanded NAqcess by the Commission, the NASD intends to discontinue the SelectNet service, except for the purpose of maintaining a communications facility for use in special market conditions. Exhibit A contains a revised version of the NAqcess Rules, Exhibit B contains the new Interpretations and the new rule in its Rules of Fair Practice related to NAqcess and Exhibit C contains proposed amendments to the Schedules to the By-Laws. Additions are italicized and deletions are bracketed.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

On September 22, 1995, the NASD proposed rules governing the operation of NAqcess, a new service for the delivery, handling and execution of investors' agency orders.[4] As originally proposed, NAqcess would have been a new system that offers nationwide limit order protection and price improvement opportunities for customer orders. NAqcess was a significant advance in terms of both the transparency of the Nasdaq Stock Market and increased access to faster executions and better prices by retail customers.

Subsequent to the NASD's filing of NAqcess, the SEC proposed four significant changes to SEC rules that could have far-reaching and wide-ranging effects on the overall U.S. equity markets, including the Nasdaq Stock Market.[5] The Commission's goals in proposing these change are fully consistent with the views of the NASD regarding investor protection and transparency of limit orders in the Nasdaq Stock Market. While the NASD believes that NAqcess, as originally filed, was consistent with the Commission's Order Exposure Release, the NASD has determined to seek the Commission's approval of refinements of NAqcess that are even more closely configured to the SEC's approach.

Through this amendment, the NASD proposes to further enhance Nasdaq's transparency and customer access to prompt executions by increasing the size of limit orders eligible for entry and permitting market makers to enter proprietary market and limit orders. These proposed amendments to NAqcess closely parallel certain of the SEC's proposals regarding order exposure and handling, in particular those rules relating to the display of customer limit orders (proposed Rule 11Ac1–4). The changes to NAqcess that are proposed herein are responsive to the goals of the SEC's proposed rules, and also maintain an environment where the substantial benefits to issuers and investors that the Nasdaq competing dealer system provides can be continued.

A. Increased Eligibility Size for Limit Orders Entered Into NAqcess

The NASD proposes to increase the size of limit orders eligible for entry into NAqcess to 9,900 shares for the 250 most active Nasdaq National Market securities as measured by median daily dollar volume over the previous calendar quarter.[6] The NASD believes that this increase in the size of NAqcess-eligible limit orders should enhance market transparency and increase the likelihood that there will be sufficient trading interest available in NAqcess for other orders to execute against in a timely manner. Through this change, the NASD envisions that customer limit orders will more likely be executed because customers with larger orders, including the institutions that make up a significant portion of the investor base of many highly liquid Nasdaq securities, will be able to enter orders into NAqcess. At the same time, the approach that the NASD is taking with a revised NAqcess (limiting the increase size eligibility to the 250 most active National Market securities) attempts to balance the transparency objectives against other core market and regulatory objectives, such as maintaining market liquidity and improving market quality for all investors.

As explained in greater detail below, the proposed limitation provides the NASD and market makers with an opportunity to develop experience with larger limit orders to determine if or when the size requirements may be expanded to less liquid securities. The NASD believes at this time that the trading activity in securities below the most active 250 Nasdaq securities may not be sufficient to provide the incentive for substantial market maker participation if limit orders up to 9,900 shares were eligible for NAqcess. Market makers bring significant amounts of capital to bear in support of the trading of new and smaller-capitalized companies in which there may not be significant natural liquidity. A market maker's willingness to sponsor new companies is directly related to its return on capital for the risks incurred. Market maker participation could diminish if Nasdaq did not provide market makers a reasonable opportunity to obtain a fair return on investment. In turn, lack of market maker sponsorship could seriously damage the capital-raising abilities of small issuers at an early stage in their growth. As is well-known, Nasdaq's competing dealer market structure historically has provided strong support for smaller issuers as they built investor interest and support. It is appropriate, then, to permit Nasdaq to constructively refine its market structure as it seeks to provide greater benefits to investors using the market, while continuing to maintain market maker incentives in its structure.[7] The NASD believes that its

[4] Securities Exchange Act Release No. 36548 (Dec. 1, 1995); 60 FR 63092 (Dec. 8, 1995).

[5] Securities Exchange Act Release No. 36310 (Sept. 29, 1995); 60 FR 52792 (Oct. 10, 1995) (''Order Exposure Release'').

[6] The NASD has chosen 9,900 shares as the largest limit order eligible for entry into NAqcess because such size is the largest round lot size below 10,000 shares, the order size traditionally defined as ''block size.'' The SEC's proposed Rule 11Ac1–4, as currently proposed, would exempt orders 10,000 shares and larger from its display requirements. Because the NASD is attempting to develop NAqcess to parallel the SEC's rule, it has chosen to permit certain limit orders below 10,000 shares into NAqcess. An order size of 9,999 shares, however, would have an odd-lot of 99 shares embedded in it that would present difficulties in execution. Accordingly, the NASD plans to program the system to accept orders up to the largest round-lot below 10,000 shares, *i.e.*, 9,900.

[7] The NASD also notes other significant benefits that a competing dealer structure brings to the marketplace in addition to issuer sponsorship and liquidity. Dealers also provide immediacy of execution to persons demanding such and willing to pay the costs associated with immediacy. Additionally, dealers provide significant capacity to

Continued

approach provides an appropriate balance of these competing objectives.

Based upon an analysis of the trading activity in Nasdaq securities for the first quarter in 1996, the 250 most active National Market securities are significantly more liquid than other Nasdaq securities. For instance, median daily dollar volume for the 250 most active securities was $13,788,823.[8] For the next 250 most active securities, first quarter median daily dollar volume was $3,604,481. The median daily dollar volume for the remaining securities in the Nasdaq National Market list was $268,228.[9]

These figures demonstrate a drop off in trading activity in stocks ranked below the 250 most active securities. Market makers currently are willing to quote in these securities on a regular and continuous basis and will buy from or sell to any customer that seeks to trade. Market makers may not be willing, however, to incur the substantial risk to their capital in low liquidity securities when forced to compete with limit orders that in effect could act as fair-weather market makers, *i.e.*, displaying priced orders when there is natural investor interest on the opposite side of the market, but disappearing as soon as market conditions turn unfavorable. Market makers that must compete on such unfair terms would likely seek more productive uses for their capital and would withdraw from market making in such securities.

In addition, if market makers withdraw, the NASD believes at this time that other sources of liquidity may not provide an adequate replacement. The liquidity provided by typical investor order flow through limit orders in low-liquidity stocks is likely to be overwhelmed or non-existent, and accordingly, it may be difficult to sustain price continuity. The NASD believes volatility may increase and investors will receive poorer executions as a result. Ultimately, investors may seek investment opportunities in other securities and issuers may find it more difficult to raise capital.

It is important to emphasize that these less liquid securities would continue to have the NAqcess limit order facility available for limit orders of 1,000 shares or less. This feature clearly permits the average retail investor the opportunity to compete with market makers and to seek price improvement opportunities over the dealer quote. The NASD notes that in the SOES limit order file, the typical retail investor limit order size (excluding day traders) averaged under 500 shares. Based on this information and information from NASD members, for securities below the Top 250, the eligible limit order size provision should satisfy retail investors. Accordingly, the NASD believes it is appropriate to create two different size levels of limit orders eligible for entry into NAqcess.

Moreover, both the NASD and the SEC, together with market participants, will be able to learn from the experience gained in expanding the limit order size for the most active Nasdaq securities. The tempered approach proposed by the NASD will permit it to determine the empirical effect that larger-sized limit order exposure has on these securities, especially on liquidity and continued market maker participation. After a sufficient study period of two years (if not sooner), the NASD will be in a better position to evaluate additional steps that may be warranted.

The NASD also notes that under the proposed rules it would permit a continuing, gradual expansion in the list of securities eligible for large-sized limit order entry. This gradual expansion would occur because the NASD would not delete issues from the list even if supplanted by other issues in subsequent recalculations of the 250 most active securities. For example, if securities ranked 240 through 250 as measured in the initial ranking were to be replaced by other securities not previously ranked, the NASD would add the new most active securities to the eligibility list but would not delete those supplanted. In this way, the list would eventually expand in size, providing investors with additional opportunities to place larger limit orders.

Of course, if a security ranked in the 250 most active list were to experience a fundamental change in trading characteristics, the NASD would delete the security from the list. By fundamental change, the NASD means it would examine the median daily dollar volume activity to determine if its dollar volume had fallen below the 1,500 most active securities, or that it no longer qualified as a National Market security. In either case, the security would be deleted from eligibility for larger limit orders entry into NAqcess.

B. Market Maker Proprietary Orders in NAqcess

The NASD also proposes to amend the NAqcess rules to permit broker-dealers that are registered as NAqcess market makers, or other broker-dealers that perform market making functions (defined as ''eligible market makers'' in the amended rule), the opportunity to enter proprietary orders into NAqcess. Proprietary orders are orders entered by a market maker for the firm's own principal account or as a part of a riskless principal trade on behalf of a customer.[10] Eligible market makers may enter proprietary orders that are priced orders (*i.e.*, limit orders), unpriced orders (*i.e.*, market orders), or priced orders entered at the current best dealer

deal with unbalanced order flow in times of market imbalances or in cases of very large trades by institutions, such as pension funds and mutual funds, that represent large numbers of individual investors.

The NASD notes that other markets in the U.S. and around the world have developed special arrangements to encourage and facilitate dealer participation to handle block trading and order imbalances. For example, the specialist system in U.S. exchange markets requires dealer participation in what are typically referred to as ''auction markets.'' Block trading rules used at exchanges in the U.S. and the Paris Bourse's special rules regarding the ''contra partie'' system also encourage dealer participation to accommodate block trades. The NASD refers to these hybridized market structure approaches only to note that it is important that the regulator allow market forces, within a strong regulatory framework, to determine an appropriate, flexible, balanced approach to serving the diverse needs of all market participants—issuers, retail and institutional customers, and market professionals, including market makers.

[8] The NASD believes that the best measure for determining trading activity for these purposes is the median daily dollar volume over the course of a quarter. Dollar volume provides a clearer measure than share volume because it normalizes across diverse share prices. Because of merger activity among Nasdaq issuers and other phenomena that can cause temporary volume surges, share trading statistics can be skewed. The temporary spikes in share volume could displace from the most active list more substantial companies that regularly trade in heavy volume. The median is a measure of central tendency that limits the importance of temporary volume surges.

However, even with the median daily dollar volume calculation, the trading history in an initial public offering (''IPO'') may be skewed to such an extent that the NASD does not have an accurate picture of the true trading characteristics of that security. For that reason, the NASD will exclude an IPO from the Top 250 calculation until the security has two full calendar quarters of trading history after which a more accurate determination can be made. The NASD will use the second full calendar quarter of trading to determine whether an IPO falls into the list of the Top 250 securities. The first full calendar quarter will not be used in the calculation.

[9] These statistics were derived from the first thirteen Thursdays of trading in 1996 (January 4–March 28, 1996). The NASD excluded Small Cap issues and any issue that did not trade on each day of the sample period. The calculation was derived by first finding the median daily dollar volume for each issue and then finding the median value across the grouping.

[10] Under the original NAqcess proposal, market makers would have been able to enter ''marker orders.'' A marker order was defined as a principal order that a market maker entered for the purpose of effecting, in essence, a riskless principal transaction with a customer. The proprietary order proposal eliminates the need for the marker order concept. Under the proposed revision, market makers may enter priced or unpriced principal orders for their own account, or principal orders on behalf of a customer as part of a riskless principal transaction.

bid or offer (*i.e.*, marketable limit orders), consistent with the general order entry requirements for NAqcess.

1. Proprietary Limit Orders

The entry of proprietary limit orders in NAqcess should increase the size and depth of the limit orders in the facility and may help to further tighten the spreads in stocks. Market maker limit orders should permit such firms to aggressively price securities anonymously and to attract additional orders to them through this anonymous display. Consequently, the NASD believes that this amendment will increase the likelihood that customer orders will be executed more quickly, more frequently, and at better prices.

In addition, the entry of proprietary limit orders responds to the transparency concerns that the SEC raised with respect to orders placed in widely disseminated electronic communications networks (''ECNs'') and will assist market makers in managing their risk by eliminating the potential for double executions that would be possible under the SEC's proposal. The SEC's proposed Rule 11Ac1–1(c)(5) would require that market makers reflect in their quotes the prices of orders that they place in ECNs. As the NASD noted in its comment letter on the Commission's proposed rules, this part of the SEC proposal may act as a major disincentive to market making because it would destroy the benefit of anonymity provided by ECNs. Every quote from a market maker in Nasdaq has the market maker's own unique identifier. The quote-display requirement with the attached identifier increases substantially the risk that a market maker would incur in establishing or liquidating a larger position because it telegraphs to the entire market the inventory position of the market maker. Moreover, displaying a better price in both the individual quote and in an ECN exposes the market maker to the risk of multiple executions at the same price.

The proposed revision to NAqcess that would allow proprietary limit orders by market makers in the NAqcess file addresses both the transparency concern and the double execution issue. NAqcess limit orders, whether agency or principal, that establish the best prices on the market would be reflected in the Nasdaq best bid and offer, *i.e.*, the inside market.[11] Because the inside market is publicly disseminated, price discovery would be enhanced and best execution obligations would be more readily met. In other words, small investors would have access to the same prices that institutional and professional traders have in ECNs. Further, because the order would be anonymously reflected in the inside market, the problems that surface under the SEC proposal are diminished. In sum, this change to NAqcess should enhance the price discovery function of the Nasdaq Stock Market, while continuing to promote the liquidity that multiple market makers bring.

2. Proprietary Market Orders

Additionally, the NASD is amending the filing to permit eligible market makers to enter market orders for their own accounts, *i.e.*, proprietary market orders.[12] Proprietary market orders would be handled in the same manner as agency market orders. In other words, proprietary market orders would be subject to the same maximum order sizes and would be processed and executed in the same way agency market orders are to be handled. The intention in this amendment is to promote market maker participation in Nasdaq and to aid market makers in their ability to reduce risk from inventory by laying off positions through an automated means.

The NASD believes, at this time, that the proprietary market order entry feature provides a significant benefit to market makers and the marketplace as a whole. The ability to enter proprietary market orders allows market makers the ability to swiftly access other market makers' quotes and receive executions at those displayed prices. As a result, the accessibility of these quotes will encourage market makers to take positions in those securities and thereby aid in the liquidity of the market. The NASD believes that it is appropriate to limit use of NAqcess for proprietary trading to market maker orders. The purpose of proprietary trading in NAqcess is to enhance price discovery and to provide market makers with the tools to continue to function effectively as a market maker.[13] The NASD's goal is to promote liquidity and to provide incentives to market makers to maintain that liquidity and to continue to sponsor new issuers.

Accordingly, to the extent that proprietary trading capability is not extended to other broker-dealers and thus considered a competitive burden, the NASD believes that any such burden is appropriate and in furtherance of the purposes of the Act. In particular, by quoting firm, two-sided markets on a regular and continuous basis in addition to entering proprietary limit orders, market makers perform an important liquidity-provider function that is at the core of the Nasdaq Stock Market. Non-market-makers do not provide such liquidity. In fact, broker-dealers that seek execution of orders for their own account without incurring any of the risks associated with the display of firm quotes reasonably related to the current market could potentially harm the market and investors. They are demanders of liquidity competing with investors for a scarce commodity. It does not further the purposes of the Act to create a market structure that could harm investors by allowing market professionals to exhaust market liquidity for their own gain without imposing a corresponding obligation to provide support to the market. Any broker-dealer seeking access to this particular feature of NAqcess may seek to register as a NAqcess market maker and contribute to Nasdaq liquidity.[14]

3. Proprietary Orders—Generally.

The NASD believes that it would be appropriate to extend the capability to enter proprietary orders to registered Nasdaq market makers and to other broker-dealers that perform Nasdaq-security-related market-making functions in other markets. The

[11] A proprietary limit order may be entered by the firm as principal for the firm's own account or as part of a riskless principal transaction. In riskless principal transactions, the limit order entered may be of representative size, *i.e.*, it does not have to be for as large a size as the customer order the firm holds. However, this type of proprietary order may not be representative of an order larger than that eligible for NAqcess in the first instance. Entry of split orders, whether as part of an agency order or as part of a riskless principal proprietary order transaction, is not permitted.

[12] Because marketable limit orders are the equivalent of market orders, this amendment also permits the entry of proprietary marketable limit orders. When used in this discussion, the term ''market orders'' encompasses marketable limit orders as well.

[13] With respect to options market makers, the NASD notes that this approach should address the concerns expressed by the Commission in its approval order regarding the NASD's Limit Order Protection Interpretation (NASD Rules of Fair Practice, Article III, Section 1, Interpretation .07). Securities Exchange Act Release No. 35751, May 22, 1995. In that order, the Commission stated that it ''recognized the importance of price discovery and market efficiency and liquidity for options specialists and market makers to have efficient and economical opportunities for laying off risk in the Nasdaq market.'' Id. at 21. Because of the important options market liquidity role that options market makers have, and because options market makers' orders will enhance liquidity and the likelihood of prompt executions in NAqcess, the NASD determined that proprietary orders from these types of firms should be allowed.

[14] The NASD notes that NAqcess rules continue to allow any NASD member to enter customer limit orders on behalf of their customers and to enter takeout orders on behalf of customers or for their own accounts.

proposed amendments specify that proprietary orders may be entered by three separate groups of market makers: (1) Registered Nasdaq market makers that also have registered as NAqcess market makers; (2) UTP exchange specialists; and (3) registered options market makers. Market makers must be registered as market makers for the specific security for which they seek to enter a proprietary order. Thus, a market maker registered and actively quoting as a market maker in one Nasdaq security (or, in the case of options market makers, an option on a Nasdaq security) may not enter a proprietary market or limit order in another Nasdaq security, unless separately registered as a market maker in that security as well. It is important to note that mere registration as a market maker is not sufficient to allow the entry of proprietary orders. A market maker must also have commenced quoting the security and the quotation must be active, *i.e.*, the market maker may not enter proprietary orders when it is in a closed quote state. Additionally, all proprietary orders must be entered by an associated person of the eligible market maker who is actively engaged in a market making capacity for Nasdaq securities. The NASD seeks to ensure that the entry of proprietary orders is properly managed by the eligible market maker.

As to UTP exchange specialists, the exchange specialist must be registered with an exchange that is a signatory to the Nasdaq/NMS/UTP Plan and must accept responsibility for market order executions at its quotation pursuant to the NAqcess market order execution process. Specifically, the NASD notes that the extension of this privilege to UTP specialists is contingent upon UTP exchanges and Nasdaq coming to terms on access to UTP exchange quotes for the purpose of market order executions. The best way to provide the reciprocal capability of one market being able to access the other is through the provision of Nasdaq Workstations to UTP Exchanges. In that way, UTP Exchange specialists will be able to enter proprietary orders into NAqcess and in return, NASD members can directly access exchange quotes in Nasdaq securities through NAqcess. Until such time as NASD members can obtain executions of market orders in NAqcess against the UTP exchange specialist when a UTP exchange is setting the best price in a security, the NASD believes that it would be unfair to allow UTP specialists to enter proprietary orders into NAqcess. The NASD is fully willing to negotiate with UTP exchanges an appropriate approach to access to all Nasdaq systems as a part of the Nasdaq/NMS/UTP Plan. In this regard, prior to filing this amendment to the rule filing, the NASD has contacted the UTP Exchanges to inform them of this proposed function and to commence discussions on reaching a successful resolution of the access issue.

A registered options market maker that seeks to enter a proprietary order in a security must be registered as an options market maker in that same security on an exchange that trades options on that security. Options market makers that are not NASD members with access to Nasdaq Workstation II equipment may place NAqcess orders through an NASD member, whether a market maker or a NAqcess order entry firm.[15]

All proprietary orders will be accorded the same priorities and, for limit orders, price protection as provided to any other order in NAqcess. Accordingly, a proprietary limit order in NAqcess that has price or time priority over any other limit order will be executed ahead of all other limit orders. Further, the price protection rule also applies to proprietary limit orders in NAqcess in the same way that the rule would apply to an agency order.[16] Proprietary limit orders will not have any distinguishing characteristic viewable to market participants to differentiate them from other limit orders.[17] Similarly, proprietary market orders will be handled in the same order delivery and execution process as agency orders. In addition, proprietary orders, both limit and market orders, may not be entered for sizes larger than the maximum order sizes permitted under the rules, *i.e.*, 9,900 and 1,000 shares for limit orders, and 1,000, 500, and 200 for market orders. It should be noted, however, that proprietary orders will not be aggregated under a single investment concept approach when the proprietary orders are strictly for the market maker's own account. On the other hand, to avoid allowing a customer to circumvent the maximum order size rules, a market maker may not enter a series of proprietary orders in order to execute as riskless principal a customer order that is in excess of the maximum order size. For example, if a market maker receives a customer limit order for 20,000 shares, the firm is not permitted to enter four 5,000 share orders at that same price with the expectation that the firm will pass along the benefit of the executions to the customer.

4. Elimination of SelectNet

The entry of proprietary orders and larger sized limit orders provides significantly greater functionality in the NAqcess system. It is the NASD's view that this new functionality provides members with the capabilities substantially equivalent to the most used functions in SelectNet. Members use SelectNet in several ways. Members most frequently broadcast smaller or medium size orders in an attempt to obtain price improvement for a customer order over the current dealer quotation. NAqcess provides a similar ability in a more efficient book display and interaction environment.

Market makers also occasionally use SelectNet to send orders to other market makers when they cannot reach them by telephone. NAqcess will provide market makers similar capabilities and because orders will not scroll off the screen unexecuted as occurs in SelectNet, it will provide for more efficient executions.

Members also can use SelectNet to broadcast larger orders in an attempt to seek negotiation or execution of those orders. NAqcess will provide the ability to send orders up to 9,900 shares for certain securities, but, unlike SelectNet,

[15] To clarify the rule on takeout orders, the NASD also proposes to amend the rule to specifically allow takeout order entry on behalf of registered options market makers, as well as customers. In the original proposal, takeouts were described as principal orders or orders entered as agent for a customer. Under NASD rules generally, customer is defined not to include brokers or dealers. The NASD has added the term ''customer'' to the list of definitions in the NAqcess rules and have redefined ''takeouts'' to include options market maker orders. Because UTP Exchange specialists will have access to Nasdaq Workstations, they will be permitted to enter takeout orders directly. In adding the definition of customer, the NASD reiterates that agency orders entered within a five minute period may be deemed to be based on a single investment decision. In this regard, it also noted that entry of computer generated orders could be considered orders based on a single investment decision. *See* Securities Exchange Act Release No. 36548, at n. 16 (60 FR 63095).

[16] The equivalent price protection rule does not apply to proprietary limit orders because such rules only apply to customer orders. Thus, to the extent that a member firm holds a limit order from an options market maker outside of NAqcess, the firm is not obligated to provide equivalent price protection for such order.

[17] A member entering a proprietary order on behalf of an options market maker must ensure itself that the firm placing the order is eligible to do so. Thus, if a member receiving an order from another firm claiming to be eligible as a registered options market maker knew or should have known that the firm claiming the right to enter the order did not in fact qualify, the member could be deemed to have violated the NAqcess rules. Members entering such orders are required to document that the order is eligible for entry. Members will be required to place an appropriate indicator in the order entry window on the Nasdaq Workstation to denote whether a limit order is an agency order, a principal order, a riskless principal order, or an order on behalf of an options market maker.

it will not permit unlimited size for all securities. The NASD notes, however, that although SelectNet allows the display of unlimited size orders, it is rare that orders larger than the NAqcess size limits are executed in SelectNet. The NASD examined certain trading days in the first quarter of 1996 to determine a representative picture of SelectNet use.[18] Of the 250 most heavily traded issues as determined by median dollar volume, there were 52 trades in SelectNet larger than 9,900 shares on the days studied. Over the same time period, the total number of trades for these securities was 2,085,544. Thus, SelectNet trades greater than 9,900 shares accounted for .0025% of total trades. The numbers related to other securities present a very similar pattern. There were 27,646 SelectNet trades greater than 1,000 shares for all other Nasdaq securities in this time period, as compared to a total number of trades of 1,827,282. This represents 1.51% of total trades.

Overall, NAqcess provides a very similar opportunity for market makers to lay off positions and to obtain a better execution for their customer and proprietary orders. Further, and more important, NAqcess will consolidate market information that previously was fragmented and not transparent to the entire market. Moreover, merging SelectNet trading activity into NAqcess should increase the likelihood that public limit orders displayed in NAqcess will receive a quick and advantageous execution. Because NAqcess provides capabilities analogous to the most used capabilities permitted in SelectNet, the NASD believes that SelectNet is no longer necessary. Accordingly, through this filing, the NASD proposes to terminate the SelectNet service.

Finally, the NASD intends to maintain the communications capability of SelectNet to provide an emergency communications mechanism among members in case of market exigencies. This feature is essentially the original SelectNet service first provided after the 1987 market break. Nasdaq will maintain this feature running in the background on the host processor operated by Nasdaq, and if necessary to provide additional communications capabilities during special market circumstances, Nasdaq will commence operation of this communications facility. Under such limited circumstances, NASD members would be able to direct an order through SelectNet to a particular market maker in lieu of calling on the telephone.

C. Other Changes

The NASD has made several other changes to the NAqcess rules, in particular with respect to the preopening procedures.

1. Opening

The NASD has revised the opening process it will use at the startup of NAqcess to greatly simplify the process of opening NAqcess. The NASD has deleted all of the opening procedures previously described in the original rule filing. In its place, the NASD proposes the following procedures: NAqcess will not accept any limit or market orders entered into NAqcess outside of normal market hours, *i.e.*, 9:30 a.m. to 4:00 p.m. Eastern Time. Members will be able to cancel resident GTC agency or proprietary limit orders prior to the opening, as well as after the market has opened. This will allow members to exercise their fiduciary duties as to their customers when material news in a security occurs after the market has closed on the previous day.

The rules regarding the opening will provide a special exception to the normal mechanism for dealer quotations that match or cross orders not executed the previous day or cancelled prior to the opening. Under the newly proposed opening process, a dealer quotation that matches or crosses limit orders on the file at 9:30 is subject to immediate execution of the limit orders at its quotation price. Thus, if a market maker were to move its opening offer at 9:30 to 19⅞ to set the inside market when a limit order to buy 8,000 shares at 20 was resident on the file at 9:30, the 8,000 share limit order would automatically execute against the market maker at its 19⅞ quotation. Moreover, the execution would not deplete the market maker's minimum exposure limit. If multiple market makers quote through resident limit orders, each limit order quoted through will be distributed to the market makers at the best dealer bid or offer on a time sequence basis. In other words, if two GTC limit orders to buy 3,000 shares each at 20 are resident in the file at 9:30, and at 9:30, two market makers set the inside by quoting on the asked side of the market at 19⅞, each market maker will receive an execution report for 3,000 shares at 19⅞ delivered to it. The executions against their quotes will not have an effect on their exposure limits.

Orders entered at 9:30 and thereafter and any limit orders already resident in NAqcess from the previous day will be processed according to the normal market procedures described in the NAqcess rules.

2. Inside Market—Best Dealer Bid and Offer

The NASD revised the use of the term ''inside market'' and added the term ''best dealer bid and offer'' throughout the proposed rule.[19] The NASD has made these revisions to provide a clearer definitional framework for several reasons. The new definition of ''best dealer and offer'' is necessary to establish, for example, when a limit order is to be treated as a ''marketable limit order.'' This new definition sets the condition that a limit order is to be handled as market order when the limit order is priced the same as or outside the dealer bid or offer, as the case may be. Similarly, the two definitions, working in tandem, are critical to determine when limit orders establish the inside market and when such limit orders are to be automatically executed against each other.

3. Self-Directed Orders

Consistent with the proprietary market order change discussed above, the NASD has also eliminated the requirement set out in the original proposal concerning agency market orders entered by market makers for their customers. The original proposal required that such orders be self-directed to the market maker. The NASD does not believe that requirement is necessary in an environment where market makers can enter proprietary orders. Nonetheless, market makers will be able to self-direct any market order.

4. Odd-Lot Orders

The NASD has amended the proposal regarding the eligibility of odd-lot orders in NAqcess. The smallest normal unit of trading in Nasdaq is a round lot of 100 shares. At least for the initial operation of NAqcess, the NASD has determined that odd-lot orders (*i.e.*, orders 99 shares or less) should not be handled through NAqcess, because of

[18] NASD Economic Research examined SelectNet activity on Thursdays in the first quarter in 1996.

[19] The NASD also plans to develop a new approach to the requirement related to updating a market maker's quotation after its exposure limit has been exhausted. Currently, NAqcess rules provide that a market maker has up to five minutes to update its quotation after the exposure limit has been exhausted. The NASD plans to submit a system and rule revision to the Nasdaq Board for review and approval. The proposed revision would be to create a system alert function that would advise a closed quote market maker after one minute that it should refresh its quotation. If the market maker does not take any action by the end of three minutes in a closed quote status, the market maker would have a choice between system-assisted reentry of a quotation in accordance with market maker predetermined parameters or suspension as a market maker in the security for 20 business days.

the potential adverse cost impact that odd-lot executions may have on round-lot customer orders. Thus, the proposed Rules are being amended to delete references to the entry of odd-lot orders, except insofar as a partial execution of a mixed lot order (*i.e.*, an order consisting of at least one round lot and an odd-lot) may occur. In the case of a partial fill of a mixed lot order, the remaining unfilled odd-lot, if it is a limit order, will be stored in the NAqcess limit order file. However, it will not establish the inside market if it is the best priced limit order, nor will it be displayed in the Top of File display. The unfilled odd-lot will not be matched against incoming limit or market orders. Execution of the odd-lot limit order will occur when the best dealer bid or offer matches or crosses the odd-lot order; the odd-lot will automatically execute against the dealer quote. If the order was a mixed-lot market order that obtained a partial fill against a limit order, the unfilled remainder will be automatically executed against the next available market maker at the inside market without the possibility of being declined. The NASD also has amended the Rules of Fair Practice regarding the customer's discretion on NAqcess order entry to reflect this limitation on odd-lot order entry.

The NASD will continue to assess the need for development of an odd-lot order handling facility and may propose to revise NAqcess at a future date to permit such a capability.

5. Agency Orders—Family Members

The NASD is proposing to change the prohibition regarding the entry of agency orders on behalf of an immediate family member. The current proposal retained the SOES prohibition that stated an order is not considered an ''agency order'' if it is for any account of a member of the immediate family of an associated person who has physical access to a device capable of entering orders into NAqcess.[20] These provisions were intended to prevent the creation of multiple accounts by a firm to evade the maximum order size limit in SOES.

Upon consideration of the purpose of the restriction on immediate family members in light of the new order delivery risk management features in NAqcess (*i.e.*, the ability of a market maker to decline an order if it has just effected a trade and is in the process of updating its quotation), the NASD has determined at this time to eliminate the restriction. However, it should be noted that the restriction's elimination is being done based upon preliminary views that the order delivery function of NAqcess should provide sufficient tools to market makers to handle multiple market orders sent for execution at a dealer's quotation. If experience in NAqcess teaches that firms attempt to set up multiple accounts using family members as a technique to evade the order size restrictions, the NASD will seek to amend the NAqcess rules to address such subterfuges.

6. Amendment to Schedule D, Part V, Section 2(a)

The NASD has amended this rule to be consistent with the criteria for maximum market order size in NAqcess.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The NASD has attempted to consider the various perspectives and competing interests and to determine an approach that provides maximum benefits for investors while reducing the costs to the lowest level possible. The NASD has carefully weighed the competitive implications of these changes, including the effect that larger orders and proprietary limit orders will have on competing systems and markets, and has determined that the benefits provided by greater transparency of limit orders and the increased likelihood of execution of public limit orders resident in NAqcess outweigh any competitive concerns. Specifically, NAqcess provides a limit order display that drives the inside market, thereby generally increasing competition in Nasdaq through the increased transparency of limit orders. The changes involving proprietary limit orders proposed in this amendment further increase the competition among orders. Increased competition among orders and quotations is inherently pro-competitive. Further, by permitting market makers to enter proprietary market orders, market makers can access other market makers' quotations more readily, resulting in an increased willingness to provide liquidity.

Finally, the NASD believes that any adverse competitive impact resulting from the entry of proprietary orders to market makers is far outweighed by the positive impact that the change will have on market liquidity and market making competition.[21]

The NASD notes that NAqcess will provide new opportunities to satisfy investor demand that Nasdaq provide an investor with an ability to interact with another customer's order without the intermediation of a dealer, a goal stated in Section 11A of the Act. In comment letters on NAqcess and the SEC Order Exposure Release, institutional investors and companies listed on Nasdaq noted that this was an important feature that they wanted.[22] The NASD believes that it is important that every market listen to its ultimate customers and provide capabilities that those customers request. Further, it is critical that Nasdaq market makers, and other firms that perform market making functions in Nasdaq securities, or options related to Nasdaq securities, maintain incentives to continue to make markets and provide liquidity for those securities. Opening NAqcess to proprietary orders from any broker-dealer would permit any firm to effectively operate as a fair-weather market maker by competing with market maker quotes through limit orders. This would allow non-market makers to compete risk-free with market makers and would drive market makers from the risk position they occupy when they enter two-sided quotes on a regular and continuous basis. Because market makers are a significant source of market liquidity, it is essential that the system is structured to provide incentives to continued market maker presence.

As to the competitive effect on ECNs, the NASD emphasizes that NAqcess is voluntary in nature. The decision as to whether to enter orders into NAqcess will be determined by investors seeking the best available market in which to obtain an execution of their orders, priced and unpriced. NAqcess does not restrict broker-dealer opportunities to offer a competing service. Accordingly, the NASD believes that NAqcess as revised herein provides significant investor benefits that outweigh any competitive effects on others. Finally, as to the general benefits that the NASD believes will result from the implementation of NAqcess and its accompanying rules, the NASD's Economic Research Department has developed a report regarding the benefits NAqcess will bring to investors

[20] See changes to proposed definition I. G. and Order Entry Restrictions IV. B. 3 and 4.

[21] *See* changes to Section 11A(a)(1)(C)(i), (iv) and (v) of the Act (''It is in the public interest and appropriate for the protection of investors * * * to assure * * * economically efficient execution of securities transactions, * * * the practicability of brokers executing investors' orders in the best market; and an opportunity * * * for investors' orders to be executed without the participation of a dealer.'').

[22] *See e.g.*, letter from Harold Bradley and IRC.

in Nasdaq stocks. The report is attached as Exhibit D to this filing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the amendments 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,[23] 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. The Commission requests comments generally concerning whether the NASD's proposal is consistent with the Act. In addition, the Commission invites interested persons to address the following specific issues:

(1) The NASD proposes to allow limit orders up to 9,900 shares in the 250 most active Nasdaq securities, determined by the median dollar volume over the previous calendar quarter. Further, once a security is included in the 250 most active Nasdaq securities, the NASD proposes to continue to allow limit orders up to 9,900 shares in the security until the security's median daily dollar volume brings it below the 1,500 most active Nasdaq National Market securities. The Commission seeks comment on:

(a) Whether the median dollar volume is the most appropriate measure for determining the most active Nasdaq stocks or whether a different measure or alternative measures should also be considered;

(b) Whether it is appropriate, as the NASD has proposed, to exclude IPOs from the quarterly assessment of which securities meet the median dollar volume test until the second full calendar quarter after the IPO; and

(c) Whether it is appropriate to maintain the maximum limit order size for the top 1,500 most active securities or a lesser of greater number of securities.

(2) As under the SOES rules, the NAqcess rules generally would prohibit members from splitting orders to comply with the NAqcess order size limitations. Two or more orders based on a single investment decision would be considered one order for purposes of determining whether an order was split. As a general rule, orders entered by an order entry firm within any five minute interval would be presumed to be based on a single investment decision. Notwithstanding the single investment decision limitation, market makers would be permitted to enter multiple proprietary orders, unless the order is a riskless principal order. The Commission seeks comment on whether the exception to allow market makers to enter multiple proprietary orders is appropriate.

(3) The proposed NAqcess ''equivalent price protection'' rule would require member firms that do not enter NAqcess-eligible customer limit orders into NAqcess (*e.g.*, firms that internalize) to provide these orders price protection at least equivalent in substance to that which the order would have received had the order been entered into NAqcess. This rule, however, would not apply to proprietary (*i.e.*, non-customer) limit orders. Thus, if a firm internalizes a limit order it receives from an options market maker, it would not be required to provide it print protection. The Commission seeks comment on whether this exception is appropriate. In addition, the Commission seeks comment on the practical impact of the ''equivalent price protection'' rule. Specifically, the Commission is interested in commenters' views on whether this rule, in effect, would require member firms to place their customers' limit orders in NAqcess.

(4) The NASD developed SelectNet in response to the difficulties experienced in the Nasdaq market during the market break of October 1987. SelectNet is an electronic screen-based order routing system allowing market makers and order-entry firms to negotiate securities transactions in Nasdaq securities through computer communications rather than relying on the telephone. Through SelectNet, NASD members can either direct an order to another member or broadcast an order to all market makers in the security or all members watching the security. The NASD proposes to terminate its SelectNet service but intends to maintain for ''special market conditions'' the ability of market makers to use the directed feature in SelectNet. The Commission seeks comment on whether the NASD should continue to operate the directed feature at all times, rather than reserving it for ''special market conditions,'' if NAqcess is approved.

(5) At least for the initial operation of NAqcess, the NASD proposes to prohibit the entry of odd-lot orders (*i.e.*, orders of less than 100 shares). The NASD is concerned that the cost imposed on a round-lot customer order that matches with an odd-lot order might be excessive. The NASD recognizes, however, that even though the entry of odd-lots would be prohibited, round-lot orders might be partially executed and result in an odd-lot remaining. Under this situation, the NASD proposes to immediately execute the remaining odd-lot automatically against a market maker as soon as the order becomes marketable (*i.e.*, immediately if the order is a market order or, if it is a limit order, after the inside market moves so that a buy (sell) limit order equals the inside ask (bid)). The Commission seeks comment on whether odd-lot orders should be entered in NAqcess and the appropriate methodology for executing these orders, including consideration of immediate automatic execution of marketable orders.

(6) Under the proposed NAqcess rules, a limit order priced at the quote (*i.e.*, buy (sell) order priced at the bid (ask)) would not have time priority over market makers' quotes. For example, if the inside market consists of two market makers bidding $20 in a security and a limit order to buy at $20 is placed in NAqcess after the market makers began bidding $20, incoming market orders would be directed to the market makers before they are matched with the limit order priced at $20. Given that market makers would have an opportunity to decline market orders entered into NAqcess (consistent with the Firm Quote Rule), but market orders matched with limit orders would be executed immediately, the Commission seeks comment on whether limit orders should have priority over market maker quotes, so that incoming market orders would be matched with limit orders first.

(7) Under the NASD's original NAqcess proposal (similar to current SOES Rules), members would have been permitted to enter orders during non-market hours (market orders: 8:30 a.m. to 9:28 a.m.; limit orders: 8:30 a.m. to 9:28 a.m. and 4:00 p.m. to 6:00 p.m.).

[23] The NASD has consented to an extension until August 30, 1996 for the Commission to act on the proposal. Letter from Eugene A. Lopez, Assistant General Counsel, Nasdaq, to Michael J. Ryan, Jr., Special Counsel, SEC (June 11, 1996).

Immediately prior to the opening, NAqcess would have applied to the orders in its book special pre-opening procedures that, generally, would have first matched limit orders with limit orders and then market orders with limit orders. Any orders that remained unexecuted after the pre-opening procedure would have been subject to the normal intra-day procedures. Under the amended proposal, the NASD proposes to prohibit entry of any orders outside of Nasdaq market hours. The Commission seeks comment on the appropriateness of eliminating the entry of orders outside of Nasdaq market hours. Further, to the extent commenters believe that pre-opening and post-closing orders should be permitted, the Commission seeks comment on the appropriate pre-opening procedures.

(8) Like SOES, the current NAqcess proposal would provide a market maker up to five minutes to update its quotation after its exposure limit has been exhausted. The NASD has represented, however, that it intends to recommend that the Nasdaq Board adopt a new approach. Specifically, the NASD is expected to create a system alert function to advise a closed quote market maker after one minute that it should refresh its quotation. If the market maker does not take any action by the end of three minutes in a closed quote status, the market maker would have a choice between a system-assisted reentry of a quotation in accordance with market maker predetermined parameters or suspension as a market maker in the security for 20 business days. The Commission seeks comments on:

(a) Whether the one minute and three minute parameters are appropriate; and

(b) Whether, after three minutes have lapsed, the NASD should allow a market maker to choose between having its quotation updated and being suspended or whether the system should then automatically reestablish the market maker's quotation, with the market maker being limited to selecting the update parameters.

(9) The NASD proposes to allow UTP exchange specialists to enter proprietary limit and market orders in NAqcess. To obtain access, UTP exchange specialists must, among other things, provide electronic access that permits NAqcess market and limit orders to be executed against the specialist's published quote.

The Commission seeks comment on the most appropriate mechanism for providing this electronic access.

(10) The NASD has represented that many of its member firms have expressed an interest in integrating NAqcess into the firms' internal order handling systems. The Commission understands the NASD has provided its members with the technical specifications necessary to begin integrating NAqcess. The Commission requests that commenters provide an estimate of the time necessary from Commission approval of NAqcess to complete the changes necessary to integrate NAqcess. Further, the Commission seeks comment on members' and other commenters' views on the capacity for the current Nasdaq network and Workstation to manage expected NAqcess order flow.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–95–42 and should be submitted by July 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Rules of Operation and Procedures For the NAqcess System

I. Definitions

[The terms used in this Section shall have the same meaning as those defined in the Association's By-Laws and Rules of Fair Practice, unless otherwise specified.]

A. The term ''NAqcess'' shall mean the limit order and market order delivery and execution system owned and operated by The Nasdaq Stock Market, Inc. (a wholly owned subsidiary of the National Association of Securities Dealers, Inc.).

B. The term ''NAqcess participant'' shall mean either a market maker or *an* order entry firm registered for participation in NAqcess.

C. The term ''NAqcess eligible security'' shall mean any Nasdaq National Market or Nasdaq SmallCap equity security.

D. The term ''open quote'' shall mean a market maker's quotation price and size (up to its designated exposure limit) in an eligible security against which orders may be executed through the NAqcess system during normal market hours, as specified by the NASD. For the purposes of these Rules, a market maker has a ''closed quote'' when its exposure limit in NAqcess has been exhausted or it has been deemed ''closed'' pursuant to Section IV. A. 9 below.

E. The term ''NAqcess market maker'' shall mean a member of the Association that is registered *and quoting with an open quote* as a Nasdaq market maker pursuant to the requirements of Schedule D to the NASD By-Laws and as a market maker in one or more NAqcess eligible securities.

F. The term ''NAqcess order entry firm'' shall mean a member of the Association that is registered as an order entry firm for [participating] *participation* in NAqcess which permits the firm to enter agency orders of limited size [for delivery to and execution against] *that may be (1) delivered to* NAqcess market makers [and customer limit orders in NAqcess that are included in] *or UTP Exchange specialists that are at the best dealer bid and/or offer or (2) executed against limit orders that are at* the inside market.

G. The term ''agency order'' shall mean an order from a [public] customer that is entered by the NAqcess order entry firm or NAqcess market maker on an agency basis.

An order will not be considered an agency order if it is for any account of a person associated with any member firm or any account controlled by such an associated person.

[An order will not be considered an agency order if it is for any account of a member of the ''immediate family'' (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into NAqcess.] *H. The term ''customer'' shall have the same meaning as set forth in the Rules of Fair Practice, Article II, Section 1(f).*

[H] *I.* The term ''directed order'' shall mean an order entered into NAqcess and directed to a particular NAqcess market maker or an order entered by a NAqcess market maker that is self-directed. Each market maker has the ability to select order entry firms from which it will accept directed orders.

[24] 17 CFR 200.30–3(a)(12).

[I] *J.* The term ''non-directed order'' shall mean an order entered into NAqcess and not directed to any particular market maker [,] or [a directed] *an* order that has been directed to a market maker that has not identified the order entry firm as one from which it will accept directed orders, or a directed order sent to a [firm] *member* that is not registered as a market maker in that security.

[J] *K.* The term ''limit order'' shall mean an order entered into NAqcess that is a priced order.

[K] *L.* The term ''marketable limit order'' shall mean a limit order that, at the time it is entered into NAqcess, if it is a limit order to buy, is priced at the current [inside] *best dealer* offer or higher, or if it is a limit order to sell, is priced at the [inside] *best dealer* bid or lower.

[L] *M.* The term ''executable limit order'' shall mean a limit order that, at the time a limit order, market order, or marketable limit order on the opposite side of the market is entered, is either [included in the inside market] *within the best dealer bid and offer* or is equal in price to the inside market and has time priority over other [limit] orders or [dealer quotations included] *quotes* in the inside market.

N. The term ''proprietary order'' shall mean an order for the principal account of a broker or dealer. A proprietary order may be a limit order, a market order or a marketable limit order.

O. The term ''UTP exchange specialist'' shall mean a broker-dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that: (1) Is a signatory as either a participant or limited participant in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq/ NMS/UTP Plan''); (2) provide for electronic access that permits a UTP exchange specialist to enter proprietary orders and permits NAqcess market and limit order executions against a UTP exchange specialist at its published quote; and (3) permit all transactions to be cleared and settled through a registered clearing agency using a continuous net settlement system.

P. The term ''registered options market maker'' shall mean an exchange member registered with a national securities exchange as a market maker or specialist pursuant to the rules of such exchange for the purpose of regularly engaging in market making activities as a dealer or specialist in an option on a Nasdaq-listed security.

Q. The term ''eligible market maker'' shall mean a NAqcess market maker, a UTP exchange specialist or a registered options market maker. Eligible market makers may enter proprietary orders only for those Nasdaq securities for which they are registered as a NAqcess market maker or an exchange specialist or for a Nasdaq security for which they are registered as an options market maker in an option on the underlying Nasdaq security.

R. The term ''takeout [M. The term ''marker] order'' shall mean an order entered by an NASD member firm *or a UTP exchange specialist,* acting as principal or as agent *on behalf of a customer or a registered options market maker,* that executes against [NAqcess limit orders viewable by that firm.] *limit orders consolidated in the inside market or displayed in the NAqcess Full File Display.*

[O] *S.* The term ''inside market'' shall mean the best dealer bid, UTP exchange bid, or NAqcess limit order(s) to buy and the best dealer offer, UTP exchange offer or NAqcess limit order(s) to sell, as the case may be, displayed by Nasdaq.

T. The terms ''best dealer bid,'' ''best dealer offer'' or ''best dealer bid and/or offer'' shall mean the highest priced bid quotation from a Nasdaq market maker or a UTP exchange specialist and/or the lowest priced offer quotation from a Nasdaq market maker or a UTP exchange specialist.

U [P]. The term ''UTP exchange'' shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq securities [.] *pursuant to the Nasdaq/ NMS/UTP Plan.*

[Q] *V.* The term ''matched or crossed file'' shall mean the entry of: (1) a bid quotation by a market maker equal to or greater than a limit order to sell resident in the NAqcess file in the same security; or (2) an offer quotation by a market maker equal to or less than a limit order to buy resident in the NAqcess file in the same security.

[R] *W.* The term ''maximum market order size'' shall mean the maximum size of individual market orders for a NAqcess eligible security that may be entered into or executed through NAqcess. The maximum market order size for each security shall be advertised in the system and published from time to time by the Association. In establishing the maximum market order size for each Nasdaq National Market security, the Association generally will give consideration to the average daily non-block volume, bid price, and number of market makers for each security. Maximum market order size for Nasdaq National Market securities shall be 200, 500 or 1,000 shares, depending upon the trading characteristics of the securities.[1] These sizes may be adjusted on an issue by issue basis, depending upon trading characteristics of the issue and other relevant factors as determined by the Association. Maximum market order size for Nasdaq SmallCap securities shall be 500 shares.

[S] *X.* The term ''maximum limit order size'' shall mean the maximum size of a limit order for a security that may be entered into or matched through NAqcess. The maximum limit order size for Nasdaq National Market securities shall be 1,000 shares for each tier of Nasdaq National Market securities, except for the [securities that comprise the Nasdaq 100 Index[2]] *250 most active Nasdaq National Market securities as measured by a security's median daily dollar volume over the most recent completed calendar quarter,* which shall have a maximum limit order size of [3,000 shares.] *9,900 shares. A National Market security that is the subject of an initial public offering (''IPO'') shall not be considered for inclusion in the list of Top 250 securities until such security has had two full calendar quarters of trading history on Nasdaq. Initial inclusion of an IPO in the Top 250 category will be based on the IPO's median daily dollar volume in its second full calendar quarter. A security designated as eligible for the entry of limit orders of 9,900 or less shall not be deleted from this list of eligibility if its median daily dollar volume causes it not to be included in subsequent calculations of the 250 most active securities, unless there is a fundamental change in its trading characteristics that causes the median daily dollar volume to fall below the highest 1,500 most*

[1] The applicable maximum market order size for each Nasdaq National Market security is determined generally by the following criteria:

(i) A 1,000 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 6,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

(ii) A 500 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 2,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers; and

(iii) A 200 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 2,000 shares a day, a bid price of less than or equal to $250, and that have two or more market makers.

[2] [The Nasdaq 100 Index is an index comprised of many of the largest capitalized issues quoted in the Nasdaq National Market. The securities that make up the Nasdaq 100 are changed from time to time and The Nasdaq Stock Market publishes notice of such changes as they occur.]

active Nasdaq National Market securities. Maximum limit order size for Nasdaq SmallCap securities shall be 1,000 shares.

[T] *Y.* The term ''exposure limit'' shall mean the number of shares of a NAqcess eligible security specified by a NAqcess market maker that it is willing to have executed for its account by *non-directed* orders entered into NAqcess on either side of the market.

[U] *Z.* The term ''minimum exposure limit'' for a security shall mean an exposure limit equal to the maximum market order size for that security.

[V] *AA.* The term ''automated quotation update facility'' shall mean the facility in the NAqcess system that allows the system to automatically refresh a market maker's quotation in any security that the market maker designates when the market maker's exposure limit has been exhausted. The facility will update: (1) Either the bid or the offer side of the quote using a quotation interval designated by the market maker, depending upon the side of the market on which the execution has occurred and refresh the market maker's exposure limit; or (2) close the market maker's quote for five minutes, within which time the market maker shall update its quote or be placed in a suspended state for [20] *twenty (20) business* days.[a]

[W] *BB.* The term ''Automated Confirmation Transaction service'' (''ACT''), for purposes of the NAqcess rules, shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which accommodates trade reporting of transactions executed through NAqcess and submits locked-in trades to clearing.

II. NAqcess Participant Registration

A. All members participating in NAqcess shall register and be authorized as NAqcess market makers and/or order entry firms. Registration as a NAqcess participant shall be conditioned upon the member's initial and continuing compliance with the following requirements: (1) Membership in a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which NAqcess compared trades may be settled; or entry into a correspondent clearing arrangement with another member that clears trades through such clearing agency; (2) registration as a market maker (if applicable) in Nasdaq pursuant to Schedule D of the NASD By-Laws and compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission; (3) maintenance of the physical security of the equipment located on the premises of the member to prevent the unauthorized entry of orders or other data into NAqcess or Nasdaq; and (4) acceptance and settlement of each trade [for which it is responsible] that is executed through the facilities of the NAqcess service, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NAqcess trades by the clearing member on the regularly scheduled settlement date.

B. Upon effectiveness of the member's registration to participate in NAqcess, participants may commence activity within NAqcess for entry and/or execution of orders, as applicable, and their obligations as established in this rule will commence.

C. Pursuant to Schedule D to the NASD By-Laws, participation as a NAqcess market maker is required for any Nasdaq market maker registered to make a market in a Nasdaq National Market security. A market maker in a Nasdaq SmallCap security may withdraw from and reenter NAqcess at any time, and without limitations, during the operating hours of the service.

D. Each NAqcess participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

III. Operating Hours of NAqcess

The operating hours of NAqcess will be the normal market hours specified for The Nasdaq Stock Market.

IV. Participing Hours of NAqcess

A. Market Makers

1. A NAqcess market maker shall commence participation in NAqcess by initially contacting the Market Operation Center to obtain authorization for market making in particular Nasdaq securities and identifying those terminals on which the NAqcess trade information is to be displayed. Thereafter, on-line registration on a security-by-security basis is permissible, consistent with the requirements of Schedule D to the NASD By-Laws.

2. Participation as a NAqcess market maker obligates the firm, upon presentation of a market order or marketable limit order through the service, to execute such order as provided in Section V.A.5. below. NAqcess market makers are not permitted to decline orders directed to the firm pursuant to a directed order arrangement acknowledged by the market maker.

The system will transmit to the market maker on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

3. For each NAqcess eligible security in which a market maker is registered, the market maker shall enter into NAqcess [its] *an* exposure limit. For a Nasdaq National Market security, that limit shall be any amount equal to or larger than the minimum exposure limit for the particular security. If no exposure limit is entered for a Nasdaq National Market security, the firm's exposure limit will be either the default size selected by the particular market maker or the minimum exposure limit. ''Default size'' shall mean an exposure limit *equal to or* greater than the minimum exposure limit that may be selected by a market maker for individual securities or for all securities in which it makes a market.

4. A NAqcess market maker may elect to use the automated quotation update facility in one or more securities in which it is registered. The facility will [update] *refresh* the market maker's quotation automatically by a quotation interval designated by the market maker, once its exposure limit in the security has been exhausted. The facility will [update] *refresh* the market maker's quotation in either the bid or the offer side of the market by the interval designated and will reestablish the market maker's displayed size and either the default *exposure limit* size or the minimum exposure limit; or the facility will close the market [maker] *maker's* quote for five minutes.[b]

5. Matched or crossed file. If a market maker's quotation change matches or crosses a limit order residing in the NAqcess limit order file, the system will automatically provide a notification to the market maker that informs the market maker of its obligation to protect all limit orders residing in the NAqcess file that would be affected by the quotation change. If the market maker enters the matching or crossing

[a] [Commission Note: The NASD has stated that it plans to submit to the Nasdaq Board a proposal to revise NAqcess to create a system alert function that would advise a closed quote market maker after one minute that it should refresh its quotation. Under the expected change, if the market maker does not take any action by the end of three minutes in a closed quote status, the market maker would have a choice between a variety of system-assisted reentry of a quotation in accordance with market maker predetermined parameters or suspension as a market maker in the security for 20 business days. *See supra* note 19 of the Commission's notice.]

[b] [Commission Note: *But see supra* note a of this Appendix.]

quotation change after this notification, limit orders in the file for the particular security will be automatically executed against the matching or crossing market maker, provided however, that if the number of shares in the limit order file that would be matched or crossed is greater than five times the maximum market order size for that particular security, or if the quotation change matches and crosses multiple price levels, the quotation change will be rejected. To effect such quotation change, the market maker first must manually enter a takeout order for the affected orders in the file prior to re-entering its quotation update.

6. The *NAqcess* market maker may terminate its obligation by keyboard withdrawal from NAqcess at any time. However, the market maker has the specific obligation to monitor its status in NAqcess to assure that a withdrawal has in fact occurred. Except as otherwise permitted by Section 70 of the Uniform Practice Code regarding the Association's authority to declare clearly erroneous transactions void, (''UPC Section 70''), any transaction occurring prior to the effectiveness of the withdrawal may remain the responsibility of the market maker. In the case of a Nasdaq SmallCap security, a market maker whose exposure limit is exhausted will be deemed to have withdrawn from NAqcess and may reenter at any time. In the case of a Nasdaq National Market security, a market maker whose exposure limit is exhausted will have a closed quote in Nasdaq and NAqcess and will be permitted a standard grace period of five minutes within which to take action to restore its exposure limit, if the market maker has not authorized use of the automated quotation update facility. A market maker that fails to renew its exposure limit in a Nasdaq National Market security within the allotted time will be deemed to have withdrawn as a market maker.[c] Except as provided in subsection 7 below, a market maker that withdraws from a Nasdaq National Market security may not re-register in NAqcess as a market maker in that security for twenty (20) business days.

7. Notwithstanding the provisions of subsection 6 above, (i) a market maker that obtains an excused withdrawal pursuant to Part V of Schedule D to the NASD By-Laws prior to withdrawing from NAqcess may reenter NAqcess according to the conditions of its withdrawal; [and] (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NAqcess for Nasdaq National Market securities, may reenter NAqcess after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements, provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Schedule D and these rules*; or (iii) Nasdaq Market Operations Review Committee may reinstate market makers that voluntarily withdraw or fail to obtain excused withdrawal status pursuant to Schedule D, Part V, Section 8, prior to the expiration of twenty (20) business days in the interest of ensuring market liquidity and the protection of investors.*

8. In the event that a malfunction in the market maker's equipment occurs rendering on-line communications with the NAqcess service inoperable, the NAqcess market maker is obligated to immediately contact the Market Operations Center by telephone to request a closed quote status from NAqcess. [For Nasdaq securities, such] *Such* request must be made pursuant to the requirements of Part V, Schedule D to the NASD By-Laws. If the closed quote status is granted, Market Operations personnel will enter such status notification into NAqcess from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under UPC Section 70, the NAqcess market maker may continue to be obligated for any transaction executed prior to the effectiveness of its closed quote.

B. Order Entry—Agency Orders

1. [Only] *Except as provided in subsection C below, only* market and limit agency orders may be entered in NAqcess by the NAqcess order entry firm *or the NAqcess market maker* through either its Nasdaq Workstation or computer interface. The system will transmit to the *market maker or* order entry firm on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution. [NAqcess market makers may enter limit agency orders in NAqcess for any NAqcess eligible security, but may not enter agency market orders or marketable limit orders in securities in which they make markets, unless such orders are self-directed. As a limited exception to the prohibition of the entry of proprietary orders into NAqcess, NAqcess market makers may place marker orders into NAqcess. The benefit of any such marker order execution must be passed immediately to one or more customer limit orders held by the firm placing the marker order. Marker orders may not be placed with respect to customer limit orders held by the firm that exceed the maximum limit order size permitted by these rules.]

2. NAqcess will accept both market and limit agency orders of appropriate size for execution. Agency orders may be directed to a specific NAqcess market maker, self-directed by the NAqcess market maker, or may be non-directed, thereby resulting in execution against the next available NAqcess market maker. If an order is directed to a market maker by an order entry firm from which it has not agreed to accept [direct] *directed* orders, the order will be executed on a non-directed basis.

3. [Only agency] *Agency* orders no larger than the maximum market and limit order sizes may be entered by a NAqcess [order entry firm into NAqcess for execution against an NAqcess] market maker *or order entry firm into NAqcess for execution against a NAqcess market maker or UTP exchange specialist* or against an executable limit order. [Orders] *Agency orders* in excess of the maximum order sizes may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into NAqcess. All *agency* orders based on a single investment decision that are entered by a NAqcess *market maker or* order entry firm for accounts under the control of associated persons or [public] customers, whether acting alone or in concert with other associated persons or [public] customers, shall be deemed to constitute a single order and shall be aggregated for determining compliance with the maximum order size limits. [Orders] *Agency orders* entered by the NAqcess *market maker or* order entry firm within any five-minute period in accounts controlled by associated persons or [public] customers, acting alone or in concert with other associated persons or [public] customers, shall be presumed to be based on a single investment decision. An associated person or customer shall be deemed to control an account if the account is [his or her] *a* personal account [or an account in which he or she has a beneficial interest]; the person exercises discretion over the account; *or* the person has been granted a power of attorney over the account; [or the account is the account of an immediate

[c] [Commission Note: But see supra note a of this Appendix.]

family member as that term is defined in the Board of Governors Interpretation on Free-Riding and Withholding, Article III, Section 1 of the NASD Rules of Fair Practice].

4. No order will be considered an agency order from a [public] customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. [No order will be considered an agency order from a public customer if it is for any account of a member of the ''immediate family'' (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into NAqcess.]

5. No member or person associated with a member shall utilize NAqcess for the execution of agency orders in a SmallCap security in which the member is a Nasdaq market maker but is not a NAqcess market maker *in that security*.

6. NAqcess will accept the following types of agency orders during normal market hours: (a) day orders; (b) good-till-canceled (''GTC''); and (c) good till date (''GTD'').

C. Order Entry—Proprietary Orders

1. As an exception to the general prohibition of the entry of proprietary orders into NAqcess, eligible market makers may place proprietary orders for their market making accounts into NAqcess. All such proprietary orders must be entered by an associated person of the eligible market maker who is actively engaged in a market making capacity for Nasdaq securities. Proprietary orders placed by a registered options market maker may be entered through a NAqcess market maker or NAqcess order entry firm.

2. Proprietary orders may be entered only for NAqcess-eligible securities for which the NAqcess market maker or UTP exchange specialist is registered as a market maker or specialist. Registered options market makers may enter such proprietary orders for NAqcess-eligible securities for which they are registered as a market maker or specialist in an option overlying such securities. A member that enters a proprietary order must designate the order with the appropriate designator for surveillance and examination purposes: ''P'' for a proprietary order entered by a NAqcess market maker; ''E'' for a proprietary order entered by a UTP exchange specialist; and ''D'' for a proprietary order entered by a registered options market maker.

3. Proprietary orders will be subject to the same display and execution requirements and protections as agency orders. Proprietary orders will be entered and displayed anonymously, i.e., no special indicator will be displayed. Proprietary orders entered by eligible market makers may not exceed the maximum market or limit order sizes for NAqcess eligible securities. Proprietary market and marketable limit orders are not subject to the limitations regarding a single investment decision imposed on agency market orders in subsection B.3 above, provided, however, that an eligible market maker may not enter a series of proprietary market and/or marketable limit orders to effect transactions on behalf of a customer order that is in excess of the maximum order sizes. Such orders may not be divided into smaller parts for the purposes of meeting the size requirements for orders entered into NAqcess.

4. A member accepting and entering proprietary orders on behalf of a registered options market maker must maintain in its records documentation that clearly indicates that such orders are for principal accounts of persons eligible to enter proprietary orders. A member entering proprietary orders for a person not eligible to enter such orders violates the terms of the NAqcess rules, unless the member can demonstrate that the member did not know or have reason to know that the order was in contravention of NAqcess rules.

V. Execution of Naqcess Orders

A. *General Execution Procedures* [:] Orders in [Nasdaq equity] *NAqcess-eligible* securities entered into NAqcess may be directed or non-directed. Non-directed market orders and non-directed marketable limit orders will be processed according to the procedures established below. [Non-directed odd-lot orders that are market orders or marketable limit orders will be automatically executed in NAqcess against the next available market maker at the inside market and execution reports will be delivered to the order entry firm and the market maker] *NAqcess will accept orders in sizes equal to or greater than the normal unit of trading up to the applicable maximum order sizes. An unexecuted odd-lot portion of a mixed-lot order will be handled according to procedures set forth below.*

1. *Entry of Limit Orders* [:] Limit orders may be entered into NAqcess by order entry firms and by *eligible* market makers up to the maximum limit order size allowed for a particular security. Limit orders priced away from the Nasdaq inside bid or offer (as the case may be) as well as limit orders [consolidated in the inside market] *priced at or within the best dealer bid and offer* will be stored in the NAqcess limit order file. Limit orders in securities priced at $10 or more shall be priced in increments of an eighth or more; limit orders in securities that are priced at under $10 may be placed in increments of a sixteenth or less depending upon the dealer quotation increments permitted.

2. *Display of NAqcess Limit Orders* [:] (a) Consolidated Display of Limit Orders In Inside Market: If a NAqcess limit order to buy or sell for 100 shares or more is better than the best dealer bid or offer, the limit order to buy or sell will be displayed in the Nasdaq inside market. Such display will contain the limit order price, size (which shall be aggregated if two or more limit orders are at the same best price) and an indicator to note that the inside market consists of a limit order rather than a market maker or UTP exchange quotation. If a NAqcess limit order of 100 shares or more is at the same price as the best dealer bid or offer, the size displayed in the inside market will be an aggregation of any same-priced limit orders and a single dealer quote at the best price.

(b) *Top of the file display: The Nasdaq Stock Market, Inc. will make available via Nasdaq Workstations and to securities information processors the prices and aggregate size of the best limit order(s) to buy and the best limit order(s) to sell. This top of the file display will be displayed separately from the inside market and will be dynamically updated.*

(c) Full Limit Order File Display: All Nasdaq market makers in a particular security may request via Nasdaq Workstations a display of all limit orders in such security entered in the NAqcess limit order file. Such displays will be available on a query basis only to a registered market maker in a particular security.

3. *Execution of Limit Orders* [: A limit order that matches or crosses a limit order on the opposite side of the market will be automatically executed against the matching or crossing order when such orders are at the inside market or better, and have priority over the dealer quotation] *Matching or crossing limit orders on opposite sides of the market priced better than the best dealer bid or offer on Nasdaq upon entry or thereafter will be automatically executed against each other.* The priority rules for limit order interaction shall be that orders that are best in price shall be executed against each other first. If two or more

orders are at the same price on the same side of the market, then the order that was received first in time shall be accorded priority over other orders at the same price. Limit orders that cross each other in price shall be executed at the price of the order that entered the file first. A limit order matches a limit order on the file when: the limit orders are [consolidated in the inside market] *within the best dealer bid and offer* on Nasdaq; are on opposite sides of the market; and are equal in price. A limit order crosses a limit order on the file when: [both limit orders are either consolidated in the inside market or better than the inside market;] *one limit order is within the best dealer bid and offer; they* are on opposite sides of the market from each other; and the subsequent limit order is at a superior price to the existing limit order (i.e., the sell (buy) limit order is priced below (above) a limit order to buy (sell)). Execution of limit orders will occur up to the size of the initial limit order or the subsequent limit order, whichever is smaller, and without the participation of a market maker. The unexecuted balance of a limit order is entered into the NAqcess file for subsequent matching, unless such balance is less than 100 shares, in which case the balance is automatically executed against the next available market maker, if equal to the [inside quotation] *best dealer bid or offer*.

If there is a limit order at the same price as the best dealer [quotation] *bid or offer* (i.e., if a limit order to buy is the same as the best dealer bid, or a limit order to sell is the same as the best dealer offer), the order or quote that has time priority shall be matched against the incoming limit order.

4. *Takeouts of Limit Orders* [:] Any NASD member firm *or UTP exchange specialist*, acting as principal or as agent *on behalf of a customer or a registered options market maker*, may enter into NAqcess an order or orders that execute(s) any limit order(s) [consolidated in the inside market or otherwise] displayed in the NAqcess limit order file. Such orders shall be known as ''takeout'' orders. A takeout order may be for any size up to the aggregate amount of shares displayed in the NAqcess limit order file at a particular price. Takeout orders must be executed against limit orders on the opposite side of the market in order of price and time. A firm entering a takeout order for limit orders at multiple prices may enter a single takeout order at a price either at or above or below the NAqcess limit orders, as the case may be, and each limit order will be executed at each such price. *Unfilled takeout orders have no standing in the system*. Takeout orders do not reduce a firm's exposure limit.

5. *Entry and Execution of Market Orders*[:] (a) Market orders up to the maximum market order size for a NAqcess eligible security may be entered into NAqcess. If at the time a market order is entered into NAqcess there is a limit order on the opposite side of the market that resides in the NAqcess limit order file [and is reflected in] *at a price superior to* the best *dealer* bid or offer, the incoming market order will be automatically executed against the limit order at the limit order price without the participation of a market maker. If a market order is not fully executed against the limit order file, the balance of such market order will be treated as any other market order as set forth in subparagraph (b) below, provided that if the balance of the market order is odd-lot size, the balance will be automatically executed against the next available market maker at the [inside quotation] *best dealer bid or offer*. If there is a limit order [consolidated in the inside market] at the same price as [a] *the best* dealer bid or offer (i.e., if a limit order to buy is the same as the best dealer bid, or a limit order to sell is the same as the best dealer offer), the order or quote that has time priority shall be matched against the incoming market order.

(b) If there is no limit order residing in NAqcess [that has been consolidated in the inside market] *priced at or within the best dealer bid or offer* on the opposite side of the market from the market order, each market order will be assigned to a market maker at the inside market and will be executed against the next available market maker at the current inside market after a [display] period of [15–]*20* seconds. The market maker to which a market order is displayed may decline the market order within the [15–]*20* second period if the market maker has contemporaneously executed another transaction and is in the process of updating its quotation pursuant to SEC Rule 11Ac1–1 ____. *The quotation update should be entered prior to declining the order.* If a market order or a marketable limit order is declined by a market maker, the order is returned to the system for distribution to the next available market maker. If that market maker is at the same price level as the first market maker who declined the order, the second market maker has [15] *20* seconds to react to the order. If the originally declined order is re-presented to a market maker at a price level different from its original presentation(s), the order is automatically executed at that price level without any market maker ability to decline.

(c) If the NAqcess limit order file does not have any executable limit orders at the time a directed market order is entered, *the* directed market [orders] *order* will be automatically executed *at the inside market price* against the directed order market maker without a [15-second] decline capability. Directed limit order that are not matched by incoming limit or market orders will be automatically executed against the directed order market maker when the inside market is changed to match the directed limit order price. [Directed odd-lot orders (orders of less than 100 shares) that are market orders or marketable limit orders also will be automatically executed against the directed order market maker. Non-directed odd-lot orders that are market orders or marketable limit orders will be automatically executed against the next available market maker at the current inside market. An odd-lot limit order that is not executable at time of entry will be stored and executed against the best dealer bid or offer, as the case may be, when such quotation reaches the limit order price.]

6. *Entry and Execution of A Marketable Limit Order* [:] Marketable limit orders that meet the maximum market order size requirements will be accepted and treated as market orders. Marketable limit orders greater than the maximum market order size will be returned to the order entry firm for handling outside of NAqcess.

7. *NAqcess Opening [Procedures: NAqcess will permit the entry of limit orders and market:] NAqcess will commence the processing of orders at 9:30. The system will not accept* orders outside of normal market hours. *Limit orders not executed or cancelled during normal market hours (''resident limit orders'') may be cancelled at any time that the system is opened for the purpose of entering quotations prior to the opening. If the best opening dealer bid or offer matches or crosses resident limit orders not cancelled prior to the open, then the market maker that quoted through the limit order(s) must execute the full share size of the order(s) at its quoted price. If multiple market makers change their quotations to match or cross the NAqcess file at the open, resident limit orders will be distributed to each market maker at the best dealer bid or offer for immediate execution at their quotation in time sequence. Quote-through executions at the opening do not deplete a market makers's exposure limit. Resident limit orders at market open and limit orders and market orders entered into NAqcess*

at market open will be processed according to normal market processing rules set forth in Section V, above[, except that market orders will not be accepted between 4:00 and 6:00 p.m. Orders entered at such times will not be executed but will be stored for matching and execution at the next market opening. NAqcess permits the entry of such orders between 4:01 p.m. to 6:00 p.m. and 8:00 a.m. to 9:28 a.m. (Orders entered from 9:28 to 9:30 will be stored and handled according to normal market procedures after the opening procedures are concluded.)

Matching and execution at the NAqcess opening will occur according to the following procedures:

At 9:28 a.m., NAqcess will stop accepting orders for execution in the NAqcess file for opening purposes. At 9:30 a.m., NAqcess will commence execution procedures for opening orders in NAqcess by first ranking and matching limit orders in NAqcess in sequence of the highest price buy order against the lowest price sell order. When all available limit orders are matched and executed, market orders on a time priority basis will be matched and executed against any remaining limit orders in the NAqcess file within the inside quotation at the limit order price(s). Any remaining market limit orders will be stored in the NAqcess file. Any remaining orders will be subject to normal order execution processes].

VI. Clearance and Settlement

All transactions executed in NAqcess shall be transmitted to the National Securities Clearing Corporation to be cleared and settled through a registered clearing agency using a continuous net settlement system.

VII. Obligation To Honor System Trades

If a trade reported by a NAqcess participant, or clearing member acting on its behalf, is reported by NAqcess to clearing at the close of any trading day, or shown by the activity reports generated by NAqcess as constituting a side of a NAqcess trade, such NAqcess participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

VIII. Compliance With Procedures and Rules

Failure of a NAqcess participant or person associated with a NAqcess participant to comply with any of the rules or requirements of NAqcess may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. No member shall effect a NAqcess transaction for the account of a customer, or for its own account, indirectly or through the offices of a third party, for the purpose of avoiding the application of these rules. Members are precluded from doing indirectly what is directly prohibited by these rules. All entries in NAqcess shall be made in accordance with the procedures and requirements set forth in the NAqcess User Guide. Failure by a NAqcess participant to comply with any of the rules or requirements applicable to NAqcess shall subject such NAqcess participant to censure, fine, suspension or revocation of its registration as a NAqcess market maker and/or order entry firm or any other fitting penalty under the Rules of Fair Practice of the Association.

IX. Termination of NAqcess Service

The Association may, upon notice, terminate NAqcess service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the NAqcess service or the Association, or fails to pay promptly for services rendered.

Exhibit B—Interpretations Related to Member Firm Responsibilities Regarding Orders in NAqcess

In its efforts to maximize the protection of investors and to enhance the quality of the marketplace, the NASD and [The] *the* Nasdaq Stock Market, Inc. have developed a nationwide limit order protection, price improvement, and market order handling facility of The Nasdaq Stock Market. This nationwide facility is herein referred to as ''NAqcess''.

The NASD Board of Governors is issuing these Interpretations to the Rules of Fair Practice to provide: (1) Customers the right to have their orders entered and protected in NAqcess; and (2) member firm provision of equivalent protection for limit orders held in a member firm's proprietary limit order system. These Interpretations are based upon a member firm's obligation to provide best execution to customer orders under Article III, Section 1 of the Rules of Fair Practice and a member firm's obligations in dealing with customers as principal or agent to buy and sell at fair prices and charge reasonable commissions or service charges under Article III, Section 4 of the Rules of Fair Practice. Accordingly, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to violate the following provisions:

1. Member Firm Obligation Regarding Investors Directions on Order Handling

NAqcess will provide individual investors with significant opportunities to achieve limit order protection and price improvement. The NASD recognizes that member firms operating as market makers also operate trading systems which offer significant protection and execution opportunities for customer limit orders. Accordingly, nothing herein is intended to limit a member's ability to recommend use of its own or another member firm's proprietary system for handling limit and market orders where equivalent protection is afforded. In light of the significant benefits offered to customers by the NAqcess system, however, members must abide by the directions of its customers who request that the firm enter their *eligible* orders in NAqcess.

Further, nothing in this Interpretation requires a member firm to accept any or all customer limit orders. Member firms accepting limit orders that are placed in NAqcess or otherwise may charge fair and reasonable commissions, commission-equivalents, or service charges for such handling, provided that such commissions, commission-equivalents, or service charges do not violate Article III, Section 4 of the Rules of Fair Practice. In no event, however, shall a member impose any fee or charge that effectively operates as a disincentive to the entry of orders in the nationwide facility and thereby interferes with the investor's ability to choose order handling alternatives.

2. Equivalent Protection for Orders Held Outside of NAqcess

As a further adjunct to a member firm's best execution obligations, the NASD Board of Governors has interpreted Article III, Section 1 of the Rules of Fair Practice to require member firms that do not enter customer limit orders into NAqcess, but hold such protectible orders in their own proprietary system, to provide such orders with price protection at least equivalent in substance to that which the order would have received had the order been entered into NAqcess. For the purposes of this Interpretation, a ''protectible limit order'' shall mean a limit order that meets the maximum limit-order size criteria as set forth in the Rules of Operation and Procedure for NAqcess at Section [I.S] *I(s).* For the purposes of this Interpretation, equivalent price protection shall mean:

A. Print Protection

If a transaction in a Nasdaq security is reported via the Automated Confirmation Transaction Service (''ACT'') at a price inferior to the price of customer limit order(s) that the firm is holding (*i.e.*, if the reported price is a price lower than a buy limit order or higher than a sell limit order being held by the firm), the firm holding the limit order(s) is required on a contemporaneous basis to execute the limit order(s) at the limit price(s) up to the size of the reported transaction.

B. Matching Limit Orders

If the firm holds a customer buy (sell) limit order in its proprietary limit order file and that limit order matches a sell (buy) limit order in NAqcess, the firm holding the limit order must either provide its customer with an immediate execution at the limit order price or must immediately direct the order to NAqcess. A limit order held by a firm would match a limit order in NAqcess when the limit order in NAqcess is at the same price or is priced lower than the firm's customer's limit order to buy or higher than the firm's customer limit order to sell (''offsetting limit orders'').

C. Matching Limit Order Interaction Within A Firm's File

If the firm holds two or more offsetting customer limit orders within its own proprietary file, the firm must execute the offsetting limit orders.

D. Interaction Between Limit and Market Orders Held Within a Firm's File

While holding a customer limit order that is priced equal to or better than the best bid or offer in the security disseminated in Nasdaq, if a firm accepts customer market orders for automated execution against the best bid or offer in the security disseminated in Nasdaq, the firm, pursuant to its obligation set forth in the Interpretation to the Rules of Fair Practice, Article III, Section 1, (the so-called ''Manning Interpretation''), must first permit the market orders to execute against any applicable limit orders it holds before the firm may execute the market orders for its own account.

E. Examples of Equivalent Protection

The NASD Board of Governors has provided the following examples to further explain a member firm's equivalent protection obligation for orders held outside of NAqcess:

Print Protection The best dealer bid and offer in Nasdaq [(the] *(''the* inside price[)]*'')* is 20 bid—20¼ offer. Firm ABCD holds a customer limit order of 1,000 shares to buy at 20⅛ in its own proprietary file. Firm MNOP reports a transaction in the subject security via ACT, disseminating a price of 20$^{1}/_{16}$ for 500 shares. Contemporaneous with the dissemination of the trade report, firm ABCD is required to provide an execution of its customer limit order for at least 500 shares at 20⅛.

Matching Limit Orders The inside price is 20 bid—20¼ offer. NAqcess is displaying a 1,000 share customer limit order to buy at 20⅛ for customer X. Firm ABCD thereafter receives from customer Y a 1,000 share limit order to sell at 20⅛ that the firm ABCD retains for handling outside of NAqcess. Upon receipt of the limit order, firm ABCD must execute customer Y's limit order for 1,000 shares at 20⅛.

Matching Limit Order Interaction Within a Firm's File The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20⅛. Firm ABCD thereafter receives a customer limit order to sell 1,000 shares at 20⅛. Firm ABCD must match the orders and execute the trade.

Interaction Between Limit and Market Orders Held Within A Firm's File

The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20⅛. Firm ABCD thereafter receives a customer market order to sell 1,000 shares. Firm ABCD must match the two orders and execute the trade at 20⅛. Similarly, if the limit order to buy were priced at 20, the firm would have to execute the market order against the limit order at 20.

Price Protection for NAqcess Limit Orders Rules of Fair Practice, Article III, Section [XX]

No member firm shall execute an order as principal or as agent at a price inferior to any limit order(s) viewable in NAqcess to the member firm, provided however, that a member firm executing a transaction that is larger than the limit order(s) viewable in NAqcess at an inferior price must contemporaneously satisfy the limit order(s) viewable in NAqcess. An ''inferior price'' means an execution price that is lower than a buy limit order or higher than a sell limit order that is viewable in NAqcess. The term ''limit orders viewable in NAqcess'' shall mean those orders that the member firm is able to view either as consolidated in the Nasdaq inside market or as reflected in the Full Limit Order File Display as the firm is authorized to view under the Rules of Operation and Procedure.

Exhibit C—Schedule D, Part V

Sec. 1. No Change

Sec. 2. Character of Quotations

(a) Two-Sided Quotations. For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in The Nasdaq Stock Market subject to the procedures for excused withdrawal set forth in Section 8 below. Each member registered as a Nasdaq market maker in Nasdaq National Market equity securities shall display size in its quotations of 1,000, 500, or 200 shares and the following guidelines shall apply to determine the applicable size requirement: (i) A 1,000 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of [3,000]*6,000* shares or more a day, a bid price of less than or equal to $100, and three or more market makers; (ii) a 500 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of [1,000]*2,000* shares or more a day, a bid price of less than or equal to $150, and two or more market makers and (iii) a 200 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of less than [1,000]*2,000* shares a day, a bid price of less than or equal to $250, and that have two or more market makers. Each member registered as a Nasdaq market maker in Nasdaq SmallCap Market equity securities shall display size in its quotations of 500 or 100 shares and the following guidelines shall apply to determine the applicable size requirement: (i) A 500 share requirement shall apply Nasdaq SmallCap Market securities with an average daily non-block volume of 1,000 shares or more a day or a bid price of less than $10.00 a share; and (ii) a 100 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of less than 1,000 shares a day and a bid price equal to or greater than $10.00 a share. Share size display requirements in individual securities may be changed depending upon unique circumstances as determined by the Association, and a list of the size requirements for all Nasdaq equity securities shall be published from time to time by the Association.

Exhibit D—The Introduction of NAqcess into the Nasdaq Stock Market: Intent and Expectation *

I. Introduction

The Nasdaq Stock Market proposes NAqcess with the intent of increasing investor access to the market by providing a new mode for investors and dealers to trade among each other. Individual investors and market makers, willing to supply liquidity to the market, will be able to display priced limit orders in a central public file. Orders in the central file will compete directly with other orders and with market maker quotes, and other investors and market makers will have the ability to access orders and quotes electronically. NAqcess is intended to augment, not replace, Nasdaq's dealer market, which Nasdaq and NASD staff (the Staff) believe has been central to the success of the Nasdaq Stock Market.[1]

NAqcess constitutes a major step in the evolution of the Nasdaq market. The principles that guided the design of NAqcess build upon the Nasdaq market's tradition of innovation and include the intent to provide greater market access across participant categories. Application of these principles now and beyond the initiation of NAqcess should simplify market rules and expand the options available to both retail and institutional investors.

All of the effects of introducing NAqcess into the Nasdaq Stock Market cannot be measured with precision. But the Staff believe that the effects of NAqcess will be valuable to investors. The Staff base that belief on (1) the practical experience of other equity markets with limit order files; (2) theory and evidence in the economic literature regarding limit order trading; (3) evidence regarding the use of limit orders in the pre-NAqcess Nasdaq Stock Market; and (4) the results of research conducted by and for the NASD.

Following a brief description of the changes to the Nasdaq Stock Market that will be effected by the introduction of NAqcess, this report presents a discussion of the four bases on which the Staff rely in forming its expectation that NAqcess will benefit investors in Nasdaq stocks.

II. Description of NAqcess

In the spring of 1996, Nasdaq is primarily a dealer-based, quote-driven market. Much of the liquidity that is available in the market is communicated through dealer quotes and provided through dealer involvement. In general, retail limit order information is not explicitly broadcast to all other market participants. Limit orders placed and executed through alternative systems such as Instinet, however, are important sources of liquidity and reduce the costs associated with market making.

NAqcess is intended to maintain the strength of Nasdaq's dealer market while augmenting the market with a system that allows all customer orders to meet each other directly. The balance between dealer quotes and customer orders under NAqcess can be seen by comparing time and size priority rules. A dealer system thrives in the absence of time priority rules;[2] the viability of an order-based system, on the other hand, is enhanced by time priority rules, because standing orders take precedence over new orders at a given price, increasing the incentive to enter them. In introducing NAqcess, Nasdaq balances these competing objectives by instituting strict price/time priority for unpreferenced orders within NAqcess, while allowing time priority (but not price priority) to be suspended for trades that occur on Nasdaq but outside of NAqcess.[3]

Table 1 on the following page details the NAqcess time and size priority rules, by market participant type. These rules are summarized in Sections A and B, following Table 1.

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* Prepared by the NASD's Economic Research Staff.

[1] Since 1971, the Nasdaq Stock Market has grown to become the second largest equity market worldwide. Share volume on Nasdaq has increased over 4,000 percent since its inception, while dollar volume has grown over 5,000 percent. In 1995, share volume broke 100 billion shares and dollar volume exceeded $2.4 billion. Over the last ten years, Nasdaq's share volume has grown over 380 percent compared to 212 percent for the NYSE and Amex combined. Nasdaq's share volume has grown 200 percent over the last five years versus 115 percent for the NYSE and Amex combined. Dollar volume on Nasdaq has grown at an even greater rate: over 900 percent for the last ten years and 430 percent for the last five years, compared to 216 percent and 132 percent for the NYSE and Amex combined. In 1994 Nasdaq share volume exceeded NYSE share volume for the first time; as of March 1996 Nasdaq share volume was 121 percent of NYSE share volume for the year, comprising 54 percent of the volume traded in all U.S. equity markets combined.

[2] It is the absence of time priority that allows preferencing on Nasdaq, which is likely to enhance a stock's sponsorship and liquidity characteristics. Preferencing can improve competition among market makers by allowing small brokerage firms to achieve the same cost advantages as those experienced by large, vertically-integrated brokerage firms. Since many of the brokers that use preferencing arrangements are discount-commission brokers, customers can benefit from preferencing through reduced commission costs. Empirical research on the topic of preferencing suggests that it may improve market quality. Battalio, et. al. study the short-term effects of the introduction of preferencing programs by the Cincinnati Stock Exchange and the Boston Stock Exchange on market share, displayed spreads, and liquidity. The study finds no adverse market effects as the market share of these two markets increases in conjunction with the introduction of preferencing programs. Marketwide, displayed spreads and liquidity premiums decline with the introduction of preferencing programs, suggesting a possible improvement in market quality. Also, since retail brokers use preferencing and internalization to reduce commissions to customers, investor welfare may be improved as a result. (See Robert Battalio, Jason Greene, and Robert Jennings, ''How Do Competing Specialists and Preferencing Dealers Affect Market Quality? An Empirical Analysis,'' unpublished manuscript, 1995.)

[3] For example, if the market in a stock is 20–20¼ on the basis of market maker quotes and an investor or a market maker places a buy order for 500 shares at 20⅛, then the market becomes 20⅛–20 ¼. A 500 share market sell order placed in NAqcess will execute strictly against the limit buy order at 20⅛ on the basis of its price and time priority, regardless of whether market maker quotes had subsequently joined the buy order at 20⅛. On the other hand, the same 500 share market order communicated outside of NAqcess, say over the phone, can execute against any market maker at 20⅛ but cannot trade through the limit buy order at a lower price. It is important to note that a firm placing a customer order into NAqcess is still subject to the NASD's Limit Order Protection Rule (Article III, Section 1, Rules of Fair Practice): the firm cannot trade at a price equal or inferior to that of the customer limit order it holds without filling the customer order. So, if the limit order in the example is the market maker's customer order, other firms can buy the stock at 20⅛, but the firm that placed the order into NAqcess cannot buy at 20⅛ without filling the order.

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Table 1: NAqcess Quote and Order Entry Protocol

(Size, for Various Tiers, is in Parentheses)

Market Participant	Direct Entry[a]	Quotes	Takeouts	Proprietary		Agency	
			Orders Against Book	Limit Orders	Market Orders	Limit Orders	Market Orders
Member Market Maker[b]	Yes	Yes (Min. = Tier Size)	Yes (Any Size)	Yes (9,900/1,000)	Yes (1,000/500/200)	Yes (9,900/1,000)	Yes (1,000/500/200)
Member Non-MM	Yes	No	Yes (Any Size)	No	No	Yes (9,900/1,000)	Yes (1,000/500/200)
UTP Specialist[c]	Yes	Yes	Yes (Any Size)	Yes (9,900/1,000)	Yes (1,000/500/200)	Yes (9,900/1,000)	Yes (1,000/500/200)
Options Market Maker[d]	No	No	Yes (Any Size)	Yes (9,900/1,000)	Yes (1,000/500/200)	N/A	N/A

[a]Where market participant does not have direct entry access, protocol reflects indirect order entry (i.e. through direct entry participant on agency basis).

[b]Only in security for which they are registered as a market maker.

[c]Pending current negotiation. Only in security for which they are registered as a market maker.

[d]Only in security for which they are making a market in the underlying option.

In essence, NAqcess is an order delivery system with features that augment the extant multiple dealer market system with a public limit order file. NAqcess guarantees execution of market orders against posted dealer quotes; it allows customer orders to interact with each other and displays limit orders that are not executed.

A. Order Entry

NAqcess provides market participants with a central file that facilitates the ability of investor and dealer orders to compete with market maker quotes in supplying liquidity.[4] This facilitation, via the dissemination of the top of the limit order file of investor and dealer orders, is intended to enhance price improvement opportunities, lowering the price of immediacy and liquidity for the investors and dealers who demand it.[5] That is, in the NAqcess environment, limit orders are expected to execute more frequently and inside market spreads are expected to narrow.

Non-marketable limit orders, which will compete directly with market maker quotes, can be placed into NAqcess by entities that have direct, interactive access to a Nasdaq workstation.[6] While any dealer can enter these orders on an agency basis, only broker-dealers making a market in a stock may enter proprietary orders.[7] Limit orders can be placed for up to 9,900 shares for the top 250 dollar volume Nasdaq National Market stocks and for 1,000 shares for all other Nasdaq stocks, including SmallCap.[8] These limits are consistent with an incremental approach to NAqcess' implementation, affording Nasdaq staff the opportunity to evaluate whether it is appropriate to expand the system.

B. Automated Execution

In the pre-NAqcess Nasdaq Stock Market, firms not making a market in a stock may enter customer orders into the SOES system for automatic execution at the inside quotes against those market makers at the inside or against market makers with which a preferencing agreement exists. These orders are for a maximum size of 1,000, 500, or 200 shares, depending on the stock's SOES tier size. These executions occur automatically, with the market maker being informed of the trade that has just occurred. Following the trade, a market maker may adjust its quotes (1) ''manually'' with a 20-second opportunity to update its quotes;[9] (2) via Nasdaq's automatic update system, following trading activity equal to the maximum order size for the security at the original quote; or (3) with an internal automatic update system, following trading activity equal to the maximum order size for the security at the original quote. In practice, those market makers who use an automatic update feature frequently set their exposure levels such that several trades are accepted before quotes are adjusted.

In contrast, NAqcess provides for automated executions. Instead of market makers having 20 seconds following an automatic trade to adjust their quotes, they have 20 seconds, upon receipt of the marketable order (a market or marketable limit order), to accept or decline it.[10] A market maker may not decline an order at its quote unless it has just traded and is in the process of updating its quotes.[11] The execution will occur automatically if the market maker takes no action within 20 seconds. This constitutes a change to the ''manual'' quote update method. In the NAqcess environment, both internal and Nasdaq automated update systems will continue to allow quote adjustments to be made following trading activity of one or more times the maximum order size for the security at the original quote.

If a market maker declines a marketable order, it is delivered (in time precedence) to the next available market maker (i.e. not currently reviewing another marketable order) at that price, with the same obligations. If all market makers decline the order at that price, the trade is automatically executed by the first market maker quoting at the next price level with no waiting period.[12]

Because NAqcess limit orders will be integrated with dealer quotes by time priority within price levels, a marketable order may be delivered to a NAqcess limit order, in which case it is automatically executed. If the marketable order is delivered to a limit order of a smaller size, the order is partially executed against the limit order, and a marketable order for the residual size is delivered to the next quote or limit order in time priority.

In the NAqcess environment, market makers will continue to maintain two-sided quotes and Nasdaq market surveillance will ensure that the quotes are firm. Because a market maker has liquidity provision obligations, it will be authorized to enter proprietary market orders (including marketable limit orders) into NAqcess for sizes commensurate with the pre-NAqcess SOES tier sizes.[13] This puts market makers on a par with other users of the automation technology, facilitating liquidity provision. Unlike SOES, NAqcess can be used for agency market orders by any Nasdaq dealer, making a market in a stock or not.

C. Other Changes to the Status Quo

Because most of the services provided to investors through SOES and SelectNet are subsumed within and improved upon by NAqcess, these systems will be eliminated upon implementation of NAqcess. As with SOES, participation in NAqcess by market makers will be mandatory for National Market stocks and voluntary for SmallCap stocks.[14] While SOES is used almost exclusively to execute market orders and marketable limit orders, SOES also has a limit order processing facility that stores limit orders priced off the inside market, executing them if they become

[4] The following information is presented as an aid in defining the terms, ''NASD Member,'' ''Nasdaq Dealer,'' and ''Nasdaq Market Maker.'' As of March 29, 1996, the NASD had 5,468 members; 531 of them were dealers in the Nasdaq Stock Market; a dealer that makes a market in a particular stock is a registered market maker in that stock. For example, Intel had 46 registered market makers.

[5] Market makers will be allowed to query the entire limit order file. All other market participants will be allowed to see the top of the limit order file.

[6] Direct entry into NAqcess is open to all members and, pending current negotiations, to non-member market makers at regional exchanges. Options market makers and other non-member market makers will not have direct entry capability under NAqcess, nor will non-member buy-side firms, who will have access only through a member firm.

[7] Proprietary orders are orders for a broker-dealer's own account.

[8] For both National Market and SmallCap agency orders, a single order may not be separated into many orders for purposes of NAqcess execution.

[9] NASD SOES Rules state that a market maker has 15 seconds following an automatic trade to update its quotes, yet an additional 5 second allowance for communications transmission is made. Therefore, a market maker is actually given up to 20 seconds following an automatic trade in the pre-NAqcess environment to update its quotes, depending on messaging time.

[10] Though preferenced marketable orders cannot be declined, they may be accepted during the 20 second review period. Otherwise, they are automatically executed after 20 seconds.

[11] Nasdaq Market Surveillance will police this policy with a process that uses a set of parameters to determine if a trade was legitimately declined.

[12] If the marketable order was a limit order and the execution price is inferior to the order's price, then the arriving limit order becomes the new inside. For example, if all market makers at 20 bid decline a marketable limit order to sell at 20, revising their bids to 19 7/8, the sell order is no longer marketable and becomes the market at the inside ask; i.e. the market is now 19 7/8 to 20.

[13] Non-member market markers from regional exchanges that permit automated orders access to their quotes will be able to enter limit orders as well as proprietary marketable orders.

[14] Market makers in SmallCap issues may opt out of the order delivery and execution features of NAqcess on a stock-by-stock basis.

marketable. This facility also matches offsetting limit orders and will execute matched orders if no market maker executes either order within five minutes of the match. The limit order processing features of NAqcess are superior to those of SOES.

SelectNet is a system that permits NASD members to direct buy or sell orders in Nasdaq securities to a single market maker (preferenced orders) or broadcast such orders to all market makers in the security. Accordingly, SelectNet provides investors and members with an automated means to facilitate the communication of trading interest among members and to seek price improvement. SelectNet also serves as an alternative mechanism to telephone communication between members, especially in times of market stress. Because limit orders placed in NAqcess will be incorporated in the calculation of the inside market and immediately executable upon the entry of a ''takeout'' order or offsetting market or limit orders, the price improvement and order communication and execution features of NAqcess are far superior to those of SelectNet. While SelectNet allows the display of unlimited size orders and NAqcess will not, SelectNet orders larger than the NAqcess size limits are rarely executed, so the restriction will have a minimal effect.[15] Moreover, limit orders entered into NAqcess will be accessible to and executable by a broader spectrum of market participants than currently is the case with SelectNet.

Critics of NAqcess have argued that it would be harmful to small investors to replace SOES, an immediate automatic execution system, with NAqcess, an automated execution system. The NASD believes these arguments are invalid for the following reasons. First, though an automated execution system, automatic executions may still occur in NAqcess. In fact, of the four means by which an order can be executed through NAqcess, three of them involve an automatic execution process. Specifically, automatic executions occur when: (1) a market order matches a limit order; (2) a limit order matches a limit order; and (3) a takeout order matches limit orders residing on the NAqcess file. Second, to the extent that NAqcess is functioning as an automated order execution system (i.e. marketable orders delivered to market makers at the inside market), it has a short-term (20 second) automatic execution default feature. Third, the NAqcess order execution algorithm is wholly consistent with the SEC's firm quote rule, Rule 11Ac1–1: a market maker can decline a marketable order only in cases consistent with the exceptions to Rule 11Ac1–1. Specifically, a market maker will only be allowed to decline a NAqcess order if it received the order while in the process of effecting a transaction and updating its quotation. To ensure that market makers are not declining orders in violation of the firm quote rule, the NASD has developed on-line, real-time surveillance systems.

In essence, through its enhanced limit order execution and display capabilities, NAqcess builds upon the core market order execution features of SOES and limit order facilities of both SOES and SelectNet, to enhance the transparency of Nasdaq and to provide investors with increased opportunities for price improvement and limit order protection.

With the implementation of NAqcess, Nasdaq will add a market-wide print protection policy to its Rules of Fair Practice. A firm holding a NAqcess-eligible limit order outside of NAqcess will be required to protect (execute) the order if an unmodified (e.g. not a .SLD) trade in the stock is reported at an inferior price. NAqcess print protection augments, but does not replace, Manning order protection, which does not allow a firm to trade ahead of an internally-held customer limit order (i.e. trade at a price equal or inferior to that of the customer order). Additionally, Manning will apply to orders placed in NAqcess; the firm placing the order into NAqcess cannot trade at the price level of the order without protecting it.

D. NAqcess in Historical Perspective

It is useful to view NAqcess in historical perspective, where it can be seen as a logical step in the evolution of Nasdaq. The precursor to Nasdaq existed as a completely decentralized dealer market for trading non-listed stocks. The inauguration of the computerized system for the dissemination of quotes that constituted the start of Nasdaq in 1971 was a major step towards allowing dealers to interact more closely. Since that time, Nasdaq has used technology to continually improve the dissemination of information and the execution of orders in the Nasdaq market. These improvements have created an ever-increasing degree of centrality to the marketplace, not in physical space, but in cyberspace.

A major step forward for Nasdaq came in 1982 with the advent of last-sale reporting in certain Nasdaq National Market Securities. This change allowed traders to depend more on the Nasdaq system as their window to the world. Computerized trading started with the Computer Assisted Execution System (CAES), used for the first time in 1983, to execute transactions in Nasdaq National Market issues. In 1984, the implementation of Nasdaq's Small Order Execution System (SOES) represented another step toward facilitating execution of market orders. Subsequent to the market break in 1987, Nasdaq took steps to significantly increase the number of orders executed over the computer, without the need for a telephone. To enhance liquidity and execution capabilities during heavy volume periods, participation in SOES became mandatory for all Nasdaq National Market market makers.

In 1988, the Order Confirmation Transaction (OCT) system was introduced to automatically direct priced orders of any size to specific market makers, where they could then reject or accept the order. This was the first step in facilitating the execution of priced orders on Nasdaq. As an additional step towards the enhancement of limit order execution on Nasdaq, the SOES limit order file was introduced in 1990. The SOES limit order file allowed for the input of priced retail orders and the matching of these orders. This system provided small, retail orders with a facility to get executions within the best bid and best ask prices. SelectNet, a screen-based negotiation and execution service with major enhancements to OCT's broadcast and negotiation features, was introduced in 1990 to replace OCT and also provide for enhanced limit order execution ability.[16]

In 1993, the NASD Board proposed a Rule to the SEC, subsequently approved,

[15] For the 13 Thursdays in the first quarter of 1996, there were 52 SelectNet trades of more than 9,900 shares in the top 250 dollar volume stocks, accounting for .003% of all trades for these stocks. For all other Nasdaq stocks, there were 27,646 SelectNet trades of more than 1,000 in this time period, representing 1.513% of all trades for these stocks. Combined, the 27,698 SelectNet trades that could not be achieved via NAqcess constitute .708% of all Nasdaq trades in the period.

[16] Other improvements to the trading of Nasdaq securities include the following: In 1988, Nasdaq introduced the Advanced Computerized Execution System (ACES) which allowed a participant to automatically direct retail orders to any designated ACES market maker with which it had an established business arrangement. In 1989, Nasdaq introduced Automated Confirmation Transaction (ACT) to automate the trade comparison and clearing process and enhanced OCT by allowing market makers to counter-offer. In 1992, Nasdaq introduced a new Nasdaq Workstation, Workstation II, that allowed Nasdaq traders to use windows, hot buttons, and programmable features to facilitate trading in Nasdaq securities. Also in 1992, SelectNet service hours were expanded to be available from 9:00 a.m. to 5:15 p.m. EST. In 1994, the NASD Board approved the dissemination of SelectNet orders and executions to non-members to increase the transparency of Nasdaq.

giving priority to customer limit orders over the member firm's orders. In 1995, this limit order protection rule was extended to include limit orders sent to a market maker from another member firm. In 1994, the NASD Board proposed to replace SOES with Nasdaq Primary Retail Order View and Execution System (N*PROVE), which provided enhanced execution capabilities for small, retail limit orders. In 1995, Nasdaq proposed NAqcess, a fully-automated, centralized limit and market order facility.

III. The Value of NAqcess for Nasdaq

Many commenters to the SEC on the NAqcess proposals expressed concern with the proposal due to what they perceived as the NASD's apparent lack of economic analysis of the effects of the proposals. In fact, the NASD has analyzed these proposals through a review of economic literature, an internal empirical study, and simulation research of a limit order file environment. A summary of these analyses is provided in this section. The key innovation provided by NAqcess is the establishment of a central limit order file. The value of NAqcess therefore depends on the value of such a file. This section of the report first considers NAqcess in the context of other equity markets worldwide. Then, it discusses the current state of Nasdaq in a pre-NAqcess setting, pointing out the limit order functionality that is currently present. Finally, the results of internal and sponsored NASD research regarding the use of limit orders is reported.

A. Experiences of Other Equity Markets [17]

Nasdaq's adoption of a central limit order file is consonant with systems in place in equity markets around the world. Many of the world's largest equity markets rely on the operation of a central limit order file to route and execute orders, including New York, Toronto, Paris, Australia, and Tokyo. Although this is not an exhaustive list, its breadth signals that world exchanges have acknowledged the utility of central limit order files and have incorporated them into their markets.

Every stock and options exchange in the United States operates central limit order files to facilitate trade execution.[18] The New York Stock Exchange's SuperDOT system routes orders in price and time priority to the specialist for execution against other SuperDOT orders, the specialist's inventory, or orders from the exchange floor. An analysis of 1991 SuperDOT orders by Harris and Hasbrouck (1992) shows that SuperDOT orders account for about 50% of total orders, and because SuperDOT orders are smaller than average, about 30% of share volume. Most limit orders are day orders (82%), and limit orders tend to be larger than market orders. Orders that are part of program trades are more likely to be market orders, especially index arbitrage orders, which are virtually always market orders. This finding makes sense given the high priority for execution for index arbitrage trades. The Philadelphia, Pacific, and Boston Stock Exchanges also operate centralized order files with automated execution features.

Internationally, the presence of limit order books is even more pronounced. A handful of those systems is described below.

The Toronto Stock Exchange operates a fully automated execution system called CATS (Computer Assisted Trading System), accounting for about 27 percent of the Exchange's volume. CATS is a central limit order file with a unitary price opening mechanism, operating on price and time priority. Market orders entered into CATS are converted into limit orders at the current price. For example, a market order to sell becomes a limit order at the best bid. CATS handles trading for about half of the stocks listed on the TSE, although the TSE's ''Equity Floor Closure'' project will create a central limit order file for all listed stocks, thus eliminating all floor trading. Toronto's CATS system has served as a prototype for other exchanges. Paris, Brussels, and Barcelona have adapted the CATS system while Stockholm, Helsinki, and Tokyo have developed systems resembling CATS.

The Paris Bourse converted from a periodic call market system to a fully computerized central limit order file when it launched the CAC (Cotation Assiste en Continu) system in the mid-1980s. Relevant to Nasdaq's joint order and quote capability with NAqcess, Paris determined that CAC alone could not best meet the needs of all trade types, particularly block orders. Block orders trade on London's SEAQ system, a dealer-based, quote-driven system, rather than through CAC. In response, Paris has instituted procedures allowing for an ''upstairs'' for block trade negotiations as well as more formal market making for less active stocks. Similarly, Amsterdam responded to diminishing block volume business by adding a negotiation facility to complement its limit order file system.

The London Stock Exchange, a dealer-based market, plans the creation of a central limit order file. It is expected that the order file will be used on a limited basis upon introduction, to evaluate the system's impact incrementally. The dealer market will continue to play an important role in the market, for instance, by meeting the liquidity needs of larger trades.

In 1995, the Deutsche Borse AG (DBAG) announced Project ZEUS, a plan to automate and centralize all German bourse trading. Although the particulars are still in the formation stages, a major component of the project is the creation of an open order book with market maker participation.

One criticism of the NAqcess proposal has been that the mixing of dealer quotes and the limit order file in one display is misleading and disruptive. Another criticism has been that the inclusion of limit orders in the Nasdaq inside quote would give NAqcess an unfair competitive advantage over other execution systems. The New York Stock Exchange specialist, however, has been disseminating a mixed quote for many years with no significant informational difficulties. Also, execution systems, such as Madoff's, have developed and expanded over time to trade NYSE-listed securities even with the eligibility of limit orders being included in the NYSE inside quotes. The dissemination of the top-of-the-file, reflecting limit orders at the best prices, and the consolidated inside market, reflecting orders and quotes at the best prices, will provide investors in the Nasdaq market with more information than is currently available. When one or more NAqcess orders join the dealer quotes to create the consolidated inside market, a market identifier is displayed to alert market

[17] Sources for this section include the following articles:

Domowitz, Ian (1993). ''A Taxonomy of Automated Trade Execution Systems,'' Journal of International Money and Finance 12:607–631.

Eisenhammer, John. ''OFT Calls For Fresh Curbs on Market-Makers,'' The Independent, 24 April 1996, p. 19.

Harris, Lawrence and Joel Hasbrouck (1992). ''Market vs. Limit Orders: The SuperDOT Evidence on Order Submission Strategy,'' NYSE Working Paper 92–02. Forthcoming in the Journal of Financial and Quantitative Analysis.

Hedvall, Kaj (1994). ''Essays on the Market Microstructure of the Helsinki Stock Exchange,'' Ph.D. Dissertation at the Swedish School of Economics and Business Administration, Helsinki.

Stoll, Hans R. (1992). ''Principles of Trading Market Structure,'' Journal of Financial Services Review 6:75–107.

Stoll, Hans R. and Roger Huang (1991). ''Major World Equity Markets: Current Structure and Prospects for Change London, Toronto, Paris and Tokyo,'' Working Paper 90–32.

[18] While this description focuses on equities markets, futures and options markets in the United States have also incorporated central limit order files, including the Chicago Board Options Exchange and the Chicago Mercantile Exchange.

participants that these orders are part of the current inside market.[19] The participation of orders in the Nasdaq inside market will give all Nasdaq investors, not just proprietary system users, the chance to get better execution prices.

In sum, many other world markets have recognized the importance of limit orders and have responded by incorporating central order files into their market structures, as Nasdaq plans to do with NAqcess. In fact, most world equity markets are, at their foundation, limit order books, without an explicit role for dealers. In this regard, Nasdaq is something of an exception. It is interesting to note, however, from the experience of Paris and Amsterdam, that the need for a dealer market modality exists even when a strong order book foundation exists. This point suggests the appropriateness of alternative (and competing) market modalities within a single market. With these experiences in mind, NAqcess is intended to strengthen Nasdaq's limit order modality without weakening the dealer market modality.

B. Theory and Evidence from the Economic Literature on Limit Order Trading

The economic literature supports the view that limit order trading can be a superior form of trading for some types of investors. This section briefly discusses some examples of this literature as it relates to (1) the rationale for order-driven trading, and (2) the international experience with order driven trading.

1. The Rationale for Order-Driven Trading

The key question motivating the academic limit order trading literature concerns the relative advantages of market and limit orders. The question is addressed in two recent papers written by well-known market microstructure academics: ''Limit Order Trading'' by Handa and Schwartz[20] and ''Market vs. Limit Orders: The SuperDOT Evidence on Order Submission Strategy'' by Harris and Hasbrouck,[21] discussed previously.

Handa and Schwartz analyze the fundamental rationale for limit order trading. They point out that when the market price is driven solely by information, placing a limit order is a lose-lose strategy. The opportunity for profitable limit order trading arises when short-term, self-reversing price movements take place in a stock. This type of fluctuation can occur when demanders of liquidity enter market orders that require immediate execution. In this case, limit orders, like market maker quotes, supply liquidity to the market, and can be rewarded for doing so by obtaining favorable trading terms.

Handa and Schwartz use the terms ''information traders'' and ''liquidity traders'' to describe the two types of counterparties that placers of limit orders face. The limit order loses when the counterparty is an information trader, but can win when the counterparty is a liquidity trader. Thus, an investor contemplating the placement of a limit order must weigh the probabilities of facing each of these two types of traders. Further, the investor needs to determine the importance of completing his trade. In the extreme case, an investor who absolutely must trade should not use a limit order strategy since there is some probability that the order will not be filled. On the other hand a ''patient'' investor, one whose current portfolio is already near optimal, and for whom the lack of execution of the order is not a serious concern, may find a limit order strategy to be superior to a market order strategy. Handa and Schwartz envision a natural ''ecology'' in the marketplace, wherein a paucity of limit orders would result in price movement, which compensates limit order placement and thus induces the placement of limit orders. Limit orders would work towards reducing volatility, up to the point where no new flow of limit orders is induced.

Handa and Schwartz use actual 1988 trade data from the 30 NYSE stocks in the Dow-Jones Industrial Average to compare strategies. They calculate the average purchase price for hypothetical buy limit and market orders. They consider a number of limit order strategies differentiated by the aggressiveness of the strategy. In general, when the limit order is filled, the purchase price is lower than that of a comparable market order. But when it is not filled after some period of time, it must be substituted for a market order at the then prevailing price, the average purchase price of which is usually higher. The authors find that, for buy limit orders placed 2% below the market, the average purchase price, taking into account what happens when the limit order does not execute, is only 0.2% lower than the price of a comparable market order. For a three-day holding period, a limit order set at 2% below the market earns on average a return of about 0.48% higher than that of a comparable market order, though there is substantial variability (risk) in this return. The strategy of placing the order 2% below the market appears to be optimal relative to the other percentages considered in the study.

In sum, Handa and Schwartz find sufficient short-term liquidity-driven price changes in their data to make limit order trading a potentially superior strategy to market order trading. The more patient the investor, the more likely a limit order strategy is superior.

Harris and Hasbrouck also analyze data from NYSE stocks. Using order data derived from the SuperDOT order-processing system in 1991, they are able to compare the relative performance of limit and market orders that were actually submitted.

For each order, Harris and Hasbrouck compute the ''fill'' price, which is either the limit order price if the order was filled, or an imputed price if the order was canceled or expired. Comparing the fill price with the appropriate quote (ask for buy orders, bid for sell orders) provides a measure of trading strategy value appropriate for traders who are precommitted to transacting. Limit order performance is compared to market order performance, with limit orders categorized according to aggressiveness of the order price.

Consider stocks with quoted spreads of ⅛. The authors find that limit orders placed at the market quotes placed at the bid for buy orders and at the ask for sell orders tend to do better than market orders. For small orders, such limit orders execute at prices on average of about three cents better per share than market orders. Limit orders placed away from the market tend to do worse than market orders. As the trade size increases, the relative advantage of at-the-quote limit orders diminishes to about one and a half cents. When stocks with quoted spreads of ¼ are considered, the possibility of setting a limit order between the quotes emerges. In fact, this strategy tends to be optimal, providing price improvement of around two cents a share. The authors are careful to note, however, that their measure of performance is not necessarily valid for any given trader. The key imponderable factor is the priority the investor places on execution, and the corresponding action

[19] A ''Z'' identifier will appear when an inside bid or offer represents NAqcess orders only, and a ''Y'' identifier will appear when the inside bid or offer represents both NAqcess orders and dealer quotes.

[20] Handa, Puneet and Robert A. Schwartz (1996). ''Limit Order Trading,'' forthcoming in Journal of Finance.

[21] Harris, Lawrence and Joel Hasbrouck (1992). ''Market vs. Limit Orders: The SuperDOT Evidence on Order Submission Strategy,'' NYSE Working Paper #92–02. Forthcoming in the Journal of Financial and Quantitative Analysis.

taken by the investor when a limit order does not execute.

Together, these two papers provide a basic rationale for limit order. Sufficient liquidity trading seems to occur on the NYSE, creating the short-term price volatility such that a relatively patient investor can be consistently rewarded for supplying liquidity. Application of these results to NAqcess suggests that the creation of a facility that enhances a limit order trading strategy can benefit certain types of investors.

2. Performance of Other Markets

Options exchanges combine the elements of competing market makers with a central limit order file, which is of particular interest since this is the model for Nasdaq under NAqcess. Berkman examines the European Options Exchange in Amsterdam.[22] At this exchange, dealers interact with each other in an open outcry manner, typical of options exchanges, as opposed to interacting through a computer network. Berkman seeks to determine the influence of the limit order file on spreads. His results indicate that when the number of transactions executed against limit orders as a percentage of total transactions is high, the spread is low. Berkman views this percentage as an indication of the competition faced by dealers from the limit order file. Applying this result to NAqcess suggests that limit orders create competition even in an environment characterized by competition among market makers.[23]

A number of academic studies analyze the characteristics and performance of equity markets outside the U.S. As mentioned above, the Paris Bourse and the Tokyo Stock Exchange operate fundamentally as centralized limit order files without an explicit role for dealers.

Lehmann and Modest, and Hamao and Hasbrouck study the Tokyo Stock Exchange.[24] Both studies consider the performance of a market that relies exclusively on limit orders to provide liquidity. By custom, brokers do not engage in proprietary trading on both sides of these markets. The authors perform a variety of analyses which demonstrate the viability of the Tokyo Stock Exchange's order-driven market.

Biais, Hillion, and Spatt study the operation of the Paris Bourse, in particular the flow of orders in response to market developments.[25] They find that when the current bid-ask spread (as determined from the limit order book) is relatively high or the order book thin, investors are more likely to submit limit orders. Conversely, when the spread is tight, investors tend to trade against existing limit orders. ''Thus, the investors provide liquidity when it is valuable to the marketplace and consume liquidity when it is plentiful'' (pg 1657). The market response to market orders is rapid, reflecting competition in the supply of liquidity. They also find that the flow of order placements tends to be concentrated at or inside the best market quote, again reflecting competition in the supply of liquidity.

These two examples illustrate that limit orders can be the primary or even sole source of liquidity in a market. For some types of trades and some types of stocks, however, dealer markets appear to provide an additional dimension of market quality beyond that found in a pure limit order market.

C. The Role of Limit Orders in the Pre-NAqcess Nasdaq Stock Market

In contemplating the role of a central limit order file, it is important to recognize that limit orders are currently placed in the Nasdaq market. NAqcess constitutes an enhancement in limit order trading capabilities, not the establishment of limit order trading. The following two sections discuss the submission of limit orders in the current environment as well as the use of two existing limit order facilities.

1. Evidence of Implicit (Internal) Limit Order Use on Nasdaq

Although the NASD has never conducted a comprehensive survey of limit order activity in the Nasdaq market, a 1994 review by an NASD-appointed task force demonstrates that limit orders account for a significant amount of order flow between broker-dealers. As part of its review of limit order protection rules in 1993, the NASD Board of Governors (the Board) created the Limit Order Task Force (the Task Force) to explore issues related to limit orders sent from one broker-dealer to another for execution. The Task Force included representatives from integrated broker-dealers, wholesale market makers, regional firms, firms with a large institutional clientele, and a Nasdaq issuer.

During roundtable discussions, one member of the Task Force, representing the interests of wholesale firms, stated that of all orders entering the firm's trading systems daily, as many as 40 percent were limit orders for other broker-dealers' customers.[26] Another Task Force member, who represented a full service firm, stated that 20 to 25 percent of its orders were limit orders.

In the summer of 1994, the Task Force's work prompted the NASD to survey market makers to estimate the flow of Nasdaq limit orders from broker-dealer to broker-dealer. The NASD asked market makers for daily percentages of orders received from unaffiliated brokers for execution that were limit orders, exclusive of marketable limit orders. Survey information was requested for five specified days in both January, 1994 and July, 1994. Eight market maker firms, four multi-service and four wholesale, responded to the survey. Limit order flow from other broker-dealers ranged from less than 10 percent to 30 percent for multi-service firms and from 20 percent to 50 percent for wholesale firms. The survey data show that limit orders accounted for a significant amount of member-to-member order flow.

2. Evidence of Explicit Limit Order Use on Nasdaq

Two well-known limit order facilities for trading Nasdaq securities are Instinet and SelectNet. Instinet is a proprietary trading system owned by Reuters Holdings PLC. Traders equipped with Instinet terminals or Instinet feeds can place limit orders into the system and anonymously take out existing orders on the file. Instinet executions are sent directly to ACT, Nasdaq's clearing facility. Users of Instinet have traditionally been institutional traders and market makers. Though Instinet is integrated into the Nasdaq system, it competes with other Nasdaq trading

[22] Berkman, Henk (1991). ''The Market Spread, Limit Orders and Options,'' Working Paper, Department of Finance, Erasmus University, Rotterdam.

[23] In the U.S. the Chicago Board Options Exchange (CBOE) also exemplifies a multi-modal market by combining a dealer system, a floor-based system, and a central limit order file. Dealers may engage in proprietary or customer trading while floor officials execute trades on behalf of customers only. The CBOE maintains two limit order books, RAES (Retail Automatic Execution System) the EBook (the Electronic Book), which automatically match options orders. The latter handles orders that arrive prior to the opening and are outside the current market quotes. This information is provided by the Chicago Board Option Exchange's Internet home page—http://www.cboe.com.

[24] Lehmann, B.N. and D.M. Modest (1994). ''Trading and Liquidity on the Tokyo Stock Exchange: A Bird's Eye View,'' Journal of Finance 49: 951–984. Hamao, Yasushi and Joel Hasbrouck (1995). ''Securities Trading in the Absence of Dealers: Trades and Quotes on the Tokyo Stock Exchange,'' The Review of Financial Studies 8, 3 (Fall).

[25] Biais, Bruno, Pierre Hillion and Chester Spatt (1995). ''An Empirical Analysis of the Limit Order Book and the Order Flow in the Paris Bourse,'' The Journal of Finance 50, 5 (December): 1655–1689.

[26] The member of the Task Force did not specify whether the 40 percent included marketable limit orders.

modes in the sense that it offers an alternative trading venue. In January 1996, Instinet share volume was about 15% of total Nasdaq volume. This share appears to have been roughly constant during the last three years, indicating that limit orders have been and continue to be an important part of Nasdaq trading activity.[27] Instinet share volume for the top 250 Nasdaq issues accounted for almost 20% of total share volume in these stocks during January, 1996.[28]

As described in section II.C., Nasdaq's SelectNet service, which broadcasts priced orders, will be discontinued when NAqcess is implemented, as NAqcess provides considerable improvements to the SelectNet facility. SelectNet volume has averaged about 4% of total Nasdaq volume over the last three years. In January, 1996, SelectNet accounted for 5% of total share volume in the top 250 Nasdaq issues.[29] SelectNet's use provides further evidence that limit order use is not foreign to the current Nasdaq market.

As noted above, limit order trading, by supplying liquidity to the market, allows investors the opportunity to trade at prices superior to those represented by the prevailing inside bid and offer. During January 1996, Instinet trades occurred inside the spread 65% of the time, and SelectNet trades occurred inside the spread 36% of the time. These figures contrast with the rest of Nasdaq trading (excluding SOES, ACES, SelectNet, and most Instinet trades) which for the same month executed between the quotes about 22% of the time.

D. Research Conducted by and Sponsored by the NASD

1. Replication of Handa and Schwartz Study on Nasdaq Stocks

NASD Economic Research staff have conducted a study similar in purpose to the Handa and Schwartz study discussed above. The purpose of the study is to assess the potential profitability of limit order trading in Nasdaq stocks. Like the Handa and Schwartz study, the method was to construct hypothetical limit and market orders for a stock, and compare the relative profitability of the two order types using actual historical trade price data.

Using internal trade and quote data for each Thursday from January 4 to April 11, 1996, the performance of an array of hypothetical limit orders at various price levels was measured against that of a hypothetical market order.[30] All hypothetical orders were placed at the open, so the hypothetical market buy (sell) order was executed at the opening inside ask (bid).[31] The array of hypothetical limit buy (sell) orders consisted of limit orders at each ⅛ interval between the opening ask (bid) and the opening ask (bid) plus (minus) $2. For example, if the opening bid was $20, the performance of hypothetical sell limit orders at $20⅛, $20¼, $20⅜, . . . to $22 would be compared to that of a sell market order executed at the opening bid, $20. Hypothetical limit order executions occurred if any execution at an inferior price was reported during normal trading hours. For example, a sell limit order of $20¼ would be assumed executed if a price greater than $20¼ were observed during the day. This approach is conservative in that, given Manning protection and the fact that limit orders with time priority may become the market, some executions at prices equal to the limit order price would yield an execution. If no execution occurs, the limit order converted to a market order which was executed at the prevailing inside market at the time of the last trade in the stock that day.

Each combination of a stock during a given day (stock-day) in the sample was classified by two variables, spread class and price range. A stock-day's spread class is determined by rounding the trade-weighted average spread to the nearest ⅛ (though some spread class categories contain multiple ⅛s). Price range classification is made using the opening bid for the stock-day. Stock-days with less than 20 trades were excluded from the analysis. For each of the hypothetical limit orders, the following measures were calculated: the probability of execution, nominal differential performance versus the hypothetical market order, percentage differential performance versus the hypothetical market order, and the cost of non-execution. For example, a buy order ¼ below the opening ask might have a 90 percent probability of execution. If executed, this order outperforms the market buy order by $0.25. If not executed, the order is converted to an end-of-day market order. As the limit order was not executed, it is likely the market moved against it, i.e., it rose. Suppose that a stock's price rises throughout the day, never trading at a price inferior to the limit order, and that the closing price exceeds the opening price by $2. Then an unexecuted limit order, converted to an end-of-day market order, underperforms the original market order by $2. The limit order investor then weighs the 90 percent probability of saving $0.25 against a 10 percent probability of losing $2.00 and forms the expectation that, on average, the limit order will out perform the market order by $.025.[32]

Table 2 presents results for 2 cross-sections: spread classes ⅛ and ¼ both for stock-days in the $10 to $20 price range. The first column shows the limit order price increment, with an increment of zero representing a market order. The second column shows probability of execution, which is the likelihood that a limit order will execute at the given increment level. For example, in the ⅛ spread class, a limit sell (buy) order placed ⅛ above (below) the bid (ask) has a 68.9% chance of execution on an average day. The limit order's value of execution is $0.125, which represents the savings the investor gains by selling (buying) ⅛ above (below) the bid (ask). The probability of non-execution is simply 100% minus the execution probability, which equals 31.3%. The cost of non-execution, found in the fifth column of the table, represents the opportunity cost associated with placing a limit order that is not filled during the day. As stated previously, if the hypothetical limit sell (buy) order is not filled during the day, it is executed at the closing inside bid (ask). The cost of non-execution is computed as the difference between the closing inside bid (ask) and the opening inside bid (ask), conditional on the fact that the order was not filled during the day. On average, this cost is just under $0.24 for a limit sell (buy)

[27] January 1996 data are from the Nasdaq Market Data Server. Data from this relatively new source provide more detail than was previously available for calculating Instinet volume. Data from the Nasdaq Equity Audit Trail extend back to January 1993, but are incomplete regarding Instinet trading. Incomplete as it is, however, this source indicates no trend in the Instinet share of volume during the last three years.

[28] The 250 stocks with the highest median dollar volume over the first quarter of 1996 were selected.

[29] The 250 stocks are the same as those mentioned in the previous footnote.

[30] The sample is limited to those stock-days (a stock-day is a unique combination of a stock and trading day) having 20 or more trades; thus a stock may not be included in the sample for all trading days over the period. The 20 or more trades criterion necessarily means that trading activity for the sample is higher than for the Nasdaq market as a whole. Daily share volume for stock-days in the sample averages 252,300 shares compared to 106,108 shares for the Nasdaq market over the same time period. Average trade sizes are 1,916 and 1,980 for the sample and the Nasdaq market, respectively.

[31] Note that this approach may bias our results in the limit orders favor, because in theory, the worst price at which a market order can be executed is the inside quote. Many firms offer market orders opportunities for price improvement or match them with orders on an internal file, so market orders can be executed at prices inside the dealer quotes.

[32] E(Limit Order Advantage) = P(Execution) * Outperformance − P (Non-Execution) * Cost of N–E = (.9 * .25) − (.1 * 2.00) = .025

order placed ⅛ above (below) the bid (ask). The expected dollar value of the limit order, shown in the sixth column, represents the savings of executing the limit order minus the opportunity cost of non-execution, taking the probability of both events into account. It is computed as follows:

(column 6) expected dollar value of limit order = (column 2) probability of execution * (column 3) value of execution—(column 4) prob. of non-execution * (column 5) cost of non-execution.

The expected dollar value of the limit order is the overall summary measure of what an investor might gain, on average, from placing a limit order. Finally, the seventh column divides the expected value of the strategy by the opening price of the stock. The resulting figure is the percentage gain of the strategy, and can be added to the overall investment return from holding the stock. While the discussion has focused on savings for the investors placing limit orders, it should be noted that a savings exists for the investors whose market orders execute against the limit orders. For example, say a limit buy order is placed at $15 ⅛ for 500 shares when the inside market is $15 to $15 ¼. If a market sell order for 500 shares executes against the limit order, both the limit order and the market order realize an execution value of $0.125.

Table 2 shows that, on average, for stocks priced between $10 and $20 in the ⅛ spread class, the only scenario in which a limit order outperforms a market order executed at the opening bid or ask, is placing a buy (sell) limit order ⅛ below (above) the inside ask (bid). Because this cross-section of stock-days are in the ⅛ spread class, limit orders outperform market orders even though they have been placed at levels equivalent (on average) to inside dealer quotes (i.e. buy orders at the bid, sell orders at the ask). For a spread class of ¼, however, the optimum level at which limit orders can be placed is ⅛ below (above) the inside ask (bid); as might be expected, limit orders that ''split'' the dealer spread outperform market orders.

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Table 2: Performance of Limit Orders Versus Market Orders

Stock-Days* in Spread Classes 1/8 and 1/4, Price Range $10 to $20

Limit Order Increment**	Probability of Execution	Value of Execution	Probability of Non-Execution	Cost of Non Execution	Expected Dollar Value of Limit Order	As Percentage of Price
Spread Class = 1/8 (879 Stock-Days)						
0	100.0%	$0.000	0.0%	N/A	$0.000	0.00%
1/8	68.9%	$0.125	31.1%	($0.239)	$0.012	0.10%
1/4	38.2%	$0.250	61.8%	($0.170)	($0.010)	-0.07%
3/8	24.5%	$0.375	75.5%	($0.136)	($0.011)	-0.07%
1/2	16.8%	$0.500	83.2%	($0.110)	($0.007)	-0.05%
5/8	11.3%	$0.625	88.7%	($0.084)	($0.004)	-0.03%
3/4	8.1%	$0.750	91.9%	($0.068)	($0.002)	-0.01%
7/8	5.7%	$0.875	94.3%	($0.053)	$0.000	0.00%
1	4.2%	$1.000	95.8%	($0.044)	$0.000	0.00%
Spread Class = 1/4 (2,270 Stock-Days)						
0	100.0%	$0.000	0.0%	N/A	$0.000	0.00%
1/8	89.6%	$0.125	10.4%	($0.449)	$0.066	0.48%
1/4	53.5%	$0.250	46.5%	($0.251)	$0.017	0.13%
3/8	34.9%	$0.375	65.1%	($0.206)	($0.003)	-0.02%
1/2	23.4%	$0.500	76.6%	($0.162)	($0.007)	-0.04%
5/8	17.5%	$0.625	82.5%	($0.134)	($0.001)	-0.01%
3/4	12.1%	$0.750	87.9%	($0.106)	($0.002)	-0.01%
7/8	9.0%	$0.875	91.0%	($0.086)	$0.000	0.01%
1	6.8%	$1.000	93.2%	($0.071)	$0.002	0.01%

Notes: *Stock-days equals number of stocks in a category times number of days in sample (16 Thursdays in 1996). Stock is excluded for a trading day if it had less than 20 trades that day.

**Buy orders placed at the opening ask minus the increment, sell orders at the opening bid plus the increment. Value of zero indicates market order.

BILLING CODE 8010–01–C

Table 3 contains results for the ⅛ spread class and the ⅜ and ½ spread classes for stock-days in the $20 to $30 price range. Interestingly, no limit orders placed near the market outperform a market order on average for stock-days in the ⅛ spread class. For spread classes ⅜ and ½, a number of price levels at which limit orders outperform market levels exist. Those of note are between the spread for these stock-days, i.e. at ⅛, ¼, and ⅜ off the inside quotes. A limit order ⅜ off the inside market does best; these orders will be either at (for ⅜ spread stock-days) or ⅛ inside (½ spread stock-days) the inside dealer market.

BILLING CODE 8010–01–M

Table 3: Performance of Limit Orders Versus Market Orders

Stock Days* in Spread Classes 1/8, 3/8, and 1/2; Price Range $20 to $30

Limit Order Increment**	Probability of Execution	Value of Execution	Probability of Non-Execution	Cost of Non Execution	Expected Dollar Value of Limit Order	As Percentage of Price
Spread Class = 1/8 (309 Stock-Days)						
0	100.0%	$0.000	0.0%	N/A	$0.000	0.00%
1/8	73.3%	$0.125	26.7%	($0.346)	($0.001)	-0.01%
1/4	51.6%	$0.250	48.4%	($0.317)	($0.024)	-0.11%
3/8	39.3%	$0.375	60.7%	($0.276)	($0.020)	-0.09%
1/2	30.1%	$0.500	69.9%	($0.235)	($0.014)	-0.06%
5/8	23.1%	$0.625	76.9%	($0.201)	($0.010)	-0.05%
3/4	17.8%	$0.750	82.2%	($0.180)	($0.014)	-0.07%
7/8	15.2%	$0.875	84.8%	($0.162)	($0.004)	-0.03%
1	12.0%	$1.000	88.0%	($0.142)	($0.005)	-0.03%
Spread Class = 3/8 and 1/2 (1,965 Stock-Days)						
0	100.0%	$0.000	0.0%	N/A	$0.000	0.00%
1/8	97.6%	$0.125	2.4%	($1.030)	$0.097	0.40%
1/4	88.5%	$0.250	11.5%	($0.745)	$0.136	0.55%
3/8	78.9%	$0.375	21.1%	($0.539)	$0.182	0.74%
1/2	46.9%	$0.500	53.1%	($0.393)	$0.026	0.11%
5/8	43.4%	$0.625	56.6%	($0.382)	$0.055	0.22%
3/4	29.2%	$0.750	70.8%	($0.321)	($0.008)	-0.03%
7/8	27.4%	$0.875	72.6%	($0.306)	$0.018	0.07%
1	20.4%	$1.000	79.6%	($0.256)	$0.000	0.00%

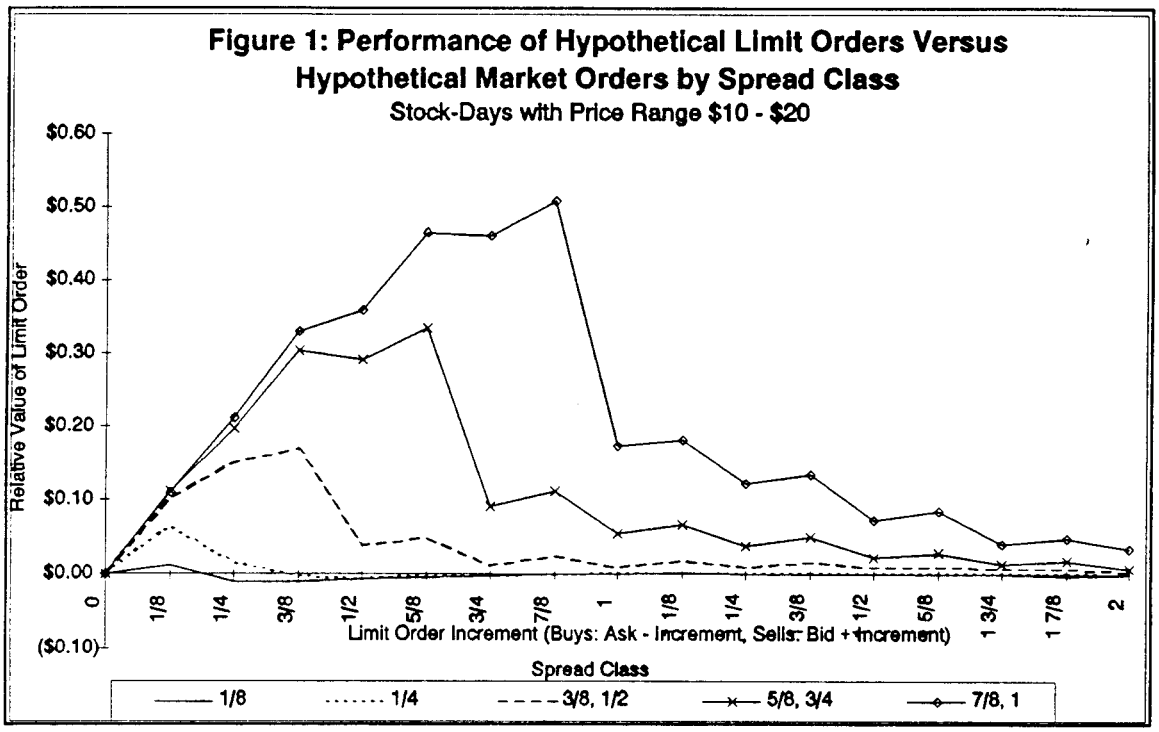
Notes: *Stock-days equals number of stocks in a category times number of days in sample (16 Thursdays in 1996). Stock is excluded for a trading day if it had less than 20 trades that day.

**Buy orders placed at the opening ask minus the increment, sell orders at the opening bid plus the increment. Value of zero indicates market order.

BILLING CODE 8010–01–C

Figure 1 plots the relative performance of the limit order array for 5 spread classes of stock-days in the $10 to $20 price range. The graph shows that for all but the ⅛ spread class (where no orders can be placed inside the quotes), the optimum limit order strategy is to place ordes at prices ⅛ better than the inside dealer market. This analysis shows the when possible, limit orders placed within the inside dealer market can outperform market orders on average.

BILLING CODE 8010–01–M



BILLING CODE 8010–01–C

This analysis suggests potential benefits for investors from enhanced limit order activity on the Nasdaq Stock Market. Investors who do not require immediate transactions will have an incentive to place limit orders in NAqcess, and may receive superior prices as a result. Since these limit orders augment the supply of liquidity, those investors who demand immediacy through the placement of market orders may pay less for it.

While this study finds that limit order strategies can result in gains for investors, its implications for NAqcess must take several factors into consideration. The study examines performance of hypothetical limit orders in the current, pre-NAqcess trading environment, which does not represent what will exist in the NAqcess environment. It is expected that the introduction of a central limit order file in the Nasdaq Stock Market will alter the dynamics of the market, including the performance of limit orders, although the precise changes cannot be known with certainty. For example, this study measures savings relative to a stock's spread without taking commissions into account. This is a reasonable approach given the current Nasdaq environment. In the NAqcess environment, however, spreads could become less relevant while commissions become more so. Secondly, some trading in the pre-NAqcess environment does occur inside the spread, meaning that some investors already realize the type of savings identified in the study.

2. Preliminary Simulation Analysis

Beginning in 1995, Nasdaq retained Robert A. Schwartz and Bruce W. Weber, both with the Leonard N. Stern School of Business, New York University to develop a model of Nasdaq trading that could be used to simulate next-generation trading on Nasdaq as exemplified by NAqcess. Professors Schwartz and Weber are experts in the field of market microstructure and simulation. Schwartz has written extensively and has many published papers on market microstructure. Weber, prior to his work for Nasdaq, developed a simulation model of London Stock Exchange trading for the London Stock Exchange.

The Schwartz-Weber model is a simplified representation of Nasdaq order placement and execution. Liquidity traders, momentum traders, informed traders, market maker quote setting, and inventory management behavior are mechanically generated by computer algorithms. Live traders representing order entry firms interact with the computer-generated environment.[33] The behavior of the live traders can be analyzed under different market structures. As an initial test of their simulation model, Schwartz and Weber conducted experiments with live subjects on the usage of limit orders in a Nasdaq limit order facility similar to NAqcess and measured the impact that a limit order facility had on limit order usage, displayed spreads, and dealer profitability.

Three different market structures were used in the experiments.[34] The first market structure allowed live traders, given a predetermined set of buy orders, to use market orders and trade at the quoted prices of market makers. The second market structure allowed live traders, given a predetermined set of buy orders, to use market orders or input limit orders in the limit order facility with dealers uninformed to the information available to them in order flow. The third market structure allowed live traders, given a predetermined set of buy orders, to use market orders or input limit orders in the limit order facility with dealers partially informed by the information available to them in order flow. The uninformed dealers in the second market structure had wider spreads than in the third market structure due to the

[33] Sixteen graduate business school students and eight NASD employees participated the simulation as live traders. No professional traders participated.

[34] A fourth market structure, allowing live participants to act as day traders, was also developed and tested for use in an experimental setting. In this environment, participants could use market orders or input limit orders in the limit order facility. Controlled experiments under this market structure, however, have not been conducted to date.

increased risk of transacting with more informed traders.

The experimental results suggest that the introduction of a limit order facility narrows the displayed spread and increases order placements. Under the uninformed dealer scenario, the displayed spread narrows by about 25 percent. Under the informed dealer scenario, the displayed spread narrows by about 50 percent. The addition of a limit order facility increased limit order placement to about 50 percent of all orders and reduced market order placement to about 50 percent of all orders. Limit orders were executed 45 percent of the time under the uninformed dealer scenario and about 50 percent of the time under the informed dealer scenario. The addition of a limit order facility increased overall orders placed by about 18 percent but decreased overall orders executed by about 5 percent.

The experimental results also suggest that the introduction of a limit order facility is particularly important to investors in stocks when spreads are greater than ¼. There is some evidence, although not consistent over all categories, that the greater the size of the displayed spread, the greater the use of limit orders. For three out of four categories, a larger percentage of limit orders were placed when displayed spreads were ⅜ and ½ than when displayed spreads were ⅛ and ¼.

The simulation also measured dealer profitability. The results on dealer profitability changes after the introduction of a limit order facility were mixed. The marginal rate of dealer profits in basis points decreased under the uninformed dealer scenario but increased under the informed dealer scenario.

The results are taken from a small sample of 24 experimental subjects. Since subjects had a limited amount of training in the simulated trading environment, better trained subjects may have led to different results. The simulation model makes simplifying assumptions about order flow characteristics, dealer quote setting behavior, and price movements in the Nasdaq market. For instance, the exact structure of NAqcess was not completely determined when the experiments were conducted. Thus, the limit order book structure tested is not identical to the structure ultimately proposed. If any assumptions made by the model are not valid, then the results may not be representative of the impact of NAqcess on the Nasdaq market.

IV. Conclusion: NAqcess Should Benefit Investors

NAqcess represents a major development for the Nasdaq Stock Market. Its key feature is a central limit order file with broad access to market participants. Investors will have the opportunity to place limit orders directly into the file, and execute trades against orders in the file in an automated fashion. This central order file will replace the current SelectNet facility. The automated execution system, fully consistent with the firm quote rule, will allow investors to execute market orders without need of explicit market maker interaction. This system will replace the current SOES facility.

Nasdaq staff believe that NAqcess will represent a significant benefit for investors, as enhanced capabilities for a limit order-oriented market modality are created. This determination is amply supported by the global experience of equity trading, by economic theory and evidence, by the current experience within the Nasdaq market, and by research conducted by and for the NASD's Department of Economic Research.

As has been the experience with the Paris Bourse, however, the dealer-oriented market modality has distinct advantages of its own. NAqcess is in no way intended to replace the dealer market. It can be expected that some issues will tend to be traded within NAqcess more than others, and that some types of trades will be more likely to be placed on NAqcess than others. The forces of competition will ultimately determine the usage of the various modalities offered within the Nasdaq Stock Market.

[FR Doc. 96–15448 Filed 6–19–96; 8:45 am]
BILLING CODE 8010–01–P

[Release No. 34–37310; File No. SR–NASD–96–15]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Schedule A to the By-Laws to Amend the Allowable Exclusions and Deductions from the Definition of Gross Revenue for Member Assessment Purposes

June 13, 1996.

On April 4, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the allowable exclusions and deductions from the definition of gross revenue for member assessment purposes.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37169 (May 6, 1996), 61 FR 21517 (May 10, 1996). No comments were received on the proposal. This order approves the proposed rule change.

I. Background

Gross revenue is defined for member assessment purposes under Section 5 of Schedule A of the NASD By-Laws (''Section 5'') as total income reported on FOCUS form Part II or IIA, with certain limited exclusions and deductions.[3] Currently, Section 5 provides that revenue derived from interest and dividends[4] may be excluded by a member from gross revenue for assessment purposes.

II. Description of Proposal

The Association's proposal amends Section 5 to remove interest and dividends as an allowable exclusion for assessment purposes. The proposal, however, adds a new provision to allow a member to deduct from gross revenue for assessment purposes either: (i) its interest and dividend expenses, but not in excess of related interest and dividend revenue; or, alternatively, (ii) 40% of interest earned by the member on customer securities accounts. The proposal also allows a member to deduct from its gross revenue an additional $50,000 of net interest and dividend revenue. Lastly, the proposal amends Section 5 to provide alphabetical references to its two primary subsections and to replace all bullets referencing its secondary subsections with numerical references.

The proposed rule will take effect for the 1996 assessment based on revenues generated in calendar year 1995. Based on its data, the NASD estimates that the proposed rule, if it had been adopted for 1995, would have generated assessment revenue of $3 million based on the budgeted level of assessment revenue of $39 million for that year. Therefore, the NASD believes that the rule proposal

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35074 (Dec. 9, 1994), 59 FR 64827 (Dec. 15, 1994) (order approving File No. SR–NASD–94–58).

[4] The term ''interest and dividends'' includes interest from a member's customer margin accounts and interest and dividends from a member's trading and investment positions, such as from repurchase and reverse repurchase agreements and stock loan and borrow transactions.

will raise the requisite funds to finance its operating costs.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(5).[5] Section 15A(b)(5) requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members.

The Commission believes that using a member's gross revenue for assessment purposes provides for the equitable allocation of reasonable assessments among members. The Commission notes that the rule proposal recognizes interest and dividend revenue as part of a member's gross revenue for assessment purposes, while recognizing that expenses incurred in connection with such interest and dividend revenue should be allowed to be deducted from such revenue. Moreover, the rule proposal allows, alternatively, members whose business incurs less direct expense in connection with interest and dividend revenue to deduct 40% of interest earned by the member on customer securities accounts. This alternative deduction is intended to eliminate the potential for inequitable allocation of assessments on those members whose interest and dividend revenue is obtained without significant expenses related to trading strategies, such as a member that derives interest revenue primarily from margin accounts financed by its own capital. The purposed rule also allows a member to deduct from its gross revenue an additional $50,000 of net interest and dividend revenue to encourage the accumulation of net capital.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–96–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15660 Filed 6–19–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78o–3(b)(5).

[6] 15 U.S.C. § 78s(b)(2) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2865]

Texas; Declaration of Disaster Loan Area

Irion County and the contiguous counties of Crockett, Reagan, Schleicher, and Tom Green constitute a disaster area as a result of damages caused by severe thunderstorms and hail that occurred on May 29, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 9, 1996 and for economic injury until the close of business on March 10, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155

or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 286511. For economic injury the number is 894500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 10, 1996.

John T. Spotila,

Acting Adminstrator.

[FR Doc. 96–15721 Filed 6–19–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2866]

Texas; Declaration of Disaster Loan Area

Howard County and the contiguous counties of Borden, Dawson, Glasscock, Martin, Mitchell, Scurry, and Sterling constitute a disaster area as a result of damages caused by severe thunderstorms and hail that occurred May 10 through 13, 1996. Applications for loans for physical damage may be filed until the close of business on August 9, 1996 and for economic injury until the close of business on March 10, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155

or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 286611. For economic injury the number is 894600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 10, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–15722 Filed 6–19–96; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Southern District of Texas, dated December 15, 1995, the United States Small Business Administration hereby revokes the license of First City Capital Corporation, a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No. 06/10–0022 issued to First City Capital Corporation on August 26, 1960 and said license is hereby declared null and void as of March 28, 1996.

Dated: June 14, 1996.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–15786 Filed 6–22–96; 8:45 am]

BILLING CODE 1555–07–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board [1]

[STB Docket No. AB–77 (Sub-No. 8X)]

Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME

Bangor & Aroostook Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 16.20 mile portion of its St. Francis Branch between a point at Fort Kent, milepost R–0.40, and the end of the branch at St. Francis, milepost R–16.60, in Aroostook County, ME.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 20, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by July 1, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 10, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P. O. Box 796, West Chester, PA 19380–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 25, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–15762 Filed 6–19–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Docket No. AB–77 (Sub-No. 9X)]

Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME

Bangor & Aroostook Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.64 mile portion of its Van Buren Branch between milepost V–24.10, and the end of the branch at milepost V–24.74, within the Town of Van Buren in Aroostook County, ME.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 20, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by July 1, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 10, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2D 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P.O. Box 796, West Chester, PA 19380–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 25, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–15768 Filed 6–19 –96; 8:45 am]

BILLING CODE 4915–00–M

[STB Docket No. AB–77 (Sub-No. 7X)]

Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME

Bangor & Aroostook Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 6.48 mile portion of its Washburn Branch between a point at Mapleton, milepost W–0.30, and the end of the branch at Washburn at a point just south of the Aroostook River, milepost W–6.78, in Aroostook County, ME.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 20, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 1, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 10, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P. O. Box 796, West Chester, PA 19380–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 25, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–15765 Filed 6–19–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–167 (Sub-No. 1162X)]

Consolidated Rail Corporation—Abandonment Exemption—in Monroe County, NY

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 8.50 miles of its line of railroad from approximately milepost 0.10 to approximately milepost 7.20 (Rochester Running Track) and from approximately milepost 92.90 to approximately milepost 94.10 (Ontario Industrial Track) in Monroe County, NY.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 20, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 1, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 10, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert S. Natalini, Esquire, Consolidated Rail Corporation, 20001 Market Street- 16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 25, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–15763 Filed 6–19–96; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement (''NAFTA'') Implementation Act (Pub. L. No. 103–182), established an advisory committee (the ''Advisory Committee'') for the community adjustment and investment program (the ''Program''). The Program will provide financing to businesses and individuals to create new jobs in communities adversely impacted by NAFTA. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. No. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) Provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held on Wednesday, July 10, 1996 from 9:00 a.m. to 4:00 p.m. at the International Conference Center (ICC) of the Henry B. Gonzalez Convention Center, Hemisfair Park, 200 East Market Street, San Antonio, Texas 78205. The ICC will accommodate approximately 100 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to July 5, 1996. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1124, Washington, DC 20220 no later than July 1, 1996. If you have any questions, please call Dan Decena at (202) 622–0637. (Please note that this telephone number is not toll-free.)

Mozelle W. Thompson,

Principal Deputy Assistant Secretary (Government Financial Policy).

[FR Doc. 96–15708 Filed 6–19–96; 8:45 am]

BILLING CODE 4810–25–P

United States Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1995, and ending June 30, 1996. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Richard J. Griffin—Deputy Director, U.S. Secret Service
Hubert T. Bell—Executive Director for Diversity Management (USSS)
Richard S. Miller—Assistant Director, Protective Operations (USSS)
Dennis L. Finch—Assistant Director, Inspection (USSS)
W. Ralph Basham—Assistant Director, Administration (USSS)
H. Terrence Samway—Assistant Director, Government Liaison & Public Affairs (USSS)
K. David Holmes, Jr.—Assistant Director, Training (USSS)
David C. Lee—Assistant Director, Protective Research (USSS)
Paul A. Hackenberry—Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service

FOR ADDITIONAL INFORMATION CONTACT:
Susan T. Tracey, Chief, Personnel Division, 1800 G Street, NW., Room 901, Washington, DC 20223, Telephone No. (202) 435–5635.

Eljay B. Bowron,

Director.

[FR Doc. 96–15706 Filed 6–19–96; 8:45 am]

BILLING CODE 4810–42–M

Corrections

Federal Register
Vol. 61, No. 120
Thursday, June 20, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–026–FOR]

Missouri Regulatory Program

Correction

In rule document 96–13261 beginning on page 26445 in the issue of Tuesday, May 28, 1996, make the following corrections:

1. On page 26451, in the 1st column, in the 1st paragraph, in the 21st line, ''therefore'' should be capitalized.

2. On the same page, in the same column, in the 3d paragraph, in the 10th line, ''10 CSR 40–7.011(c)'' should read ''30 CFR 800.11(c)''.

3. On page 26452, in the third column, in the second paragraph, in the fifth line, ''or'' should read ''of''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–025–FOR]

Missouri Regulatory Program

Correction

In rule document 96–13263 beginning on page 26454 in the issue of Tuesday, May 28, 1996, make the following corrections:

1. On page 26454, in the third column, in the third and fourth lines from the top, ''10 CSR 40–3.120/3.270(c)(B)2.A–H'' should read ''10 CSR 40–3.120/3.270(6)(B)2.A–H''.

2. On page 26460, in the third column, in the ninth line from the top, ''731.17(h)(10)'' should read ''732.17(h)(10)''.

BILLING CODE 1505–01–D

Federal Register

Thursday
June 20, 1996

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1

Federal Acquisition Regulation (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 90–39 Introduction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules with request for comment.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules which follow it in the order listed below. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing Federal Acquisition Circular (FAC) 90–39 to amend the FAR.

DATES: For effective dates and comment dates, see separate documents which follow. Please cite FAC 90–39 and the appropriate FAR case number(s) in all correspondence related to the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–39 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–39 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Double-Sided Copying	92–050	De Stefano.
II	National Industrial Security Program Operating Manual (NISPOM)	95–004	O'Neill.
III	Justification and Approval Thresholds	96–302	De Stefano.
IV	Implementation of Memorandum of Understanding Between the United States of America and the European Economic Community on Government Procurement and Sanctions Imposed on the European Community.	93–606	O'Such.
V	Postponement of Bid Openings or Closing Dates	91–095	De Stefano.
VI	Armed Services Pricing Manual	95–027	Olson.
VII	Predetermined Indirect Cost Rates	94–011	De Stefano.
VIII	Small Business Size Standards	94–600	Klein.
IX	Master Subcontracting Plans	92–039	Klein.
X	Small Business Competitiveness Demonstration Program	92–302	Klein.
XI	Use of Convict Labor	93–615	O'Neill.
XII	Ozone Executive Order	93–307	De Stefano.
XIII	Uruguay Round (1996 Code)	95–304	O'Such.
XIV	Implementation of the North American Free Trade Agreement Implementation Act	93–310	O'Such.
XV	Caribbean Basin Countries	95–030	O'Such.
XVI	Fluctuating Exchange Rates	92–048	O'Such.
XVII	Irrevocable Letters of Credit and Alternatives to Miller Act Bonds	95–301	O'Neill.
XVIII	Part 31 Agency Supplements	94–606	Olson.
XIX	Records Retention	93–020	Olson.
XX	Legislative Lobbying Costs	93–006	Olson.
XXI	Travel Costs	93–022	Olson
XXII	Prompt Payment Overseas	92–046	Olson.
XXIII	Alternate Dispute Resolution/Federal Courts Administration Act	91–062/92–301	O'Neill.
XXIV	Defense Production Act Amendments	93–304	O'Neill.
XXV	Child Care Services	91–106	Klein.
XXVI	Quick-Closeout Procedures	95–009	Klein.
XXVII	Quality Assurance Actions—Electronic Screening	92–031	Klein.
XXVIII	Quality Assurance Nonconformances	92–027	Klein.
XXIX	Solicitation Provisions—Contract Clauses	95–603	O'Neill.
XXX	Contract Award—Sealed Bidding—Construction	91–031	O'Neill.
XXXI	Small Business Innovation Research Rights in Data	93–305	O'Neill.
XXXII	Inspection Clauses—Fixed Price	92–001	Klein
XXXIII	Termination for Convenience	91–102	Klein.
N/A	Corrections and Technical Amendments		
	(1) Revision to FAR Utility Matrix (Loose-leaf edition only)	92–617	O'Such.
	(2) Table of Standard Forms and OMB Expiration Dates	N/A	N/A.

Item I—Double-Sided Copying (FAR Case 92–050)

The interim rule published as Item I of FAC 90–27, and amended by Item III of FAC 90–29, is revised and finalized. The interim rule added FAR Subpart 4.3 and a clause at 52.204–4 to encourage offerors and contractors to maximize the use of double-sided copying on recycled paper, in accordance with Executive Order 12873. FAC 90–29 amended FAR 4.304 to eliminate the requirement for use of the clause at 52.204–4 in acquisitions at or below the simplified acquisition threshold. The final rule contains additional changes at 4.301 and 52.204–4 to implement Executive Order 12995, which amended Executive Order 12873 to revise the minimum recycled content standards for printing and writing paper.

Item II—National Industrial Security Program Operating Manual (NISPOM) (FAR Case 95–004)

This final rule amends FAR Subparts 4.4 and 27.2 and the clause at 52.204–2 to (1) replace references to the ''Defense Industrial Security Program'' with references to the ''National Industrial Security Program''; and (2) replace references to the ''DoD Industrial Security Manual for Safeguarding Classified Information'' with references to the ''National Industrial Security Program Operating Manual.'' The National Industrial Security Program has been established in accordance with Executive Order 12829.

Item III—Justification and Approval Thresholds (FAR Case 96–302)

This final rule amends FAR 6.304 to implement Section 4102 of the Fiscal Year 1996 Defense Authorization Act (Public Law 104–106). Section 4102 amends 10 U.S.C. 2304(f)(1)(B) and 41 U.S.C. 253(f)(1)(B) to raise the dollar thresholds at which approval for the use of other than full and open competition must be obtained from the competition advocate, the head of the procuring activity, or the senior procurement executive. Section 4102 provides for approval of the justification for other than full and open competition by (1) the competition advocate, for proposed contracts over $500,000, but not exceeding $10,000,000; (2) the head of the procuring activity, or designee, for proposed contracts over $10,000,000, but not exceeding $50,000,000; and (3) the senior procurement executive, for proposed contracts over $50,000,000.

Item IV—Implementation of Memorandum of Understanding Between the United States of America and the European Economic Community on Government Procurement and Sanctions Imposed on the European Community (FAR Case 93–606)

The interim rule published in FAC 90–18, and amended in FACs 90–19 and 90–36, is converted to a final rule without change. The rule amended FAR Parts 14, 15, 17, 25, and 52 to (1) implement Executive Order 12849 which, based on a Memorandum of Understanding between the United States and the European Community, waives the Buy American Act in certain situations; and (2) implement certain trade sanctions imposed on the European Community.

Item V—Postponement of Bid Openings or Closing Dates (FAR Case 91–095)

This final rule amends FAR 14.402–3, and 15.412 and the provisions at 52.214–7, 52.214–23, 52.214–32, 52.214–33, 52.215–10, and 52.215–36 to clarify policy regarding rescheduling of the time for receipt of bids or proposals when an emergency or unanticipated event interrupts normal processes at a Government installation. An editorial revision is made at 15.411(a).

Item VI—Armed Services Pricing Manual (FAR Case 95–027)

This final rule amends FAR 15.805–1 to replace the Armed Services Pricing Manual, as the reference guide for pricing and negotiation personnel, with five desk references jointly prepared by the Air Force Institute of Technology and the Federal Acquisition Institute.

Item VII—Predetermined Indirect Cost Rates (FAR Case 94–011)

This final rule amends FAR 42.705–3 and the clause at 52.216–15 to implement revisions to OMB Circular A–21 that permit predetermined indirect cost rates for educational institutions to be established for periods of up to four years. An editorial revision is made at 16.307(i).

Item VIII—Small Business Size Standards (FAR Case 94–600)

This final rule revises the table at FAR 19.102 to reflect size standards published by the Small Business Administration.

Item IX—Master Subcontracting Plans (FAR Case 92–039)

This final rule amends FAR 19.704 and the clause at 52.219–9 to permit master subcontracting plans to be written for a three-year period, and to emphasize that it is incumbent upon contractors to maintain and update master plans.

Item X—Small Business Competitiveness Demonstration Program (FAR Case 92–302)

The interim rule published as Item XIII of FAC 90–23 is converted to a final rule without change. The rule amended FAR Subpart 19.10 to (1) extend the Small Business Competitiveness Demonstration Program through September 30, 1996; (2) specify that agencies may reinstate the use of small business set-asides as necessary to meet assigned goals, but only within the organizational unit(s) that failed to meet the small business goals; and (3) revise the description of architectural and engineering services as a designated industry group.

Item XI—Use of Convict Labor (FAR Case 93–615)

This final rule amends FAR Subpart 22.2 and the clause at 52.222–3 to reflect changes in the statutory restrictions on employment of convict labor in the performance of Government contracts. The amendments (1) remove all references to 18 U.S.C. 4082(c)(2), which now only applies to offenses committed prior to November 1, 1987; (2) reflect the addition of the Commonwealth of the Northern Mariana Islands to the jurisdictions covered by Executive Order 11755; and (3) include further information regarding the requirements of Executive Order 11755, as amended by Executive Order 12608.

Item XII—Ozone Executive Order (FAR Case 93–307)

The interim rule published as Item III of FAC 90–27 is revised and finalized. The rule implements Executive Order 12843 and Environmental Protection Agency Clean Air Act regulations (40 CFR Part 82). The final rule differs from the interim rule in that it (1) amends FAR Subpart 23.8 and the clause at 52.223–11 to replace the definitions of ''class I substance'' and ''class II substance'' with a definition of ''ozone-depleting substance''; and (2) amends the clause at 52.223–11 to clarify that labeling of ozone-depleting substances shall be in accordance with 42 U.S.C. 7671j and 40 CFR Part 82.

Item XIII—Uruguay Round (1996 Code) (FAR Case 95–304)

The interim rule published in FAC 90–36 is converted to a final rule without further change. The rule amends FAR Parts 25 and 52 to implement the renegotiated Government Procurement Agreement (1996 Code) (Uruguay Round). This agreement is implemented in statute by the Uruguay Round Agreement Act, Public Law 103–465, which amends the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582).

Item XIV—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93–310)

This interim rule amends the rule published in FAC 90–19 to implement the North American Free Trade Agreement (NAFTA) Implementation Act. This interim rule (1) adds language at FAR 25.402(g) to address the applicability of NAFTA to the acquisition of services; (2) adds language at 27.208 to address the use of patented technology when the patent holder is from a NAFTA country; (3) amends the provision at 52.225– 20 to clarify procedures for evaluation of

offers; (4) adds an alternate to the provision at 52.225–20 and the clause at 52.225–21 for use in acquisitions between $25,000 and $50,000; and (5) adds a new clause at 52.225–22 for use in construction contracts awarded outside the United States with an estimated value of $6,500,000 or more.

Item XV—Caribbean Basin Countries (FAR Case 95–030)

This final rule amends FAR 25.402(b) to reflect the U.S. Trade Representative's extension, through September 30, 1996, of the designation of Caribbean Basin products as eligible products under the Trade Agreements Act.

Item XVI—Fluctuating Exchange Rates (FAR Case 92–048)

This final rule revises FAR 25.501 and adds a new provision at 52.225–4 to address procedures for evaluation of offers priced in a foreign currency.

Item XVII—Irrevocable Letters of Credit and Alternatives to Miller Act Bonds (FAR Case 95–301)

This interim rule amends FAR Part 28 and the clause at 52.228–2, and adds new clauses at 52.228–13 and 52.228–14 to (1) provide for use of irrevocable letters of credit as an alternative to corporate or individual sureties as security for Miller Act bonds on construction contracts exceeding $100,000; and (2) provide alternative payment protections for construction contracts between $25,000 and $100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

Item XVIII—Part 31 Agency Supplements (FAR Case 94–606)

This final rule amends FAR 31.101 to remove the requirement for Civilian Agency Acquisition Council approval of agency supplements to FAR Part 31. Approval requirements for class deviations from Part 31 remain unchanged.

Item XIX—Records Retention (FAR Case 93–020)

This final rule amends the cost principle at 31.201–2 to explicitly state that contractors must maintain adequate cost records in order to be reimbursed for costs claimed.

Item XX—Legislative Lobbying Costs (FAR Case 93–006)

This final rule amends FAR 31.205–22, and deletes 31.205–50, to clarify the cost principle pertaining to legislative lobbying costs.

Item XXI—Travel Costs (FAR Case 93–022)

This final rule amends the cost principle at FAR 31.205– 46 to specify the documentation required to support travel costs incurred by contractors under Government contracts. These documentation requirements are consistent with similar requirements already imposed by Section 274 of the Internal Revenue Code for travel costs claimed for Federal tax purposes.

Item XXII—Prompt Payment Overseas (FAR Case 92–046)

The interim rule published as Item XIII of FAC 90–20, and further amended by Item III of FAC 90–29, is converted to a final rule without change. The rule amended FAR 32.901 and the clauses at 52.232–25, 52.232–26, and 52.232–27 to reflect the applicability of the Prompt Payment Act to contracts awarded and performed outside the United States.

Item XXIII—Alternate Dispute Resolution/Federal Courts Administration Act (FAR Cases 91–062 and 92–301)

The interim rules are converted to final rules without change. The rules were published as Item XIV of FAC 90–20 and Item III of FAC 90–10. The rules amend the claim certification procedures and the Alternative Means of Dispute Resolution (ADR) procedures in FAR Part 33, and implement section 907(a) of the Federal Courts Administration Act of 1992 (Public Law 102–572).

Item XXIV—Defense Production Act Amendments (FAR Case 93–304)

The interim rule published as Item XXIV of FAC 90–23 is converted to a final rule without change. The rule added FAR Subpart 34.1 and a clause at 52.234–1 to provide policy and procedures for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act of 1950.

Item XXV—Child Care Services (FAR Case 91–106)

The interim rule published as Item XXVII of FAC 90–23 is converted to a final rule without change. The rule amended FAR Subpart 37.1 to require contracting officers to ensure that contracts for child care services include requirements for criminal history background checks of employees in accordance with 42 U.S.C. 13041.

Item XXVI—Quick-Closeout Procedures (FAR Case 95–009)

This final rule amends FAR 42.708 and the clauses at 52.216–7 and 52.216–13 to permit maximum use of quick contract closeout procedures. The rule (1) permits use of quick closeout procedures if total unsettled indirect costs allocable to any one contract do not exceed $1,000,000; (2) and permits contracting officers to waive the 15 percent restriction on unsettled indirect costs, based upon a risk assessment that considers certain factors.

Item XXVII—Quality Assurance Actions—Electronic Screening (FAR Case 92–031)

This final rule amends FAR 46.101 to add definitions of ''latent defect'' and ''patent defect.''

Item XXVIII—Quality Assurance Nonconformances (FAR Case 92–027)

This final rule amends FAR Subpart 46.1 to provide standard terminology and guidance pertaining to supplies and services that do not meet contract requirements.

Item XXIX—Solicitation Provisions—Contract Clauses (FAR Case 95–603)

This final rule amends the provision at FAR 52.211–1 to delete the statement that copies of specifications may be obtained from General Services Administration Business Service Centers. Specifications are no longer available from these centers.

Item XXX—Contract Award—Sealed Bidding—Construction (FAR Case 91–031)

This final rule amends the provision at FAR 52.214–19 to advise offerors that, for construction solicitations, the Government may reject bids as nonresponsive if the prices are materially unbalanced. This amendment is consistent with the existing language in the provisions at 52.214–10 and 52.215- 16, which are used in solicitations for other than construction.

Item XXXI—Small Business Innovation Research Rights in Data (FAR Case 93–305)

The interim rule published as Item XIX of FAC 90–20 is converted to a final rule without change. The rule amended the clause at FAR 52.227–20 to increase a small business concern's data rights retention period from two to four years, in accordance with the Small Business Innovation Research Program Policy Directive published by the Small Business Administration.

Item XXXII—Inspection Clauses—Fixed Price (FAR Case 92–001)

This final rule amends the clauses at FAR 52.246–2, 52.246–4, 52.246–7, 52.246–12, and 52.246–13 to replace the phrase ''without additional charge'' with the phrase ''at no increase in contract price'' for clarity.

Item XXXIII—Termination for Convenience (FAR Case 91–102)

This final rule amends the clause at 52.249–2 to clarify language pertaining to settlement of contract termination costs and rights of appeal under the Disputes clause.

Corrections and Technical Amendments (Loose-leaf edition only)

Revisions to FAR Utility Matrix (FAR Case 92–617)

Section 52.301, Solicitation provisions and contract clauses (Matrix), is amended in the Utility Services column. The matrix is not carried in the *Code of Federal Regulations* and, therefore, not published in the Federal Register. Subscribers to the loose-leaf edition will receive matrix changes in FAC 90–39.

Table of Standard Forms and OMB Expiration Dates

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has obtained Office of Management and Budget (OMB) clearance of all information collection requirements contained in the FAR. In lieu of reissuing Standard and Optional Forms to reflect extended OMB approval dates, and to reduce costs of reprinting forms, FAR users should make appropriate pen-and-ink changes on any listed forms containing expiration dates that differ from the entries published below:

TABLE OF STANDARD FORMS AND OMB EXPIRATION DATES

Standard form	Edition	OMB control No.	Expiration date
SF 24 ...	Rev. 1/90	9000–0045	9/30/98
SF 25 ...	Rev. 1/90	9000–0045	9/30/98
SF 25A	Rev. 1/90	9000–0045	9/30/98
SF 25B	Rev. 10/83	9000–0045	9/30/98
SF 28 ...	Rev. 1/90	9000–0001	9/30/98
SF 34 ...	Rev. 1/90	9000–0045	9/30/98
SF 35 ...	Rev. 1/90	9000–0045	9/30/98
SF 119	Rev. 1/90	9000–0003	9/30/98
SF 129	Rev. 6/90	9000–0002	10/31/97
SF 254	Rev. 11/92	9000–0004	3/31/99
SF 255	Rev. 11/92	9000–0005	4/30/99
SF 273	Rev. 8/90	9000–0045	9/30/98
SF 274	Rev. 8/90	9000–0045	9/30/98
SF 275	Rev. 8/90	9000–0045	9/30/98
SF 294	Rev. 10/95	9000–0006	3/31/98
SF 295	Rev. 10/95	9000–0007	3/31/98
SF 1403	Rev. 9/88	9000–0011	10/31/97
SF 1404	Rev. 9/88	9000–0011	10/31/97
SF 1405	Rev. 9/88	9000–0011	10/31/97
SF 1406	Rev. 9/88	9000–0011	10/31/97
SF 1407	Rev. 9/88	9000–0011	10/31/97
SF 1408	Rev. 9/88	9000–0011	10/31/97
SF 1411	Rev. 10/95	9000–0013	9/30/98
SF 1413	Rev. 6/89	9000–0014	4/30/98
SF 1416	Rev. 1/90	9000–0045	9/30/98
SF 1417	Rev. 8/90	9000–0037	9/30/98
SF 1423	Rev. 12/88	9000–0015	5/31/98
SF 1424	Rev. 7/89	9000–0015	5/31/98
SF 1426	Rev. 7/89	9000–0015	5/31/98
SF 1427	Rev. 7/89	9000–0015	5/31/98
SF 1428	Rev. 7/89	9000–0015	5/31/98
SF 1429	Rev. 7/89	9000–0015	5/31/98
SF 1430	Rev. 7/89	9000–0015	5/31/98
SF 1431	Rev. 7/89	9000–0015	5/31/98
SF 1432	Rev. 7/89	9000–0015	5/31/98
SF 1433	Rev. 7/89	9000–0015	5/31/98
SF 1434	Rev. 7/89	9000–0015	5/31/98
SF 1435	Rev. 7/89	9000–0012	5/31/98
SF 1436	Rev. 7/89	9000–0012	5/31/98
SF 1437	Rev. 7/89	9000–0012	5/31/98
SF 1438	Rev. 7/89	9000–0012	5/31/98
SF 1439	Rev. 7/89	9000–0012	5/31/98
SF 1440	Rev. 7/89	9000–0012	5/31/98
SF 1443	Rev. 10/82	9000–0010	8/31/96
SF 1444	Rev. 10/87	9000–0089	4/30/99
SF 1445	Rev. 10/87	9000–0089	4/30/99
SF 1446	Rev. 10/87	9000–0089	4/30/99
SF 1448	10/95 edition ...	9000–0013	9/30/98
SF 1449	10/95 edition ...	9000–0136	9/30/98

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular Number 90–39

Federal Acquisition Circular (FAC) 90–39 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–39 is effective August 19, 1996, except for Item XV which was effective September 30, 1995, and Items I, IV, VI, VIII, X, XII through XIV, XVII, XXII through XXV, and XXXI, which are effective June 20, 1996.

Dated: May 16, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: May 16, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy, General Services Administration.

Dated: May 6, 1996.

L.W. Bailets,

Acting Associate Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 96–14515 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 4 and 52

[FAC 90–39; FAR Case 92–050; Item I]

RIN 9000–AG41

Federal Acquisition Regulation; Double-Sided Copying

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule which amends the Federal Acquisition Regulation (FAR) to encourage contractors to maximize the use of double-sided copying on recycled paper when submitting written documents related to an acquisition. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–050.

SUPPLEMENTARY INFORMATION:

A. Background

These revisions are based on a portion of Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention, dated October 20, 1993 (58 FR 54911), which encourages the use of double-sided copying on recycled paper for documents printed within the Government and under Government contracts.

An interim rule was published in the Federal Register at 60 FR 28493, May 31, 1995, as Item I, FAC 90–27. This interim rule amended FAR Part 4 to add a new subpart 4.3—Paper Documents, and amended FAR Part 52 to add a clause at 52.204–4, Printing/Copying Double-Sided on Recycled Paper. An additional amendment to section 4.304 was published at 60 FR 34744 on July 3, 1995, to eliminate the requirement for use of the clause at 52.204–4 in solicitations and contracts valued at or below the simplified acquisition threshold. Further amendments have been made in the final rule to implement Executive Order 12995 of March 25, 1996 (61 FR 13645, March 28, 1996), which amended Executive Order 12873 to revise the minimum content standards for printing and writing paper.

Seven comments from six sources were received in response to the interim rule. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule contains no mandatory requirements for offerors or contractors. The rule encourages, but does not require, the use of double-sided copying on recycled paper when submitting written documents to the Government. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending CFR Parts 4 and 52, which was published at 60 FR 28493, May 31, 1995 (FAC 90–27, Item I), and amended at 60 FR 34744, July 3, 1995, is adopted as a final rule with amendments at sections 4.301 and 52.204–4.

1. The authority citation for 48 CFR Parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.301 [Amended]

2. Section 4.301 is amended by removing the period at the end of the sentence and inserting in its place ‘‘, as amended by Executive Order 12995, March 25, 1996.’’

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.204–4 is amended by revising the date of the clause to read ‘‘(JUN 1996)’’; in paragraph (a) of the clause by inserting after ‘‘October 20, 1993,’’ the phrase ‘‘as amended by Executive Order 12995, dated March 25, 1996,’’; revising ‘‘20%’’ to read ‘‘20 percent’’; and by revising paragraph (b) to read as follows:

52.204–4 Printing/Copying Double-Sided on Recycled Paper.

* * * * *

PRINTING/COPYING DOUBLE-SIDED RECYCLED PAPER (JUN 1996)

* * * * *

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms

bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)

[FR Doc. 96–14516 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 4, 27, and 52

[FAC 90–39; FAR Case 95–004; Item II]

RIN 9000–AG95

Federal Acquisition Regulation; National Industrial Security Program Operating Manual (NISPOM)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect the applicability of the National Industrial Security Program Operating Manual (NISPOM). The NISPOM updates and replaces the DOD Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22–M). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–004.

SUPPLEMENTARY INFORMATION:

A. Background

The National Industrial Security Program was established by Executive Order 12829, ''National Industrial Security Program'' (58 FR 3479). Section 201 of the Executive order directs the Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of Central Intelligence, to issue and maintain a National Industrial Security Program Operating Manual.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 95–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 27, and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 27, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.402 is amended by revising paragraphs (a) and (b); and in paragraph (c) by removing ''Section VIII of the ISR'' and inserting in its place ''Chapter 10 of the NISPOM''. The revised text reads as follows:

4.402 General.

(a) Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled ''National Industrial Security Program'' (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled ''Safeguarding Classified Information Within Industry,'' as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961).

(b) The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of these Executive Orders. The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of Central Intelligence, is responsible for issuance and maintenance of this Manual. The following DOD publications implement the program:

(1) *National Industrial Security Program Operating Manual* (NISPOM) (DOD 5220.22–M).

(2) *Industrial Security Regulation* (ISR) (DOD 5220.22–R).

* * * * *

4.403 and 4.404 [Amended]

3. Section 4.403 is amended in paragraphs (a)(1)(i), (b)(1), (c)(1), and (c)(2), by revising ''DISP'' to read ''NISP''; and section 4.403(c)(1) is amended in the last sentence by removing ''Section VII of''.

3a. Section 4.404(d) is amended by revising ''DISP'' to read ''NISP''.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.207–1 [Amended]

4. Section 27.207–1 is amended in the second sentence of paragraph (b) by removing ''Department of Defense Industrial Security Manual for Safeguarding Classified Security Information'' and inserting in its place ''National Industrial Security Program Operating Manual''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–2 [Amended]

5. Section 52.204–2 is amended by revising the introductory paragraph to read as set forth below; by revising the date of the clause to read ''(AUG 1996)''; and in paragraph (b)(1) of the clause by removing ''Department of Defense Industrial Security Manual for Safeguarding Classified Information'' and inserting in its place ''National Industrial Security Program Operating Manual''. The revised text reads as follows:

52.204–2 Security requirements.

As prescribed in 4.404(a), insert the following clauses:

* * * * *

[FR Doc. 96–14517 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 6

[FAC 90–39; FAR Case 96–302; Item III]

RIN 9000–AH00

Federal Acquisition Regulation; Justification and Approval Thresholds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to raise the dollar thresholds pertaining to approval for the use of other than full and open competition in the acquisition process. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 96–302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4102 of the Fiscal Year 1996 Defense Authorization Act (Public Law 104–106) amends 10 U.S.C. 2304(f)(1)(B) and 41 U.S.C. 253(f)(1)(B) to raise the dollar thresholds at which approval for the use of other than full and open competition must be obtained from the competition advocate, the head of the procuring activity, or the senior procurement executive. Section 4102 provides for approval of the justification for other than full and open competition by (1) the competition advocate, for proposed contracts over $500,000, but not exceeding $10,000,000; (2) the head of the procuring activity, or designee, for proposed contracts over $10,000,000, but not exceeding $50,000,000; and (3) the senior procurement executive, for proposed contracts over $50,000,000.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, et seq. (FAC 90–39, FAR case 96–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 6 is amended as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Part 6 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 6.304 is amended in paragraph (a)(1) by revising ''$100,000'' to read ''$500,000''; in (a)(2) by revising ''$100,000'' to read ''$500,000'' and ''$1,000,000'' to read ''$10,000,000''; in (a)(3) introductory text by revising ''$1,000,000'' to read ''$10,000,000'' and ''$10,000,000'' to read ''$50,000,000''; and revising (a)(4) to read as follows:

6.304 Approval of the justification.

(a) * * *

(4) For a proposed contract over $50,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense (Acquisition and Technology), acting as the senior procurement executive for the Department of Defense.

* * * * *

[FR Doc. 96–14518 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 14, 15, 17, 25, and 52

[FAC 90–39; FAR Case 93–606; Item IV]

RIN 9000–AF39

Federal Acquisition Regulation; Implementation of Memorandum of Understanding Between the United States of America and the European Economic Community on Government Procurement and Sanctions Imposed on the European Community

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement the Memorandum of Understanding Between the United States of America and the European Economic Community on Government Procurement (MOU) and to implement the sanctions imposed by the President on the European community (EC) prohibiting the award of certain contracts for EC products, services, and construction. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–606.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the Federal Register on May 28, 1993 (58 FR 31140) (FAC 90–18). Revisions based on the analysis of public comments were incorporated in the interim rule published in FAC 90–19 as part of the implementation of the North American Free Trade Agreement Implementation Act (FAR case 93–310) (59 FR 544, January 5, 1994). The rule was further amended by an interim rule published in FAC 90–36 to implement the Uruguay Round Agreement Act (FAR case 95–304) (60 FR 67514, December 29, 1995).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final

rule, and a Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 14, 15, 17, 25, and 52

Government procurement.

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR Parts 14, 15, 17, 25, and 52, which was published at 58 FR 31140, May 28, 1993, and amended at 59 FR 544, January 5, 1994, and 60 FR 67514, December 29, 1995, is adopted as final without further change.

The authority citation for 48 CFR Parts 14, 15, 17, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14519 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 14, 15, and 52

[FAC 90–39; FAR Case 91–095; Item V]

RIN 9000–AF48

Federal Acquisition Regulation; Postponement of Bid Openings or Closing Dates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the time for receipt of bids or proposals when an emergency or unanticipated event interrupts normal processes at a Government installation on the date scheduled for receipt of bids or proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 91–095.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register on November 9, 1993 (58 FR 59618). The proposed rule amended FAR 14.402–3, 15.411, 15.412, 52.214–7, and 52.215–10 to clarify policy regarding rescheduling of the time for receipt of bids or proposals when an emergency or unanticipated event interrupts normal Government processes and urgent requirements do not allow time to formally extend the bid opening or solicitation closing date. One substantive comment was received in response to the proposed rule. After evaluation of this comment, the Councils agreed to finalize the amendments in the proposed rule and to make similar clarifying amendments at FAR 52.214–23, 52.214–32, 52.214–33, and 52.215–36.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely clarifies policy regarding rescheduling of bid opening/solicitation closing dates when an emergency or unanticipated event occurs. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.402–3 is amended by revising paragraph (c) to read as follows:

14.402–3 Postponement of openings.

* * * * *

(c) In the case of paragraph (a)(2) of this section, and when urgent Government requirements preclude amendment of the solicitation as prescribed in 14.208, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining ''late bids'' under 14.304. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.411 is amended by revising paragraph (a) to read as follows:

15.411 Receipt of proposals and quotations.

(a) The procedures for receipt and handling of proposals and quotations should be similar to those prescribed in 14.401. Proposals and quotations shall be marked with the date and time of receipt.

* * * * *

4. Section 15.412 is amended by revising paragraph (b) to read as follows:

15.412 Late proposals, modifications, and withdrawals of proposals.

* * * * *

(b) Offerors are responsible for submitting offers, and any modifications to them, so as to reach the Government office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date as usually prescribed by 15.410, the

time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.214–7 is amended in the provision by revising the date in the heading and adding paragraph (h) to read as follows:

52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Aug 1996)

* * * * *

(h) If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(End of provision)

6. Section 52.214–23 is amended in the provision by revising the date in the heading and adding paragraph (g) to read as follows:

52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Aug 1996)

* * * * *

(g) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the office designated for receipt of technical proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

7. Section 52.214–32 is amended in the provision by revising the date in the heading and adding paragraph (f) to read as follows:

52.214–32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (Aug 1996)

* * * * *

(f) If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(End of provision)

8. Section 52.214–33 is amended in the provision by revising the date in the heading and adding paragraph (e) to read as follows:

52.214–33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas) (Aug 1996)

* * * * *

(e) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the office designated for receipt of technical proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

9. Section 52.215–10 is amended by revising the date in the heading of the provision, and adding paragraph (i) to read as follows:

52.215–10 Late Submissions, Modifications, and Withdrawals of Proposals.

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Aug 1996)

* * * * *

(i) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

10. Section 52.215–36 is amended by revising the date in the heading of the provision, and adding paragraph (g) to read as follows:

52.215–36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (Aug 1996)

* * * * *

(g) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

[FR Doc. 96–14520 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 15

[FAC 90–39; FAR Case 95–027; Item VI]

RIN 9000–AG97

Federal Acquisition Regulation; Armed Services Pricing Manual

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to replace the Armed Services Pricing Manual, as the reference guide for pricing and negotiation personnel, with five desk references jointly prepared by the Air Force Institute of Technology and the Federal Acquisition Institute.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.805–1 to replace the Armed Services Pricing Manual, as the reference guide for pricing and negotiation personnel, with five desk references jointly prepared by the Air Force Institute of Technology and the Federal Acquisition Institute.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 95–027), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 15 is amended as set forth below:

1. The authority citation for 48 CFR Part 15 continues to read as follows:

PART 15—CONTRACTING BY NEGOTIATION

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.805–1 is amended by revising paragraph (d) to read as follows:

15.805–1 General.

* * * * *

(d) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a series of five desk references to guide pricing and negotiation personnel. The five desk references are: Price Analysis, Cost Analysis, Quantitative Techniques for Contract Pricing, Advanced Issues in Contract Pricing, and Federal Contract Negotiation Techniques. The references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. Copies of the desk references are available on CD–ROM which also contains the FAR, the FIRMR, the FTR and various other regulatory and training materials. The CD–ROM may be purchased by annual subscription (updated quarterly), or individually (reference ''List ID GSAFF,'' Stock No. 722–009–0000–2). The individual CD–ROMs or subscription to the CD–ROM may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512–1800 or facsimile (202) 512–2550, or by mail order from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Free copies of the desk references are available on the World Wide Web, Internet address: http://www.gsa.gov/staff/v/training.htm

[FR Doc. 96–14521 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 16, 42, and 52

[FAC 90–39; FAR Case 94–011; Item VII]

RIN 9000–AG92

Federal Acquisition Regulation; Predetermined Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement revisions to OMB Circular A–21 that permit predetermined indirect cost rates for educational institutions to be established for periods of up to four years. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 94–011.

SUPPLEMENTARY INFORMATION:

A. Background

On July 26, 1993, the Office of Management and Budget published revisions to OMB Circular A–21 (58 FR 39996) which include an increase in the period of time for which predetermined indirect cost rates for educational institutions may be applicable. The FAR is amended to permit use of predetermined indirect cost rates for educational institutions for periods of up to four years, in accordance with OMB circular A–21.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 94–011), in correspondence.

C. Paperwork Reduction Act

The final rule does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, a request for approval of an extension of the existing information collection requirement concerning 9000–0069, Indirect Cost Rates, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 42, and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 16, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 16, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Section 16.307 is amended by adding a sentence to the end of paragraph (i) to read as follows:

16.307 Contract clauses.

* * * * *

(i) * * * If the contract is a facilities contract, modify paragraph (c) by deleting the words ''Subpart 31.1'' and substituting for them ''section 31.106.''

PART 42—CONTRACT ADMINISTRATION

3. Section 42.705–3 is amended by revising paragraphs (b)(4)(i) and (b)(6) to read as follows:

42.705–3 Educational institutions.

* * * * *

(b) * * *

(4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

* * * * *

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216–15, Predetermined Indirect Cost Rates).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.216–15 is amended by revising the introductory text and date of the clause; in the first sentence of paragraph (b) by removing the comma after the word ''year'' and adding ''(or other period specified in the Schedule),''; in the second sentence by revising the word ''rate'' to read ''rates'' and removing the period at the end of the sentence and inserting in its place ''or other period specified in the Schedule.''; in the third sentence by revising the word ''Negotiations'' to read ''Negotiation''; revising paragraph (d)(3); and in paragraph (g) by inserting after the word ''year'' the parenthetical ''(or other period specified in the Schedule)''. The revised text read as follows:

52.216–15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause:

PREDETERMINED INDIRECT COST RATES (AUG 1996)

* * * * *

(d) * * *

(3) the period for which the rates apply, and

* * * * *

[FR Doc. 96–14522 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 19

[FAC 90–39; FAR Case 94–600; Item VIII]

Federal Acquisition Regulation; Small Business Size Standards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Amendments in this document will bring the Federal Acquisition Regulation into conformance with revised small business size standards published by the Small Business Administration (SBA). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–39 (FAR case 94–600).

SUPPLEMENTARY INFORMATION:

A. Background

SBA has revised its size standards regulations at 13 CFR Part 121 (61 FR 3280, January 31, 1996), effective March 1, 1996. Corrections were published (61 FR 6412, February 20, 1996; 61 FR 7306, February 27, 1996; and 61 FR 7986, March 1, 1996). As a result, the table of *Size Standards* shown in the FAR at 19.102 has been revised to reflect the changes made by SBA through March 1996.

SBA currently has two size standards publications available via the Internet on SBA ONLINE. They are the table of *Size Standards,* which currently appears in the FAR, and a copy of 13 CFR 121, the *Size Regulations,* published in the Federal Register on January 31, 1996.

B. Regulatory Flexibility Act

These changes derive directly from SBAs regulations, without substantive change. Therefore, the final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. The Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 94–600), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.102 is amended by revising the table consisting of industry size standards and revising the footnotes to read as follows:

19.102 Size standards.

* * * * *

SIZE STANDARDS BY SIC INDUSTRY 3/96

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
	See Footnotes on Menu	
	Division A—Agriculture, Forestry and Fishing	
	Major Group 01—Agricultural Production—Crops	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	Major Group 02—Livestock and Animal Specialties	
0211	Beef Cattle Feedlots (Custom)	$1.5
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$9.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C	$0.5
0291	General Farms, Primarily Livestock and	$0.5
	Animal Specialties	
	Major Group 07—Agricultural Services	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	Major Group 08—Forestry	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
0851	Forestry Services	$5.0
	Major Group 09—Fishing, Hunting, and Trapping	
0912	Finfish	$3.0
0913	Shellfish	$3.0
0919	Miscellaneous Marine Products	$3.0
0921	Fish Hatcheries and Preserves	$3.0
0971	Hunting and Trapping, and Game Propagation	$3.0
	Division B—Mining	
	Major Group 10—Metal Mining	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	Major Group 12—Coal Mining	
1221	Bituminous Coal and Lignite Surface Mining	500
1222	Bituminous Coal Underground Mining	500
1231	Anthracite Mining	500
1241	Coal Mining Services	$5.0
	Major Group 13—Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C.	$5.0
	Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	Division C—Construction	
	Major Group 15—Building Construction—General Contractors and Operative Builders	
1521	General Contractors—Single-Family Houses	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses	$17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses.	$17.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 16—Heavy Construction Other Than Building Construction—Contractors		
1611	Highway and Street Construction, Except Elevated Highways	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction.	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction	$17.0
1629	Heavy Construction, N.E.C.	$17.0
Except,	Dredging and Surface Cleanup Activities	$13.5 [1]
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating, and Air-Conditioning	$7.0
1721	Painting and Paper Hanging	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
Except,	Base Housing Maintenance	$7.0 [12]
Division D—Manufacturing [2]		
Major Group 20—Food and Kindred Products		
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	500 [3]
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053	Frozen Bakery Products, Except Bread	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064	Candy and Other Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C	750

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096	Potato Chips, Corn Chips, and Similar Snacks	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C	500
	Major Group 21—Tobacco Products	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
	Major Group 22—Textile Mill Products	
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk	500
2269	Finishers of Textiles, N.E.C.	500
2273	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials	
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325	Men's and Boys' Separate Trousers and Slacks	500
2326	Men's and Boys' Work Clothing	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
	Major Group 24—Lumber and Wood Products, Except Furniture	
2411	Logging	500
2421	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	Major Group 25—Furniture and Fixtures	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	Major Group 26—Paper and Allied Products	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656	Sanitary Food Containers, Except Folding	750
2657	Folding Paperboard Boxes, Including Sanitary	750
2671	Packaging Paper and Plastics Film, Coated and Laminated	500
2672	Coated and Laminated Paper, N.E.C.	500
2673	Plastics, Foil, and Coated Paper Bags	500
2674	Uncoated Paper and Multiwall Bags	500
2675	Die-Cut Paper and Paperboard and Cardboard	500
2676	Sanitary Paper Products	500
2677	Envelopes	500
2678	Stationery, Tablets, and Related Products	500
2679	Converted Paper and Paperboard Products, N.E.C	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 27—Printing, Publishing, and Allied Industries	
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodicals: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500
2759	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796	Platemaking and Related Services	500
	Major Group 28—Chemicals and Allied Products	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835	In Vitro and In Vivo Diagnostic Substances	500
2836	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	Major Group 29—Petroleum Refining and Related Industries	
2911	Petroleum Refining	1,500 [4]
2951	Asphalt Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
	Major Group 30—Rubber and Miscellaneous Plastics Products	
3011	Tires and Inner Tubes	1,000 [5]
3021	Rubber and Plastics Footwear	1,000
3052	Rubber and Plastics Hose and Belting	500
3053	Gaskets, Packing, and Sealing Devices	500
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	500
3069	Fabricated Rubber Products, N.E.C	500
3081	Unsupported Plastics Film and Sheet	500
3082	Unsupported Plastics Profile Shapes	500
3083	Laminated Plastics Plate, Sheet, and Profile Shapes	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
3084	Plastics Pipe	500
3085	Plastics Bottles	500
3086	Plastics Foam Products	500
3087	Custom Compounding of Purchased Plastics Resins	500
3088	Plastics Plumbing Fixtures	500
3089	Plastics Products, N.E.C.	500
	Major Group 31—Leather and Leather Products	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C.	500
	Major Group 32—Stone, Clay, Glass, and Concrete Products	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	Major Group 32—Primary Metal Industries	
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363	Aluminum Die-Castings	500
3364	Nonferrous Die-Castings, Except Aluminum	500
3365	Aluminum Foundries	500
3366	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment	
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws	500
3425	Saw Blades and Handsaws	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware	750
3432	Plumbing Fixture Fittings and Trim	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim	500
3443	Fabricated Plate Work (Boiler Shops)	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work	500
3448	Prefabricated Metal Buildings and Components	500
3449	Miscellaneous Structural Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491	Industrial Valves	500
3492	Fluid Power Valves and Hose Fittings	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings	500
3499	Fabricated Metal Products, N.E.C.	500
	Major Group 35—Industrial and Commercial Machinery and Computer Equipment	
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment	500
3531	Construction Machinery and Equipment	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	500
3533	Oil and Gas Field Machinery and Equipment	500
3534	Elevators and Moving Stairways	500
3535	Conveyors and Conveying Equipment	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers	750
3541	Machine Tools, Metal Cutting Types	500
3542	Machine Tools, Metal Forming Types	500
3543	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment	500
3548	Electric and Gas Welding and Soldering Equipment	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery and Equipment	500
3556	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment	500
3565	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears	500
3567	Industrial Process Furnaces and Ovens	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571	Electronic Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000
3577	Computer Peripheral Equipment, N.E.C.	1,000
3578	Calculating and Accounting Machines, Except Electronic Computers	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines .	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500
3593	Fluid Power Cylinders and Actuators	500
3594	Fluid Power Pumps and Motors	500
3596	Scales and Balances, Except Laboratory	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C	500
	Major Group 36—Electronic and Other Electrical Equipment and Components, Except Computer Equipment	
3612	Power, Distribution, and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans .	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C. .	500
3641	Electric Lamp Bulbs and Tubes	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and Television Broadcasting and Communications Equipment	750
3669	Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C.	750
	Major Group 37—Transportation Equipment	
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	750
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C	1,000 [9]
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
Except	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts	500
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C. .	500
	Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	750
3821	Laboratory Apparatus and Furniture	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	500
3824	Totalizing Fluid Meters and Counting Devices	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826	Laboratory Analytical Instruments	500
3827	Optical Instruments and Lenses	500
3829	Measuring and Controlling Devices, N.E.C	500
3841	Surgical and Medical Instruments and Apparatus	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843	Dental Equipment and Supplies	500
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	500
3845	Electromedical and Electrotherapeutic Apparatus	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500
	Major Group 39—Miscellaneous Manufacturing Industries	
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts	500
3952	Lead Pencils, Crayons, and Artists' Materials	500
3953	Marking Devices	500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
3955	Carbon Paper and Inked Ribbons	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965	Fasteners, Buttons, Needles, and Pins	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500
	Division E—Transportation, Communications Electric, Gas, and Sanitary Services	
	Major Group 40—Railroad Transportation	
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
	Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C.	$5.0
4121	Taxicabs	$5.0
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
	Major Group 42—Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage	$18.5
Except	Garbage and Refuse Collection, Without Disposal	$6.0
4213	Trucking, Except Local	$18.5
4214	Local Trucking With Storage	$18.5
4215	Courier Services, Except by Air	$18.5
4221	Farm Product Warehousing and Storage	$18.5
4222	Refrigerated Warehousing and Storage	$18.5
4225	General Warehousing and Storage	$18.5
4226	Special Warehousing and Storage, N.E.C.	$18.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	Major Group 44—Water Transportation	
4412	Deep Sea Foreign Transportation of Freight	500
4424	Deep Sea Domestic Transportation of Freight	500
4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4482	Ferries	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	$18.5
4492	Towing and Tugboat Services	$5.0
4493	Marinas	$5.0
4499	Water Transportation Services, N.E.C.	$5.0
Except	Offshore Marine Water Transportation Services	$20.5
	Major Group 45—Transportation by Air	
4512	Air Transportation, Scheduled	1,500
4513	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled,	1,500
Except	Offshore Marine Air Transportation Services	$20.5
4581	Airports, Flying Fields, and Airport Terminal Services	$5.0
	Major Group 46—Pipelines, Except Natural Gas	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
4619	Pipelines, N.E.C.	$25.0
	Major Group 47—Transportation Services	
4724	Travel Agencies	$1.0 [6]
4725	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731	Arrangement of Transportation of Freight and Cargo	$18.5
4741	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.5
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	Major Group 48—Communications	
4812	Radiotelephone Communications	1,500
4813	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.5
4841	Cable and Other Pay Television Services	$11.0
4899	Communications Services, N.E.C.	$11.0
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	4 million megawatt hrs.
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$9.0
4971	Irrigation Systems	$5.0
	Division F—Wholesale Trade	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Major Group 50—Wholesale Trade—Durable Goods	
5012	Automobiles and Other Motor Vehicles	100
5013	Motor Vehicle Supplies and New Parts	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels	100
5032	*Brick, Stone, and Related Construction Materials	100
5033	Roofing, Siding, and Insulation Materials	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical, Dental, and Hospital Equipment and Supplies	100
5048	Ophthalmic Goods	100
5049	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	100
5064	*Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091	Sporting and Recreational Goods and Supplies	100
5092	Toys and Hobby Goods and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals	100
5099	Durable Goods, N.E.C.	100
	Major Group 51—Wholesale Trade—Nondurable Goods	
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131	Piece Goods, Notions, and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's, and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafood	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162	Plastics Materials and Basic Forms and Shapes	100
5169	Chemical and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192	Books, Periodicals, and Newspapers	100
5193	Flowers, Nursery Stock, and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100
	Division G—Retail Trade (Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$9.5
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$20.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
5331	Variety Stores	$8.0
5399	Miscellaneous General Merchandise Stores	$5.0
	Major Group 54—Food Stores	
5411	Grocery Stores	$20.0
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nut, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used)	$21.0
5521	Motor Vehicle Dealers (Used Only)	$17.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$6.5
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0
5571	Motorcycle Dealers	$5.0
5599	Automotive Dealers, N.E.C.	$5.0
Except	Aircraft Dealers, Retail	$7.5
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores	$6.5
5621	Women's Clothing Stores	$6.5
5632	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$6.5
5661	Shoe Stores	$6.5
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$6.5
5731	Radio, Television, and Consumer Electronics Stores	$6.5
5734	Computer and Computer Software Stores	$6.5
5735	Record and Prerecorded Tape Stores	$5.0
5736	Musical Instrument Stores	$5.0
	Major Group 58—Eating and Drinking Places	
5812	Eating Places	$5.0
Except	Food Service, Institutional	$15.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	Major Group 59—Miscellaneous Retail	
5812	Drug Stores and Proprietary Stores	$5.0
5821	Liquor Stores	$5.0
5832	Used Merchandise Stores	$5.0
5841	Sporting Goods Stores and Bicycle Shops	$5.0
5842	Book Stores	$5.0
5843	Stationery Stores	$5.0
5844	Jewelry Stores	$5.0
5845	Hobby, Toy, and Game Shops	$5.0
5846	Camera and Photographic Supply Stores	$5.0
5847	Gift, Novelty, and Souvenir Shops	$5.0
5848	Luggage and Leather Goods Stores	$5.0
5849	Sewing, Needlework, and Piece Goods Stores	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
5861	Catalog and Mail-Order Houses	$18.5
5862	Automatic Merchandising Machine Operators	$5.0
5863	Direct Selling Establishments	$5.0
5883	Fuel Oil Dealers	$9.0
5884	Liquefied Petroleum Gas (Bottled Gas) Dealers..	$5.0
5889	Fuel Dealers, N.E.C.	$5.0
5892	Florists	$5.0
5893	Tobacco Stores and Stands	$5.0
5894	News Dealers and Newsstands	$5.0
5895	Optical Goods Stores	$5.0
5899	Miscellaneous Retail Stores, N.E.C.	$5.0
	Division H—Finance, Insurance, and Real Estate	
	Major Group 60—Depository Institutions	
6021	National Commercial Banks	$100 Million in Assets[7]
6022	State Commercial Banks	$100 Million in Assets[7]
6029	Commercial Banks, N.E.C.	$100 Million in Assets[7]
6035	Savings Institutions, Federally Chartered	$100 Million in Assets[7]
6036	Savings Institutions, Not Federally Chartered	$100 Million in Assets[7]
6061	Credit Unions, Federally Chartered	$100 Million in Assets[7]
6062	Credit Unions, Not Federally Chartered	$100 Million in Assets[7]
6081	Branches and Agencies of Foreign Banks	$100 Million in Assets[7]
6082	Foreign Trade and International Banks	$100 Million in Assets[7]
6091	Nondeposit Trust Facilities	$5.0
6099	Functions Related to Depositor Banking, N.E.C.	$5.0
	Major Group 61—Nondepository Institution	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0 *
6158	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Brokers	$5.0
	Major Group 62—Security and Commodity Brokers, Dealers, Exchanges and Services	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	Major Group 63—Insurance Carriers	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500.
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service	$5.0
	Major Group 65—Real Estate	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites,	$5.0
Except	Leasing of Building Space to Federal Government by Owners	$15.0[8]
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C	$5.0
6531	Real Estate Agents and Managers	$1.5[6]
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemeteries	$5.0
6553	Cemetery Subdividers and Developers	$5.0
	Major Group 67—Holding and Other Investment Offices	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0
6794	Patent Owners and Lessors	$5.0
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C	$5.0
	Division I—Services	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial	$10.5
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	$10.5
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$3.5
7217	Carpet and Upholstery Cleaning	$3.5
7218	Industrial Launderers	$10.5
7219	Laundry and Garment Services, N.E.C	$5.0
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C	$5.0
	Major Group 73—Business Services	
7311	Advertising Agencies	$5.0[6]
7312	Outdoor Advertising Services	$5.0[6]
7313	Radio, Television, and Publishers' Advertising Representatives	$5.0[6]
7319	Advertising, N.E.C	$5.0[6]
7322	Adjustment and Collection Services	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
7323	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334	Photocopying and Duplicating Services	$5.0
7335	Commercial Photography	$5.0
7336	Commercial Art and Graphic Design	$5.0
7338	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C	$12.0
7352	Medical Equipment Rental and Leasing	$5.0
7353	Heavy Construction Equipment Rental and Leasing	$5.0
7359	Equipment Rental and Leasing, N.E.C	$5.0
7361	Employment Agencies	$5.0
7363	Help Supply Services	$5.0
7371	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373	Computer Integrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375	Information Retrieval Services	$18.0
7376	Computer Facilities Management Services	$18.0
7377	Computer Rental and Leasing	$18.0
7378	Computer Maintenance and Repair	$18.0
7379	Computer Related Services, N.E.C	$18.0
7381	Detective, Guard, and Armored Car Services	$9.0
7382	Security Systems Services	$9.0
7383	News Syndicates	$5.0
7384	Photofinishing Laboratories	$5.0
7389	Business Services, N.E.C	$5.0
Except	Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services.	$3.5
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers	$18.5
7514	Passenger Car Rental	$18.5
7515	Passenger Car Leasing	$18.5
7519	Utility Trailer and Recreational Vehicle Rental	$5.0
7521	Automobile Parking	$5.0
7532	Top, Body, and Upholstery Repair Shops and Paint Shops	$5.0
7533	Automotive Exhaust System Repair Shops	$5.0
7534	Tire Retreading and Repair Shops	$10.5
7536	Automotive Glass Replacement Shops	$5.0
7537	Automotive Transmission Repair Shops	$5.0
7538	General Automotive Repair Shops	$5.0
7539	Automotive Repair Shops, N.E.C.	$5.0
7542	Carwashes	$5.0
7549	Automotive Services, Except Repair and Carwashes	$5.0
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	$5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	$5.0
7631	Watch, Clock, and Jewelry Repair	$5.0
7641	Reupholstery and Furniture Repair	$5.0
7692	Welding Repair	$5.0
7694	Armature Rewinding Shops	$5.0
7699	Repair Shops and Related Services, N.E.C.	$5.0[9]
	Major Group 78—Motion Pictures	
7812	Motion Picture and Video Tape Production	$21.5
7819	Services Allied to Motion Picture Production	$21.5
7822	Motion Picture and Video Tape Distribution	$21.5
7829	Services Allied to Motion Picture Distribution	$5.0
7832	Motion Picture Theaters, Except Drive-In	$5.0
7833	Drive-In Motion Picture Theaters	$5.0
7841	Video Tape Rental	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	$5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$5.0
7933	Bowling Centers	$5.0
7941	Professional Sports Clubs and Promoters	$5.0
7991	Physical Fitness Facilities	$5.0
7993	Coin-Operated Amusement Devices	$5.0
7996	Amusement Parks	$5.0
7997	Membership Sports and Recreation Clubs	$5.0
7999	Amusement and Recreation Services, N.E.C.	$5.0
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	$5.0
8041	Offices and Clinics of Chiropractors	$5.0
8042	Offices and Clinics of Optometrists	$5.0
8043	Offices and Clinics of Podiatrists	$5.0
8049	Offices and Clinics of Health Practitioners, N.E.C	$5.0
8051	Skilled Nursing Care Facilities	$5.0
8052	Intermediate Care Facilities	$5.0
8059	Nursing and Personal Care Facilities, N.E.C	$5.0
8062	General Medical and Surgical Hospitals	$5.0
8063	Psychiatric Hospitals	$5.0
8069	Specialty Hospitals, Except Psychiatric	$5.0
8071	Medical Laboratories	$5.0
8072	Dental Laboratories	$5.0
8082	Home Health Care Services	$5.0
8092	Kidney Dialysis Centers	$5.0
8093	Specialty Outpatient Facilities, N.E.C.	$5.0
8099	Health and Allied Services, N.E.C.	$5.0
	Major Group 81—Legal Services	
8111	Legal Services	$5.0
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
8299	Flight Training Services	$18.5
	Major Group 83—Social Services	
8322	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412	Museums and Art Galleries	$5.0
8422	Arboreta and Botanical or Zoological Gardens	$5.0
	Major Group 86—Membership Organizations	
8611	Business Associations	$5.0

SIZE STANDARDS BY SIC INDUSTRY 3/96—Continued

SIC	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	Major Group 87—Engineering, Accounting, Research, and Related Services	
8711	Engineering Services	$2.5
Except	Military and Aerospace Equipment and Military Weapons	$20.0
Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	$20.0
Except	Marine Engineering and Naval Architecture	$13.5
8712	Architectural Services	$2.5
8713	Surveying Services	$2.5
8721	Accounting, Auditing, and Bookkeeping Services	$6.0
8731	Commercial Physical and Biological Research	500 [10]
Except	Aircraft	1,500
Except	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
Except	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8732	Commercial Economic, Sociological, and Educational Research	$5.0
8733	Noncommercial Research Organizations	$5.0
8734	Testing Laboratories	$5.0
8741	Management Services	$5.0
Except	Conference Management Services	$5.06
8742	Management Consulting Services	$5.0
8743	Public Relations Services	$5.0
8744	Facilities Support Management Services	$5.0 [11]
Except	Base Maintenance	$20.0 [12]
Except	Environmental Remediation Services	500 [13]
8748	Business Consulting Services, N.E.C.	$5.0
	Major Group 89—Services, not Elsewhere Classified	
8999	Services, N.E.C.	$5.0
	Division K—Nonclassifiable Establishments	
9999	Nonclassifiable Establishments..	$5.0

[1] SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[2] SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

[3] SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

[4] SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[5] SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

[6] SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

[7] A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.

Assets for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

[8] SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[9] SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

[10] SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[11] Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

[12] SIC code 8744: (1) If one of the activities of base maintenance, as defined below, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

[13] SIC code 8744: (1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

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48 CFR Parts 19 and 52

[FAC 90–39; FAR Case 92–039; Item IX]

RIN 9000–AG07

Federal Acquisition Regulation; Master Subcontracting Plans

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to permit master subcontracting plans to be written for a three-year period and to emphasize that it is incumbent upon contractors to maintain and update master plans. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–039.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register on September 8, 1994 (59 FR 46385). The proposed rule amended FAR 19.704(b) and 52.219–9 to permit master subcontracting plans to be written for a three-year period with contractors making changes/updates to master subcontracting plans as necessary. After evaluating public comments, the Councils have agreed to add language at FAR 19.704(b) stating that changes required to update master subcontracting plans are not effective until approved by the contracting officer.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from subcontracting plan requirements, and the rule does not change the contractor's obligation to maximize subcontracting opportunities for small business concerns. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Public Law 104–13) is deemed to apply because the final rule contains information collection requirements. This final rule will result in an estimated reduction in the number of subcontract plans per year and associated hours. Consequently, a revised clearance for OMB Control Number 9000–0006 was submitted to OMB. The revised clearance has been approved through October 31, 1997. OMB Control Number 9000–0006 has recently been further revised by FAR case 94–780, and approval has been extended through March 31, 1998.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

2. Section 19.704 is amended in paragraph (b) by revising the second sentence and adding a third and fourth sentence to read as follows:

19.704 Subcontracting plan requirements.

* * * * *

(b) * * * Master plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. Changes required to update master plans are not effective until approved by the contracting officer. A master plan, when incorporated in an individual plan, shall apply to that contract throughout the life of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.219–9 is amended by revising the date of the clause to read ''(AUG 1996)''; in paragraph (f) introductory text by removing ''(d) above,'' and inserting ''paragraph (d) of this clause,'' in its place; and revising paragraph (f)(2) of the clause to read as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Aug 1996)

* * * * *

(f) * * *

(2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and

* * * * *

[FR Doc. 96–14524 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Part 19

[FAC 90–39; FAR Case 92–302; Item X]

RIN 9000–AG10

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to finalize without change the interim rule which was published at 59 FR 67036, December 28, 1994 (FAC 90–23, Item XIII), amending the Federal Acquisition Regulation (FAR) Part 19 to (1) extend the Small Business Competitiveness Demonstration Program through September 30, 1996; (2) specify that agencies may reinstate the use of small business set-asides as necessary to meet assigned goals, but only within the organizational unit(s) that failed to meet the small business goals; and (3) revise the description of Architectual and Engineering services as a designated industry group. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–302.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes the interim rule, which implements Title II of Public Law 102–366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, which revised Title VII of Public Law 100–656, Small Business Competitiveness Demonstration Program. The Office of Federal Procurement Policy published an interim policy directive in the Federal Register at 58 FR 19849, April 16, 1993, revising the current directive dated August 31, 1989, to include revisions based on Title II.

On December 28, 1994, the interim rule was published in the Federal Register with a request for comment. Two responses were received. No changes were made to the interim rule as a result of the responses. The interim rule has been adopted as a final rule without change.

B. Regulatory Flexibility Act

The final rule implements statutory revisions included in the revisions to the OFPP policy directive. OFPP prepared the appropriate regulatory flexibility statements as part of the revisions to the OFPP policy directive published in the Federal Register.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Part 19

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 19, which was published at 59 FR 67036, December 28, 1994 (FAC 90–23, Item XIII), is adopted as a final rule without change.

The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14525 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 22 and 52

[FAC 90–39; FAR Case 93–615; Item XI]

RIN 9000–AG02

Federal Acquisition Regulation; Use of Convict Labor

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect changes in the statutory restrictions on employment of convict labor in the performance of Government contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building,

Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–615.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register on September 6, 1994 (59 FR 46020). The proposed rule amended FAR Subpart 22.2 and the clause at 52.222–3 to (1) remove all references to 18 U.S.C. 4082(c)(2), which now only applies to offenses committed prior to November 1, 1987; (2) reflect the addition of the Commonwealth of the Northern Mariana Islands to the jurisdictions covered by Executive Order 11755; and (3) include further information regarding the requirements of Executive Order 11755, as amended by Executive Order 12608.

No substantive comments were received on the proposed rule during the public comment period. The Councils, therefore, agreed to adopt the proposed rule as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely updates FAR language pertaining to the employment of convict labor to conform to current statutory requirements. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 22.201 is revised to read as follows:

§ 22.201 General.

(a) Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, states: ''The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.'' The Executive order does not prohibit the contractor, in performing the contract, from employing—

(1) Persons on parole or probation;

(2) Persons who have been pardoned or who have served their terms;

(3) Federal prisoners; or

(4) Nonfederal prisoners authorized to work at paid employment in the community under the laws of a jurisdiction listed in the Executive order if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Paid employment will not—

(A) Result in the displacement of employed workers;

(B) Be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or

(C) Impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended.

(b) Department of Justice regulations authorize the Director of the Bureau of Justice Assistance to exercise the power and authority vested in the Attorney General by the Executive order to certify and to revoke the certification of work-release laws or regulations (see 28 CFR 0.94–1(b)).

22.202 [Amended]

3. Section 22.202 is amended in the introductory paragraph by inserting after ''Samoa,'' ''the Commonwealth of the Northern Mariana Islands,''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.222–3 is revised to read as follows:

52.222–3 Convict labor.

As prescribed in 22.202, insert the following clause:

Convict Labor (Aug 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

[FR Doc. 96–14526 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 23 and 52

[FAC 90–39; FAR Case 93–307; Item XII]

RIN 9000–AG42

Federal Acquisition Regulation; Ozone Executive Order

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published at 60 FR 28500, May 31, 1995, to a final rule with changes to amend the Federal Acquisition Regulation (FAR) to provide policy for the acquisition of items that contain or are manufactured with ozone-depleting substances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–307.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) promulgated 40 CFR Part 82, Subpart D, to satisfy EPA's obligation under Section 613, Title VI of the Clean Air Act Amendments of 1990. The EPA rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under Section 612 of the Act. The EPA rule complements Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances (58 FR 21881, April 23, 1993). Both the Executive Order and the EPA rule require that new contracts provide that any acquired products which contain or are manufactured with ozone-depleting substances be labeled in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E. On May 31, 1995 (60 FR 28500), the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published an interim rule to implement the EPA regulations and the Executive Order.

This final FAR rule contains revisions resulting from public comments received in response to the interim rule. Several respondents questioned whether the interim rule went beyond the labeling requirements in Section 611 of the 1990 amendments to the Clean Air Act (42 U.S.C. 7671j) and its implementing EPA regulations at 40 CFR. This confusion has been resolved by replacing the definitions of ''Class I substance'' and ''Class II substance'' with a definition of ''ozone-depleting substance'', and by revising the clause at 52.223–11 to clarify that labeling shall be in accordance with 42 U.S.C. 7671j and 40 CFR Part 82. The intent of the rule is to stay within the bounds of the Clean Air Act and the EPA regulations.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 23 and 52 which was published at 60 FR 28500, May 31, 1995, is adopted as final with changes as set forth below:

1. The authority citation for 48 CFR Parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.800 [Amended]

2. Section 23.800 is amended by removing the last sentence.

3. Section 23.802 is revised to read as follows:

23.802 Definition.

Ozone-depleting substance means—

(a) Any substance designated as Class I by EPA (40 CFR part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(b) Any substance designated as Class II by EPA (40 CFR part 82), including but not limited to hydrochlorofluorocarbons.

23.803 [Amended]

4. Section 23.803 is amended in paragraph (b)(2) by removing the period and inserting '', except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r).''

5. Section 23.804 is revised to read as follows:

23.804 Contract clauses.

Except for contracts to be performed outside the United States, its possessions, and Puerto Rico, the contracting officer shall insert the clause at:

(a) 52.223–11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.

(b) 52.223–12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.223–11 is revised to read as follows:

52.223–11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

Ozone-Depleting Substances (Jun 1996)

(a) *Definitions. Ozone-depleting substance,* as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82),

including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

''WARNING: Contains (or manufactured with, if applicable)
*, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.''

* The Contractor shall insert the name of the substance(s).

(End of clause)

[FR Doc. 96–14527 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 25 and 52

[FAC 90–39; FAR Case 95–304; Item XIII]

RIN 9000–AG80

Federal Acquisition Regulation; Uruguay Round (1996 Code)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are finalizing without further change the interim rule on the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–304.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes without further change the interim rule, published in the Federal Register on December 29, 1995 (60 FR 67514), which implemented the Uruguay Round Agreement Act, Public Law 103–465. No public comments were received in response to the interim rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The rule primarily changes the list of designated foreign countries and extends applicability of the Trade Agreements Act to all agencies for supply and construction contracts over certain dollar thresholds. However, those contracts which are now subject to the Trade Agreements Act were already subject to the Memorandum of Understanding between the United States of America and the European Community on Government Procurement. This change will have minimal impact on U.S. firms. The rule does not diminish existing preferences for small businesses, because purchases under small and small disadvantaged business preference programs are exempted from the Trade Agreements Act.

C. Paperwork Reduction Act

The final rule does not impose any new reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501, *et seq.* Contractors, which previously were required to respond to the now deleted provision at 52.225–16, Buy American Act—Supplies under European Community Agreement Certificate, will now be required to respond to the comparable provision at 52.225–8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate (OMB Control No. 9000–0046).

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR Parts 25 and 52, which was published at 60 FR 67514, December 29, 1995, is adopted as final without further change.

The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14528 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 25, 27, and 52

[FAC 90–39, FAR Case 93–310, Item XIV]

RIN 9000–AF60

Federal Acquisition Regulation; Implementation of the North American Free Trade Agreement Implementation Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Revised interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a revised interim rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* June 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 19, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90–39, FAR case 93–310 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–310.

SUPPLEMENTARY INFORMATION:

A. Background

While the North American Free Trade Agreement (NAFTA) remains in effect, the Canadian Free Trade Agreement (CFTA) is suspended. The CFTA interim rule published December 30, 1988 (53 FR 53340, FAC 84–41, FAR case 88–070), which revised the FAR coverage

concerning Canadian products, has been revised and updated by FAR case 93–310, which implements NAFTA. As a result, FAR case 88–070 was closed into FAR case 93–310.

An interim rule was published January 5, 1994 (59 FR 544, FAC 90–19, FAR case 93–310), to implement NAFTA. Based on the analysis of public comments, the interim rule has been revised to—

(1) Add language to FAR 25.402 to address the applicability of NAFTA to services.

(2) Implement Article 1709(10) of NAFTA and Section 6 of Executive Order 12889 of December 27, 1993. FAR 27.208 is added to make contracting personnel aware of the requirements to obtain authorization from the owner of technology covered by a valid patent prior to use by or for the Federal Government and of waivers permitted under Section 6 of Executive Order 12889.

(3) Revise 52.212–3 and 52.212–5 to reflect changes to 52.225–20 and 52.225–21, accomplished in this revised interim rule.

(4) Add alternates for the provision at 52.225–20 and the clause at 52.225–21 for use in procurements between $25,000 and $50,000.

(5) Add a new clause 52.225–22, ''Balance of Payments Program—Construction Materials—NAFTA,'' for construction contracts awarded outside the United States with an estimated value over $6,500,000.

B. Regulatory Flexibility Act

The amendments in this revised interim rule are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because (1) the new clause, ''Balance of Payments Program—Construction Materials—NAFTA, is only for construction contracts awarded outside the United States; (2) the new coverage at 27.208 pertains only to patents held by parties from NAFTA countries; and (3) other changes are primarily for clarification or editorial. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and provided to the Chief Counsel for Advocacy for the Small Business Administration when the interim rule was issued in January 1994. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 et seq. (FAC 90–39, FAR case 93–310), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this revised interim rule without prior opportunity for public comment. This action is necessary because the North American Free Trade Agreement Implementation Act, signed into law on December 8, 1993, became effective on January 1, 1994, and several substantive changes to the existing interim rule are needed to fully implement the Act. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 25, 27, and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 25, 27, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 25, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Section 25.305 is amended in the section heading and in the heading of paragraph (c) by revising the word ''clause'' to read ''clauses''; designating the existing paragraph (c) as (c)(1); and adding paragraph (c)(2) to read as follows:

25.305 Solicitation provision and contract clauses.

* * * * *

(c) * * *

(2) For construction contracts outside the United States, with an estimated value of $6,500,000 or more, insert the clause at 52.225–22, Balance of Payments Program—Construction Materials— NAFTA.

3. Section 25.402 is amended by adding paragraph (g) to read as follows:

25.402 Policy.

* * * * *

(g) The procedures in 25.405 apply to the acquisition of NAFTA country services. These are services provided by a firm established in a NAFTA country under service contracts with an estimated acquisition value of $50,000 or more ($6,500,000 or more for construction), except for the following excluded services (Federal Service Code or Category from the Federal Procurement Data System Product/Service Code Manual is indicated in parentheses):

(1) Information processing and related telecommunications services (D):

(i) Automated data processing (ADP) telecommunications and transmission services (D304).

(ii) ADP teleprocessing and timesharing services (D305).

(iii) Telecommunications network management services (D316).

(iv) Automated news services, data services, or other information services (D317).

(v) Other ADP and telecommunications services (D399).

(2) Maintenance, repair, modification, rebuilding, and installation of equipment (J):

(i) Maintenance, repair, modification, rebuilding, and installation of equipment related to ships (J019).

(ii) Non-nuclear ship repair (J998).

(3) Operation of Government-owned facilities (M):

(i) All facilities operated by the Department of Defense, Department of Energy, and the National Aeronautics and Space Administration.

(ii) Research and development facilities (M180).

(4) Utilities—all classes (S).

(5) Transportation, travel, and relocation services—all classes except V503 travel agent services (V).

(6) All services purchased in support of military forces overseas.

(7) Construction dredging services.

4. Section 25.408 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

25.408 Solicitation provisions and contract clauses.

(a) * * *

(3) The provision at 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision, in solicitations containing the clause at 52.225–21. Use the provision with its

Alternate I if the acquisition value is between $25,000 and $50,000; and

(4) The clause at 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA. Use the clause with its Alternate I if the acquisition value is between $25,000 and $50,000.

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

5. Section 27.208 is added to read as follows:

27.208 Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or public noncommercial use.

(c) Section 6 of Executive Order 12889 of December 27, 1993, waives the requirement to obtain advance authorization for—

(1) An invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license; and

(2) The existence of a national emergency or other circumstances of extreme urgency, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(d) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately owned patent.

(e) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term ''adequate remuneration.'' Executive Order 12889 equates ''remuneration'' to ''reasonable and entire compensation'' as used in 28 U.S.C. 1498, the statute which gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the U.S. Government.

(f) Depending on agency procedures, either the technical/requiring activity or the contracting officer shall ensure compliance with the notice requirements of NAFTA Article 1709(10). A contract award should not be suspended pending notification to the right holder.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.212–3 is amended—

(a) By revising the date of the provision to read ''(JUN 1996)'';

(b) Redesignating paragraphs (g)(1) through (g)(4) as (g)(1)(i) through (g)(1)(iv) and redesignating paragraph (g) as ''(g)(1)''; removing ''(NAFTA)'' each time it appears (twice); and removing the word ''Certificate'';

(c) Revising newly designated paragraphs (g)(1)(i), (g)(1)(iii), and (g)(1)(iv); and

(d) Adding paragraph (g)(2) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (JUN 1996)

* * * * *

(g)(1) * * *

(i) Each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.'' Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products.

The following supplies qualify as ''NAFTA country end products'' as that term is defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:''

_____

_____

_____

(Insert line item numbers)

(iv) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

(2) *Alternate I.* If Alternate I to the clause at 52.225–21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

The following supplies qualify as ''Canadian end products'' as that term is defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program'':

_____

(Insert line item numbers)

7. Section 52.212–5 is amended by revising the date of the clause to read ''(JUN 1996)''; paragraph (b)(15) is redesignated as (b)(15)(i); and (b)(15)(ii) is added to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jun 1996)

* * * * *

(b) * * *

____(15)(ii) Alternate I of 52.225–21.

* * * * *

8. Section 52.225–20 is amended in the section heading and provision heading by revising the word ''Certificate'' to read ''Provision''; revising the date of the provision to read ''(JUN 1996)''; revising paragraphs (a), (c), and (d) of the provision; and adding Alternate I to read as follows:

52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision (Jun 1996)

(a) Each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program''). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products.

The following supplies qualify as ''NAFTA country end products'' as that term is defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program'':

Line item no.	Country of origin

(*List as necessary*)

(d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

(End of provision)

Alternate I (JUN 1996). As prescribed in 25.408(a)(3), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

The following supplies qualify as ''Canadian end products'' as that term is defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program'':

(*Insert line item numbers*)

9. Section 52.225–21 is amended by revising the date of the clause to read ''(JUN 1996)''; in the fourth sentence of paragraph (c) by revising the word ''certifying'' to read ''specifying''; removing paragraph (d) of the clause; and by adding Alternate I to read as follows:

52.225–21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Jun 1996)

* * * * *

Alternate I (JUN 1996). As prescribed in 25.408(a)(4), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Canadian end product means an article that (1) is wholly the growth, product, or manufacture of Canada, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(c) The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.'' An offer specifying that a Canadian end product will be supplied requires the Contractor to supply a Canadian end product or, at the Contractor's option, a domestic end product.

10. Section 52.225–22 is added to read as follows:

52.225–22 Balance of Payments Program—Construction Materials—NAFTA.

As prescribed in 25.305(c)(2), insert the following clause:

Balance of Payments Program—Construction Materials—NAFTA (Jun 1996)

(a) *Definitions.* As used in this clause—

Components means those articles, materials, and supplies incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation shall be treated as domestic.

NAFTA country construction material means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

North American Free Trade Agreement (NAFTA) country means Canada and Mexico.

(b) The Balance of Payments Program provides that the Government give preference to domestic construction material.

(c) The Contractor agrees that only domestic construction material or NAFTA country construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

[FR Doc. 96–14529 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 25

[FAC 90–39; FAR Case 95–030; Item XV]

RIN 9000–AG96

Federal Acquisition Regulation; Caribbean Basin Countries

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements

Act for products of Caribbean Basin countries. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–030.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.402(b) by changing the date ''1995'' to ''1996.'' Products of Caribbean Basin countries were to be treated as eligible products until September 30, 1995, unless otherwise extended by the U.S. Trade Representative (USTR) by means of a Federal Register notice. On October 3, 1995, the USTR published an extension through September 30, 1996 (60 FR 51822).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 95–030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 25.402 [Amended]

2. Section 25.402 is amended in the first sentence of paragraph (b) by removing ''(see 51 FR 6964–6965, February 27, 1986)''; and in the second sentence by revising ''1995'' to read ''1996''.

[FR Doc. 96–14530 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 25 and 52

[FAC 90–39; FAR Case 92–048; Item XVI]

RIN 9000–AF83

Federal Acquisition Regulation; Fluctuating Exchange Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to provide guidance and a solicitation provision regarding evaluation of foreign currency offers. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–048.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR Subpart 25.5 and a corresponding solicitation provision were published in the Federal Register as a proposed rule, with a request for comments (see 59 FR 16391, April 6, 1994). Two responses were received. The Council's analysis of those comments resulted in a revision to the rule to delete ''commercially available'' in the description of the current market exchange rate used in the evaluation of foreign currency offers. The final rule also adds language at 25.501(b) and 52.225–4 to address evaluation of offers in negotiated acquisitions, when award is based on initial offers received.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains to contracts entered into and performed overseas and, with rare exceptions, will affect only foreign concerns. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. In part 25, subpart 25.5, the heading is revised to read as follows:

Subpart 25.5—Use of Foreign Currency

3. Section 25.501 is revised to read as follows:

25.501 Policy.

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers either in U.S. currency or in a specified foreign

currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations should generally require all offers to be priced in the same currency. However, if submission of offers in other than a specified currency is permitted, the contracting officer shall convert the offered prices to U.S. currency for evaluation purposes. The contracting officer shall use the current market exchange rate from a commonly used source in effect on the

(1) Date of bid opening for sealed bid acquisitions,

(2) Closing date for negotiated acquisitions when award is based on initial offers, or

(3) Due date for receipt of best and final offers, for other negotiated acquisitions.

(c) If contracts are priced in foreign currency, agencies must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

4. Section 25.502 is added to read as follows:

25.502 Solicitation provision.

The contracting officer shall insert the provision at 52.225–4, Evaluation of Foreign Currency Offers, in solicitations if the use of other than a specified currency is permitted. The contracting officer shall insert the source of the rate to be used in the evaluation of offers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.225–4 is added to read as follows:

52.225–4 Evaluation of Foreign Currency Offers.

As prescribed in 25.502, insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (AUG 1996)

If offers are received in more than one currency, offers shall be evaluated by converting the foreign currency to United States currency using (*insert source of rate*) in effect on the (a) date of bid opening for sealed bid acquisitions, (b) closing date for negotiated acquisitions when award is based on initial offers, or (c) due date for receipt of best and final offers, for other acquisitions.

(End of provision)

[FR Doc. 96–14531 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 28 and 52

[FAC 90–39, FAR Case 95–301, Item XVII]

RIN 9000–AG99

Federal Acquisition Regulation; Irrevocable Letters of Credit and Alternatives to Miller Act Bonds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) to implement OFPP Policy Letter 91–4 (previously considered under FAR case 91–113, Irrevocable Letters of Credit) and provide alternatives to Miller Act Bonds, as required by Section 4104(b) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date*: June 20,1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–39, FAR case 95–301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–301.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Parts 28 and 52 to provide for use of Irrevocable Letters of Credit as an alternative to corporate or individual sureties as security for Miller Act bonds, and provides alternatives to Miller Act bonds for construction contracts valued at $25,000 to $100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of FASA.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule provides alternatives to Miller Act bonds for construction contracts valued at $25,000 to $100,000. In addition, it offers Irrevocable Letters of Credit as an alternative to surety on Miller Act bonds for construction contracts over $100,000. These alternatives may be helpful to both large and small construction contractors. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 95–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Section 4104(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), regarding Irrevocable Letters of Credit and alternatives to Miller Act Bonds, requires immediate implementation. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 28 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.001 is amended in the definition of ''Bond'' by revising the first sentence; and adding, in alphabetical order, the definition ''Irrevocable letter of credit'' to read as follows:

28.001 Definitions.

* * * * *

Bond means a written instrument executed by a bidder or contractor (the ''principal''), and a second party (''the surety'' or ''sureties'') (except as provided in 28.204), to assure fulfillment of the principal's obligations to a third party (the ''obligee'' or ''Government''), identified in the bond.

* * *

* * * * *

Irrevocable letter of credit (ILC) means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money on demand to the Government (the beneficiary) until the expiration date of the letter. The letter of credit cannot be revoked or conditioned.

* * * * *

28.102 Performance and payment bonds and alternative payment protections for construction contracts.

3. The heading at section 28.102 is revised as set forth above.

4. Section 28.102–1 is amended in paragraph (a) introductory text by revising ''$25,000'' to read ''$100,000''; redesignating paragraph (b) as (c) and adding after the word ''bonds'' the phrase ''or alternative payment protection''; and adding (b)(1) and (b)(2). The revised text reads as follows:

28.102–1 General.

* * * * *

(b)(1) Pursuant to Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), for construction contracts greater than $25,000, but not greater than $100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

(i) A payment bond.

(ii) An irrevocable letter of credit (ILC).

(iii) *A tripartite escrow agreement.* The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit.* The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable form, executable by the contracting officer.

(v) A deposit of the types of security listed in 28.204–1 and 28.204–2.

(2) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

* * * * *

5. Section 28.102–2 is amended by—

(a) Revising the heading of paragraph (b) and (b)(1) introductory text;

(b) In the last sentence of paragraph (b)(2) by removing ''subparagraph (1) immediately above'' and inserting ''paragraph (b)(1) of this subsection'' in its place;

(c) At the end of paragraph (b)(3) by removing the period and inserting '', or to furnish additional alternative payment protection.'' in its place;

(d) In paragraph (c)(1) and the first sentence of (c)(2) by inserting after the word ''bonds'' the phrase ''or alternative payment protection'';

(e) In the second sentence of paragraph (c)(2) by removing the word ''above'' and inserting ''of this subsection'' in its place;

(f) Adding paragraph (d). The revised text reads as follows:

28.102–2 Amount required.

* * * * *

(b) *Payment bonds or alternative payment protection.* (1) The penal amount of payment bonds or alternative payment protection shall equal—

* * * * *

(d) *Reducing amounts.* The contracting officer has the discretion to reduce the amount of security to support a bond, subject to the conditions of 28.203–5(c) or 28.204(b).

6. Section 28.102–3 is amended by revising the section heading; redesignating paragraphs (a), (b) and (c) as (a)(1), (a)(2) and (a)(3), respectively; redesignating the undesignated introductory paragraph as paragraph (a); and adding paragraph (b) to read as follows:

28.102–3 Solicitation requirements and contract clause.

* * * * *

(b) Insert the clause at 52.228–13, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds $25,000 but does not exceed $100,000. Complete the clause by specifying the payment protection or protections selected (see 28.102–1(b)(1)), the penal amount required, and the deadline for submission.

7. Section 28.106–3 is amended by revising the section heading and adding paragraph (c) to read as follows:

28.106–3 Additional bond or security.

* * * * *

(c) When an ILC is used as an alternative to corporate or individual sureties as security for a performance or payment bond and the contract performance period is extended, the contracting officer shall require the contractor to provide an ILC with an appropriately extended maturity that meets the requirements of 28.204–3(f).

8. Section 28.106–5 is amended by redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

§ 28.106–5 Consent of surety.

* * * * *

(b) When a contract for which performance or payment is secured by any of the types of security listed in 28.204 is modified as described in paragraph (a) of this subsection, no consent of surety is required.

* * * * *

9. Section 28.106–8 is added to read as follows:

28.106–8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

10. Section 28.203–5 is amended by redesignating paragraph (a)(2) as (a)(3) and revising the heading; adding a new

paragraph (a)(2); and in the second sentence of paragraph (c) by removing ''and (2)'' and inserting in its place ''through (3)''. The revised text reads as follows:

28.203–5 Release of lien.

* * * * *

(a) * * *

(2) *Contracts subject to alternative payment protection (28.102–1(b)(1)).* The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Miller Act.* * * *

* * * * *

11. Section 28.204 is revised to read as follows:

28.204 Alternatives in lieu of corporate or individual sureties.

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in 28.204–1 through 28.204–3 instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in 28.204–1 through 28.204–3, the contracting officer may release a portion of the security only when the conditions allowing the partial release of lien in 28.203–5(c) are met. The contractor shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in 28.204–1 through 28.204–3 or a combination of bonds supported by these types of security and additional surety bonds under 28.202 or 28.203. During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in 28.204–1 through 28.204–3 for another, or may substitute, in whole or combination, additional surety bonds under 28.202 or 28.203.

12. Sections 28.204–3 and 28.204–4 are added to read as follows:

28.204–3 Irrevocable letter of credit (ILC).

(a) Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured (see 28.204). A separate ILC is required for each bond.

(b) The ILC shall be irrevocable, unconditional, expire only as provided in paragraph (f) of this subsection, and be issued by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection. ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at 52.228–14 and present it with the ILC to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) Expiration dates shall be established as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC to cover the entire period of performance or an ILC with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(g) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher.

(1) The offeror/contractor shall provide the contracting officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228–14.

(h) Additional information on credit rating services and investment grade ratings, and a copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, is contained within the Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395–7332.

28.204–4 Contract clause.

Insert the clause at 52.228–14, Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.228–2 is amended by revising the introductory text, the date in the clause heading, and paragraph (a) of the clause; in paragraph (b) by removing ''or''; at the end of paragraph (c) by removing the period and replacing it with ''; or''; and adding paragraph (d) to read as follows:

52.228–2 Additional Bond Security.

As prescribed in 28.106–4, insert the following clause:

ADDITIONAL BOND SECURITY (JUN 1996)

* * * * *

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

* * * * *

(d) The contract performance period is extended and an irrevocable letter of credit (ILC) is used as security. If the Contractor

does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting Officer has the right to immediately draw on the ILC.

(End of clause)

14. Sections 52.228–13 and 52.228–14 are added to read as follows:

52.228–13 Alternative Payment Protections.

As prescribed in 28.102–3(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JUN 1996)

(a) The Contractor shall submit one of the following payment protections:

_____

_____

_____

(b) The penal sum of the payment protection shall be in the amount of $ _____.

(c) The submission of the payment protection is required by _____.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material who signed the escrow agreement.

(End of clause)

52.228–14 Irrevocable Letter of Credit.

As prescribed in 28.204–4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (JUN 1996)

(a) *Irrevocable letter of credit* (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay a stated amount of money on demand to the Government (the beneficiary), until the expiration date of the letter. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to support other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, unconditional, issued by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used to secure a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or may submit an ILC with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(d) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

_____

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____

(For reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable, unconditional, and transferable Letter of Credit in your favor for one or more drawings up to United States $_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or transferee's sight draft(s) drawn on issuing and, if any, confirming financial institution, for all or any part of this credit that is presented at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 19 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address] _____

_____, 19_____

Our Letter of Credit

Advice Number _____

Beneficiary: _____

[U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [*name of issuing financial institution*] for drawings of up to United States dollars _____/U.S. $_____ and expiring with our close of business on _____ [*the expiration date*], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under the Letter of Credit and this Confirmation if presented at our offices as specified herein.

4. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least sixty (60) days prior to any such expiration date we shall notify the

Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, to the laws of _____ [*state of confirming financial institution*].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 19 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

_____

[*Confirming financial institution*]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

_____

[*City, State*]

_____, 19_____

[*Name and address of financial institution*]

Pay to the order of _____

[*Beneficiary Agency*] _____

the sum of United States $ _____ ____

This draft is drawn under _____

Irrevocable Letter of Credit No. _____

_____

[*Beneficiary Agency*]

By: _____

(End of clause)

[FR Doc. 96–14532 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 31

[FAC 90–39; FAR Case 94–606; Item XVIII]

RIN 9000–AG93

Federal Acquisition Regulation; Part 31 Agency Supplements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to remove the requirement for Civilian Agency Acquisition Council approval for agency supplements to FAR Part 31. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 94–606.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation recommended that FAR 31.101 be amended to remove the requirement for Civilian Agency Acquisition Council approval for agency supplements to FAR Part 31. The change does not amend the requirement for approval of class deviations. Accordingly, supplementary coverage will be consistent with the FAR Part 31 coverage, unless a class deviation is approved. Therefore, advance approval of supplements is considered to be unnecessary.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq*. (FAC 90–39, FAR case 94–606), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.101 is amended by removing the third and fourth sentences and replacing them with the following text to read as follows:

31.101 Objectives.

* * * To achieve this uniformity, individual deviations concerning cost principles require advance approval of the agency head or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency Acquisition Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Associate Administrator for Procurement. Class deviations for the Department of Defense require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition and Technology.

[FR Doc. 96–14533 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 31

[FAC 90–39; FAR Case 93–020; Item XIX]

RIN 9000–AF99

Federal Acquisition Regulation; Records Retention

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to explicitly state that contractors must maintain adequate cost records in order to be reimbursed for all claimed costs. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–020.

SUPPLEMENTARY INFORMATION:

A. Background

The guidance for determining cost allowability at FAR 31.201–2 previously did not explicitly state that contractors must maintain adequate cost records in order to be reimbursed for all claimed costs nor did it specifically state that the contracting officer has the authority to disallow costs which are determined to be inadequately supported. This requirement and authority have, heretofore, been considered to be implicit in the cost principles. However, the Councils are revising the FAR to explicitly address these issues because the Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 3, 1992, ''Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts,'' found that agencies were having difficulty because the FAR was silent on these issues. A new paragraph (d) is added to FAR 31.201–2 to explicitly state that costs claimed for reimbursement must be adequately supported and that the contracting officer may disallow costs which are inadequately supported. A proposed rule was published in the Federal Register at 59 FR 47776 on September 16, 1994. After evaluation of public comments, the Councils agreed to convert the proposed rule to a final rule without further change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.201–2 is amended by adding paragraph (d) to read as follows:

31.201–2 Determining allowability.

* * * * *

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

[FR Doc. 96–14534 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Part 31

[FAC 90–39; FAR Case 93–006; Item XX]

RIN 9000–AF98

Federal Acquisition Regulation; Legislative Lobbying Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) cost principles concerning lobbying costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–006.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR case was opened to address issues raised by the Office of Management and Budget SWAT team concerning the requirement to maintain records which are in addition to normal records maintained to record lobbying costs under FAR 31.205–22(f). The FAR rule deletes 31.205–22(f) because it conflicts with the recordkeeping requirements in 31.201–6(c), 31.205–22(e), and Cost Accounting Standards (CAS) 405, Accounting for Unallowable Costs (48 CFR 9904.405–50(a)). In addition, the Councils believe that 31.205–22(f) is inconsistent with the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, which requires contractors to disclose lobbying activities. The reporting of such activities must necessarily be based upon certain contractor records which support the disclosures. The rule also removes the prohibition against reimbursing executive lobbying costs at 31.205–50 and adds it to the list of specifically unallowable lobbying costs at 31.205–22(a). A proposed rule was published in the Federal Register at 59 FR 47776 on September 16, 1994. After evaluation of public comments, the Councils agreed to convert the proposed rule to a final rule without further change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions clarify a condition of allowability for contractors who wish to be reimbursed under Government contracts. The revisions eliminate a subsection which may be misinterpreted in its application and more accurately describe the subject matter of the cost principle. Further, most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,

contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–22 is amended by revising the section heading; at the end of paragraph (a)(4) by removing the word ''or''; at the end of paragraph (a)(5) by removing the period and inserting ''; or''; by adding paragraph (a)(6); and by removing paragraph (f) and redesignating paragraph (g) as (f) to read as follows:

31.205–22 Lobbying and political activity costs.

(a) * * *

(6) Costs incurred in attempting to improperly influence (see 3.401), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

* * * * *

31.205–50 [Reserved]

3. Section 31.205–50 is removed and reserved.

[FR Doc. 96–14535 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Part 31

[FAC 90–39; FAR Case 93–022; Item XXI]

RIN 9000–AG00

Federal Acquisition Regulation; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to specify the documentation required to support the allowability of contractors' claimed travel costs. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–022.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register at 59 FR 47777, September 16, 1994, because the CAAC and the DARC determined that the FAR did not adequately specify what documentation is required to support travel costs incurred under Government contracts. The rule reflects a recommendation made by the Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 3, 1992, entitled ''Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts,'' which found that agencies were having difficulty because the travel cost principle is silent on the documentation requirements.

The rule amends FAR 31.205–46 by adding paragraph (a)(7) which sets forth specific documentation criteria for travel costs. The major difference between the final rule and the proposed rule is that the final rule strikes the reference to ''time'' and adds a parenthetical after ''place'' in (a)(7)(i) to make the rule consistent with similar requirements already imposed by section 274 of the Internal Revenue Code for claiming costs for Federal tax purposes (26 U.S.C. 274(d)). The final rule also coincides with guidance currently contained in the Defense Contract Audit Manual (CAM) at CAM 7–1002.2.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–46 is amended—

(a) By adding a heading to paragraph (a) and by revising paragraph (a)(1);

(b) By revising the first sentence of paragraph (a)(3)(iv); and

(c) By adding paragraph (a)(7) immediately preceding paragraph (b) to read as follows:

31.205–46 Travel costs.

(a) *Costs for transportation, lodging, meals, and incidental expenses.* (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

* * * * *

(3) * * *

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure in excess of $25.00. * * *

* * * * *

(7) Costs shall be allowable only if the following information is documented:

(i) Date and place (city, town, or other similar designation) of the expenses;

(ii) Purpose of the trip; and

(iii) Name of person on trip and that person's title or relationship to the contractor.

[FR Doc. 96–14536 Filed 6–19–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 32 and 52

[FAC 90–39; FAR Case 92–046; Item XXII]

RIN 9000–AF41

Federal Acquisition Regulation; Prompt Payment Overseas

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the Federal Register at 59 FR 11379, March 10, 1994, and amended by FAR case 94–770 (60 FR 34741, July 3, 1995), to a final rule. This rule amends the Federal Acquisition Regulation (FAR) to reflect that the Prompt Payment Act applies to overseas contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–046.

SUPPLEMENTARY INFORMATION:

A. Background

On January 13, 1992, the Armed Services Board of Contract Appeals (ASBCA), in *Held & Francke Baukittengesellschaft* (ASBCA Nos. 42463 and 42464), held that FAR 32.901 improperly excluded applicability of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) to contracts awarded to foreign contractors for work performed outside the United States. As a result of the ASBCA decision, an interim rule was issued which, in effect, makes the Government liable for payment of interest and interest penalties under the Act for contracts with foreign contractors for work performed or supplies delivered overseas.

Section 32.901 and the clauses at 52.232–25, 52.232–26, and 52.232–27 were amended by the interim rule to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of ''foreign vendor'' from the clauses. That interim rule, as amended on July 3, 1995, is now converted to a final rule without further change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contracts with foreign contractors for work performed overseas by extending the Government's liability to pay interest and penalties under the Prompt Payment Act to such entities. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending CFR Parts 32 and 52, which was published at 59 FR 11379, March 10, 1994 (FAC 90–20, Item XIII), and further amended by FAR case 94–770 (60 FR 34741, July 3, 1995), is adopted as a final rule without further change.

The authority citation for 48 CFR Parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14537 Filed 6–19–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 33, 42, and 52

[FAC 90–39; FAR Cases 91–062 and 92–301; Item XXIII]

RIN 9000–AE96/9000–AF35

Federal Acquisition Regulation; Alternate Dispute Resolution and Federal Courts Administration Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt two interim rules as final: FAR Case 91–62, Alternative Dispute Resolution, published in the Federal Register (FR) at 56 FR 67416, December 30, 1991, and 92–301, Federal Courts Administration Act, published at 59 FR 11380 on March 10, 1994. The rules amend the claim certification procedures and the Alternative Means of Dispute Resolution (ADR) procedures, and implement section 907(a) of the Federal Courts Administration Act of 1992. These regulatory actions were not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and are not major rules under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR cases 91–062 and 92–301.

SUPPLEMENTARY INFORMATION:

A. Background

Upon passage of the Federal Courts Administration Act (Act) of 1992, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued two interim rules implementing the changes made by the Act as well as changes to the Alternative Disputes Resolution procedures and claim certification procedures. Only three parties submitted comments in response to the interim rules. No issue was raised by the public comments that

necessitated changes to the interim rules. The interim rules are, therefore, being converted to final rules without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simplifies policies and procedures for the certification of claims submitted by contractors and is intended to reduce the need for costly litigation which arose under previous regulations. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33, 42, and 52

Government procurement.

Interim Rules Adopted as Final

Accordingly, the interim rule amending 48 CFR parts 33and 52, which was published at 56 FR 67416, December 30, 1991, is adopted as final, as amended by the interim rule amending 48 CFR parts 33, 42 and 52, published at 59 FR 11380, March 10, 1994, which is hereby adopted as final without change.

The authority citation for 48 CFR parts 33, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14538 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 34 and 52

[FAC 90–39; FAR Case 93–304; Item XXIV]

RIN 9000–AG11

Federal Acquisition Regulation; Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the Federal Register at 59 FR 67047, December 28, 1994, to a final rule. This rule amends the Federal Acquisition Regulation (FAR) to add policy and procedures for testing and qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act (DPA) of 1950. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–304.

SUPPLEMENTARY INFORMATION:

A. Background

Title III of the DPA authorizes various forms of Government assistance to encourage expansion of production of capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 (Public Law 102–558) provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA. This rule expresses Government policy to pay for such testing, and provides definitions, procedures, and a contract clause to implement the policy. An interim rule was published in the Federal Register on December 28, 1994 (59 FR 67047), with a request for public comments. No comments were received.

B. Regulatory Flexibility Act

The addition of FAR Subpart 34.1 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small entities are sometimes asked to perform the qualification testing required under the rule. A Final Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The change is required to implement amendments to the DPA made by Public Law 102–558. The DPA amendments provide for testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA. This rule expresses Government policy to pay for such testing, and provides definitions, procedures, and a contract clause to implement the policy. This rule will apply to any small entity that has Government contracts that require qualification testing under the Act. A reporting requirement is in the rule that requires contractors who perform this testing to provide the test results to the Government. No public comments were received in response to the statement in the interim rule regarding the Regulatory Flexibility Act. There are no alternatives that will accomplish the objectives of the rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning the DPA Amendments was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and approved under OMB Control No. 9000–0133 effective through September 30, 1997. Public comments concerning this request were invited through a Federal Register notice at 59 FR 67047, December 28, 1994, and no comments were received.

List of Subjects in 48 CFR Parts 34 and 52

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending CFR Parts 34 and 52, which was published at 59 FR 67047, December 28, 1994 (FAC 90–23, Item XXIV), is adopted as a final rule without change.

The authority citation for 48 CFR Parts 34 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.
[FR Doc. 96–14539 Filed 6–19–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Part 37

[FAC 90–39; FAR Case 91–106; Item XXV]

RIN 9000–AF31

Federal Acquisition Regulation; Child Care Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the Federal Register at 59 FR 67050, December 28, 1994, to a final rule. The rule amends the Federal Acquisition Regulation (FAR) to add a definition of ''child care services'' and to require contracting officers to ensure that contracts for child care services include requirements for criminal history background checks of employees in accordance with 42 U.S.C. 13041. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 91–106.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Subtitle E, section 231 of the Crime Control Act of 1990 (Pub. L. 101–647), codified at 42 U.S.C. 13041, as amended by section 1094 of the Fiscal Year 1992 Defense Authorization Act (Public Law 102–190). The effective date for compliance with Public Law 101–647 was May 29, 1991. Public Law 102–190 was effective upon enactment on December 5, 1991.

In part, section 231 of Public Law 101–647 requires that child care employees, hired to provide child care services at a facility operated by the Government or under contract with the Government, undergo a criminal history background check. The statute broadly defines ''child care services'' as child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child day care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. Subsequently, section 1094 of Public Law 102–190 amended 42 U.S.C. 13041 to provide for the provisional supervised employment of child care employees prior to the completion of the required criminal history background check and specified additional safety measures for Federal child care service facilities.

B. Regulatory Flexibility Act

Under the interim rule, because Subtitle E, Section 231 of the Crime Control Act of 1990, Public Law 101–647 (42 U.S.C. 13041), requires child care employees hired under contract to undergo a criminal history background check, an Initial Regulatory Flexibility Act Analysis was prepared. No comments were received.

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 37

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 37, which was published at 59 FR 67050, December 28, 1994 (FAC 90–23, Item XXVII) is adopted as a final rule without change.

The authority citation for 48 CFR Part 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.
[FR Doc. 96–14540 Filed 6–19–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 42 and 52

[FAC 90–39; FAR Case 95–009; Item XXVI]

RIN 9000–AG57

Federal Acquisition Regulation; Quick-Closeout Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to ensure maximum use of the quick-closeout procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 95–009.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 42.708, Quick-closeout procedure, the clause at FAR 52.216–7, Allowable Cost and Payment, and the clause at FAR 52.216–13, Allowable Cost and Payment—Facilities, to ease the restrictions and maximize the use of the quick-closeout procedure. This rule was based on the recommendations of the Interagency Process Action Team (PAT) sponsored by the Air Force Materiel Command. The PAT's rationale was that, by raising the dollar limitation of quick-closeout procedures to those contracts with total unsettled indirect costs not exceeding $1 million in lieu of $500,000, the number of contracts which could be closed using quick-closeout procedures would increase. Use of this procedure would benefit contractors by allowing them to invoice earlier and avoid the administrative costs which would otherwise be incurred for tracking these

contracts until final indirect cost rates are negotiated. In addition, the use of quick-closeout procedures is voluntary on the part of the contractor to ensure that the contractor does not suffer any loss. The final rule (1) revises FAR 42.708(a) by substituting the word ''shall'' for ''may''; (2) raises the limitation in FAR 42.708(a)(2)(i) for total unsettled indirect costs allocable to any one contract from $500,000 to $1 million; and (3) revises FAR 42.708(a)(2)(ii) to permit the contracting officer to waive the 15 percent restriction based upon a risk assessment that considers contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information. Paragraph (f) of the clause at FAR 52.216–7 and paragraph (e) of the clause at 52.216–13 have also been revised to be consistent with the revisions to 42.708 as outlined above.

A proposed rule was published in the Federal Register on July 25, 1995 (60 FR 38196). Five comments from two sources were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small business are awarded on the basis of a firm-fixed price, and settlement of final indirect cost rates is, therefore, not an issue. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.708 is amended in the introductory text of paragraph (a) by removing ''may'' and inserting ''shall''; and by revising paragraph (a)(2) (i) and (ii) to read as follows:

42.708 Quick-closeout procedure.

(a) * * *

(2) * * *

(i) The total unsettled indirect cost to be allocated to any one contract does not exceed $1,000,000; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year. The contracting officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.216–7 is amended by revising the date of the clause and paragraph (f) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (AUG 1996)

* * * * *

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

* * * * *

4. Section 52.216–13 is amended by revising the introductory paragraph, the date in the clause heading, and paragraph (e) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

ALLOWABLE COST AND PAYMENT—FACILITIES (AUG 1996)

* * * * *

(e) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

* * * * *

[FR Doc. 96–14541 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 46

[FAC 90–39; FAR Case 92–031; Item XXVII]

RIN 9000–AG06

Federal Acquisition Regulation; Quality Assurance Actions—Electronic Screening

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to include definitions of the terms ''latent defect'' and ''patent defect.'' This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–031.

SUPPLEMENTARY INFORMATION:

A. Background

On June 8, 1992, the Department of Defense Inspector General issued Audit Report 92–099, Quality Assurance Actions Resulting from Electronic Component Screening, which included a recommendation that the Defense FAR Supplement be revised to include definitions of the terms ''latent defect'' and ''patent defect.'' Since both terms are used in the FAR, Part 46 of the FAR is being revised to include uniform definitions for use by all acquiring agencies. A proposed rule was published in the Federal Register at 59 FR 46386 on September 8, 1994. After evaluation of public comments, the Councils agreed to convert the proposed rule to a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revision merely provides uniform definitions for existing FAR terms. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 46 is amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 46.101 is amended by adding in alphabetical order the definitions ''Latent defect'' and ''Patent defect'' to read as follows:

46.101 Definitions.

* * * * *

Latent defect means a defect which exists at the time of acceptance but cannot be discovered by a reasonable inspection.

* * * * *

Patent defect means any defect which exists at the time of acceptance and is not a latent defect.

* * * * *

[FR Doc. 96–14542 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 46

[FAC 90–39; FAR Case 92–027; Item XXVIII]

RIN 9000–AF80

Federal Acquisition Regulation; Quality Assurance Nonconformances

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to provide standardized definitions of the terms ''critical nonconformance,'' ''major nonconformance,'' and ''minor nonconformance,'' and make other conforming amendments as a result of recommendations made by the Department of Defense Inspector General. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–027.

SUPPLEMENTARY INFORMATION:

A. Background

On September 27, 1990, the Department of Defense Inspector General (DoDIG) issued Audit Report 90–113, Nonconforming Products Procured by the Defense Industrial Supply Center. The report included recommendations that the DoD should use standardized terminology for a nonconformance, and that the DoD definition of a nonconformance should be in agreement with the FAR. On March 28, 1994 (59 FR 14466), the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published a proposed rule implementing the DoDIG's recommendation.

As a result of evaluating the comments received, changes were made to the proposed rule. The changes included deleting the words ''judgment and experience indicate'' from the definition of ''critical nonconformance;'' and adding the words ''of the supplies or services,'' to the definition of ''major nonconformance'' after the word ''failure.''

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely provides standard terminology and definitions and guidance to contracting officers pertaining to nonconforming supplies and services. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 46 is amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 46.101 is amended by adding in alphabetical order the definitions ''Critical nonconformance'', ''Major nonconformance'', and ''Minor nonconformance'' to read as follows:

46.101 Definitions.

* * * * *

Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

* * * * *

Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

Minor nonconformance means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

* * * * *

3. Section 46.103 is amended at the end of paragraph (c) by removing ''and''; in paragraph (d) by removing the period and inserting ''; and''; and by adding paragraph (e) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

4. Section 46.407 is amended by revising the first sentence of paragraph (c)(1) introductory text, and in the third sentence by removing the comma after the word ''determination''; revising paragraph (d); and revising the first sentence of paragraph (f) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major. * * *

* * * * *

(d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group.

* * * * *

(f) Each contract under which supplies or services with critical or major nonconformances are accepted as authorized in paragraph (c) of this section shall be modified to provide for an equitable price reduction or other consideration. * * *

* * * * *

[FR Doc. 96–14543 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 52

[FAC 90–39; FAR Case 95–603; Item XXIX]

RIN 9000–AG98

Federal Acquisition Regulation; Solicitation Provisions—Contract Clauses

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend a Federal Acquisition Regulation (FAR) provision to delete the statement advising offerors to obtain copies of specifications from General Services Administration Business Service Centers. The substance of the provision is not changed. Specifications are no longer available at the Business Service Centers. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–39, FAR case 95–603.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the provision at FAR 52.211–1 to delete the statement that copies of specifications may be obtained from the General Services Administration Business Service Centers in Boston, New York, Philadelphia, Atlanta, Kansas City, and Fort Worth. Copies of specifications are no longer available at the Business Service Centers.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq*. (FAC 90–39, FAR case 95–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.211–1 [Amended]

2. Section 52.211–1 is amended in the introductory paragraph by revising ''11.203(a)'' to read ''11.204(a)''; revising the date of the provision to read ''(AUG 1996)''; and in the first sentence of paragraph (a) of the provision by removing '', or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX.'' and replacing it with a period.

52.211–2 and 52.211–3 [Amended]

3. Section 52.211–2 is amended in the introductory paragraph by revising ''11.203(b)'' to read ''11.204(b)''.

4. Section 52.211–3 is amended in the introductory paragraph by revising ''11.203(c)'' to read ''11.204(c)''.

[FR Doc. 96–14544 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 52

[FAC 90–39; FAR Case 91–031; Item XXX]

RIN 9000–AE41

Federal Acquisition Regulation; Contract Award—Sealed Bidding—Construction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to inform offerors under construction solicitations that the Government may reject bids as nonresponsive if the prices are materially unbalanced. The proposed rule was published in the Federal Register at 56 FR 29539, June 27, 1991. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 91–31.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR was previously amended to include unbalanced bidding provisions at 52.214–10, Contract Award—Sealed Bidding, and 52.215–16, Contract Award, for supplies and services procured under sealed bidding and negotiation procedures. At that time, the unbalanced bidding provisions were not made applicable to construction solicitations. However, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided that, for consistency, construction solicitations should include a similar provision to notify offerors that their bids may be rejected as nonresponsive if the prices are materially unbalanced.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because unbalanced bidding provisions have already been incorporated in solicitations, for other than construction, with no known impact on the small business community. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.214–19 is amended by revising the date of the provision to read ''(AUG 1996)''; and by adding paragraph (d) to the provision to read as follows:

52.214–19 Contract Award—Sealed Bidding—Construction.

* * * * *

CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION (AUG 1996)

* * * * *

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

[FR Doc. 96–14545 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 52

[FAC 90–39; FAR Case 93–305; Item XXXI]

RIN 9000–AF54

Federal Acquisition Regulation; Small Business Innovation Research Rights in Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published at 59 FR 11386, March 10, 1994, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 15(f) of the revised SBIR Program Policy Directive published by the Small Business Administration in the Federal Register on January 26, 1993 (58 FR 6144). The revision to the clause, Rights in Data—SBIR Program, increases the small business concern's data rights retention period from 2 to 4 years. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 93–305.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 15(f) of the revised SBIR Program Policy Directive published by the SBA in the Federal Register on January 26, 1993 (58 FR 6144). Section 15(f) implements Section 103(f)(4) of Public Law 102–564, ''Small Business Research and Development Enhancement Act of 1992,'' which increases the small business concern's data rights retention period from 2 to 4 years.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR to conform to the requirements of the Small Business Innovation Research Program Policy Directive published by the Small Business Administration. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,

contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 52, which was published at 59 FR 11386, March 10, 1994 (FAC 90–20, Item XIX), is adopted as a final rule without change.

The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–14546 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 52

[FAC 90–39; FAR Case 92–001; Item XXXII]

RIN 9000–AG94

Federal Acquisition Regulation; Inspection Clauses—Fixed Price

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to clarify certain Federal Acquisition Regulation (FAR) Inspection clauses pertaining to quality assurance by replacing the words ''without additional charge'' with the words ''at no increase in contract price.'' This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 92–001.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 52.246–4 published in Federal Acquisition Circular 90–09 as FAR case 90–58 (see 56 FR 67135, December 27, 1991), included the addition of the phrase ''without additional charge'' in paragraph (d). A comment was received questioning the phrase ''without additional charge.'' As a result, this final rule replaces the phrase ''without additional charge'' with the phrase ''at no increase in contract price'' in certain FAR Inspection clauses for clarity.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–39, FAR case 92–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 52.246–2, 52.246–4, 52.246–7, 52.246–12, and 52.246–13 [Amended]

2. The clause dates in sections 52.246–2, 52.246–4, 52.246–7, 52.246–12, and 52.246–13 are revised to read ''(AUG 1996)''; and sections 52.246–2(d), 52.246–4(d), 52.246–7(c), and 52.246–12(e) are amended by removing the words ''without additional charge'' and inserting ''at no increase in contract price'' in their place; and section 52.246–13(a) is amended by removing the words promptly and without additional charge'' and inserting ''promptly, and at no increase in contract price'' in its place.

[FR Doc. 96–14547 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 52

[FAC 90–39; FAR Case 91–102; Item XXXIII]

RIN 9000–AF55

Federal Acquisition Regulation; Termination for Convenience

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify language in the ''Termination for Convenience of the Government (Fixed-Price)'' clause. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–39, FAR case 91–102.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register at 58 FR 64826, December 9, 1993. The proposed rule amended the clause at FAR 52.249–2, Termination for Convenience of the Government (Fixed-Price), to clarify existing language. Changes were made to clarify that incremental payments may be involved in some instances, such as a partial termination action, and to clarify the two instances when the contractor forfeits its right of appeal. After evaluation of public comments, the Councils agreed to two changes in the proposal. The first change revises paragraph (e) of the clause by replacing the word ''amended'' with the word ''modified.'' The second change revises paragraph (i) by deleting the phrase ''following a claim and final decision.''

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and

the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it simply clarifies existing language pertaining to settlement of contract termination costs. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.249–2 is amended by revising the date in the clause heading; and revising paragraphs (e) and (i) of the clause to read as follows:

§ 52.249–2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (AUG 1996)

* * * * *

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) of this clause, exclusive of costs shown in subparagraph (f)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

* * * * *

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (d) or (k), respectively, and failed to request a time extension, there is no right of appeal.

* * * * *

(End of clause)

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[FR Doc. 96–14548 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday
June 20, 1996

Part III

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); List of Regulated Substances and Thresholds for Accidental Release Prevention, Stay of Effectiveness; and Accidental Release Prevention Requirements: Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended, Guidelines; Final Rules and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–5516–5]

RIN 2050–AD26

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Clean Air Act requires EPA to promulgate regulations to prevent accidental releases of regulated substances and reduce the severity of those releases that do occur. EPA is promulgating rules that apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. Processes will be divided into three categories based on: the potential for offsite consequences associated with a worst-case accidental release; accident history; or compliance with the prevention requirements under OSHA's Process Safety Management Standard. Processes that have no potential impact on the public in the case of an accidental release will have minimal requirements. For other processes, sources will implement a risk management program that includes more detailed requirements for hazard assessment, prevention, and emergency response. Processes in industry categories with a history of accidental releases and processes already complying with OSHA's Process Safety Management Standard will be subject to a prevention program that is identical to parallel elements of the OSHA Standard. All other processes will be subject to streamlined prevention requirements. All sources must prepare a risk management plan based on the risk management programs established at the source. The source must submit the plan to a central point specified by EPA; the plan will be available to state and local governments and the public. These regulations will encourage sources to reduce the probability of accidental releases of substances that have the potential to cause immediate harm to public health and the environment and will stimulate the dialogue between industry and the public to improve accident prevention and emergency response practices.

DATES: The rule is effective August 19, 1996.

ADDRESSES: Supporting material used in developing the proposed rule, supplemental notice, and final rule is contained in Docket No. A–91–73. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at Room 1500, 401 M St. SW, Washington, DC 20460. A reasonable fee may charged for copying.

FOR FURTHER INFORMATION CONTACT: Craig Matthiessen at (202) 260–8600, Chemical Emergency Preparedness and Prevention Office, U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1–800–424–9346 (in the Washington, DC, metropolitan area, (703) 412–9810).

SUPPLEMENTARY INFORMATION: *Judicial Review.* Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7) were proposed in the Federal Register on October 20, 1993 (58 FR 54190). A supplemental notice was issued on March 13, 1995 (60 FR 13526). This Federal Register action announces the EPA's final decisions on the rule. Under section 307(b)(1) of the Act, judicial review of the Accidental Release Prevention Requirements: Risk Management Programs is available only by the petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Regulated Entities

Entities potentially regulated by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Examples of regulated entities
Chemical Manufacturers	Industrial organics & inorganics, paints, pharmaceuticals, adhesives, sealants, fibers
Petrochemical	Refineries, industrial gases, plastics & resins, synthetic rubber
Other Manufacturing	Electronics, semiconductors, paper, fabricated metals, industrial machinery, furniture, textiles
Agriculture	Fertilzers, pesticides
Public Sources	Drinking and waste water treatment works
Utilities	Electric and Gas Utilities
Others	Food and cold storage, propane retail, warehousing and wholesalers
Federal Sources	Military and energy installations

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 (59 FR 4478), the proposed modifications (61 FR 16598, April 15, 1996) and the stay of implementation of the affected provisions until the proposed modifications are final published elsewhere in today's Federal Register, and the applicability criteria in § 68.10 of today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in reading this preamble:

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I. Introduction and Background

A. Statutory Authority

This rule is promulgated under sections 112(r), 301(a)(1), Title V of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f).

B. Background

The CAA Amendments of 1990 amend section 112 and add paragraph (r). The intent of section 112(r) is to prevent accidental releases to the air and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the public and the environment. Section 112(r)(3) mandates that EPA promulgate a list of regulated substances, with threshold quantities; this list defines the stationary sources that will be subject to accident prevention regulations mandated by section 112(r)(7). EPA promulgated its list of substances on January 31, 1994 (59 FR 4478) (''List Rule'').

As noted elsewhere in today's Federal Register, EPA has stayed certain provisions of part 68 that were promulgated as part of the List Rule. The stayed provisions are being addressed in amendments to the List Rule, which were proposed in 61 FR 16598 (April 15, 1996). Therefore, EPA has not taken final action on provisions of the Risk Management Program rule that apply to regulated substances, mixtures, and stationary sources addressed by the stayed provisions. Final action will be deferred until EPA takes final action on the proposed amendments to the List Rule.

Section 112(r)(7) mandates that EPA promulgate regulations and develop guidance to prevent, detect, and respond to accidental releases. Stationary sources covered by these regulations must develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program must be described in a risk management plan (RMP) that must be registered with EPA, submitted to state and local authorities, and made available to the public. On October 20, 1993, EPA published a Notice of Proposed Rulemaking (NPRM) for the section 112(r)(7) regulations (58 FR 54190). (For a summary of the statutory requirements of section 112(r) and related statutory provisions, see the October 20, 1993, NPRM).

Following publication of the proposed rule, EPA held four public hearings and received approximately 770 written comments. Because of these comments, EPA issued a supplemental notice of proposed rulemaking (SNPRM) on March 13, 1995 (60 FR 13526) for comment on: approaches for setting different requirements for sources that pose different levels of hazard (tiering); worst-case releases and other hazard assessment issues; accident information reporting; public participation; inherently safer approaches; and implementation and integration of section 112(r) with state programs, particularly state air permitting programs. EPA held a public hearing on March 31, 1995, in Washington, DC, and received more than 280 written comments. Today's rule reflects EPA's consideration of all comments; major issues raised by commenters and EPA's response are briefly discussed in Section III of this preamble. A summary of all comments submitted and EPA's response to them is available in the Docket (see **ADDRESSES**).

EPA has proposed to delist explosives from § 68.130. Consequently, explosives are not addressed in this rule. EPA had also requested at the time of the final List Rule comments on whether flammable substances, when used as fuel, posed a lesser intrinsic hazard than the same substance handled otherwise (59 FR 4500, January 31, 1994). The comments submitted lacked data that would justify a lesser level of hazard consideration for flammable fuels; hence, the Agency will not adopt a fuel use exemption for purposes of threshold quantity determination.

With today's rule, EPA continues the philosophy that the Agency embraced in implementing the Emergency Planning and Community Right-to-Know Act of

1986 (EPCRA). Specifically, EPA recognizes that regulatory requirements, by themselves, will not guarantee safety. Instead, EPA believes that information about hazards in a community can and should lead public officials and the general public to work with industry to prevent accidents. For example, today's rule requires covered sources to provide information about possible worst-case scenarios. EPA intends that officials and the public use this information to understand the chemical hazards in the community and then engage in a dialogue with industry to reduce risk. In this way, accident prevention is focused primarily at the local level where the risk is found. Further, today's rule builds on existing programs and standards. For example, EPA has coordinated with Occupational Safety and Health Administration (OSHA) and the Department of Transportation (DOT) in developing this regulation. To the extent possible, covered sources will not face inconsistent requirements under these agencies' rules. EPA is encouraging sources to use existing emergency response programs, rather than develop a separate and duplicative program under this rule. In addition, today's rule scales requirements based on the potential risk posed by a source and the steps needed to address the risk, rather than imposing identical requirements on all sources.

To accommodate the concerns of small businesses, EPA is providing guidance with reference tables that covered sources can use to model the offsite consequences of a release. EPA is providing a model RMP guidance for the ammonia refrigeration industry, and will develop similar guidance for propane handlers and drinking water systems. As today's rule is implemented, EPA hopes that other industry sectors will work with EPA to develop model RMPs for other processes, thereby reducing costs for individual sources. Finally, today's rule requires industry to submit RMPs centrally in a format and method to be determined by EPA. Working with stakeholders, EPA will develop mechanisms to allow industry to use appropriate electronic technology to register with EPA and submit RMPs. In turn, all interested parties will be able to access electronically the data in RMPs. This method of submission and access avoids a potentially significant amount of paperwork for all involved parties and promotes uniformity. Users will be able to develop databases for specific purposes and compare RMPs for various sites across the country. In turn, industries' use of the data will promote continuous improvement, for example, through new safety technologies. As the method for submitting RMPs is developed, EPA invites the participation of all stakeholders, including industry, state and local governments, local emergency planning committees, environmental groups, and the general public.

II. Discussion of Final Rule

A. Applicability

The owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with these requirements no later than June 21, 1999; three years after the date on which a regulated substance is first listed under § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process, whichever is later.

B. Program Criteria and Requirements

Under today's rule, processes subject to these requirements are divided into three tiers, labeled Programs 1, 2, and 3. EPA has adopted the term ''Program'' to replace the term ''Tier'' found in the SNPRM to avoid confusion with Tier I and Tier II forms submitted under EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III). Eligibility for any given Program is based on process criteria so that classification of one process in a Program does not influence the classification of other processes at the source. For example, if a process meets Program 1 criteria, the source need only satisfy Program 1 requirements for that process, even if other processes at the source are subject to Program 2 or Program 3. A source, therefore, could have processes in one or more of the three Programs.

Program 1 is available to any process that has not had an accidental release with offsite consequences in the five years prior to the submission date of the RMP and has no public receptors within the distance to a specified toxic or flammable endpoint associated with a worst-case release scenario. Program 3 applies to processes in Standard Industrial Classification (SIC) codes 2611 (pulp mills), 2812 (chlor-alkali), 2819 (industrial inorganics), 2821 (plastics and resins), 2865 (cyclic crudes), 2869 (industrial organics), 2873 (nitrogen fertilizers), 2879 (agricultural chemicals), and 2911 (petroleum refineries). Program 3 also applies to all processes subject to the OSHA Process Safety Management (PSM) standard (29 CFR 1910.119), unless the process is eligible for Program 1. Owners or operators will need to determine individual SIC codes for each covered process to determine whether Program 3 applies. All other covered processes must satisfy Program 2 requirements. Program requirements and differences are illustrated on Tables 1 and 2:

TABLE 1—PROGRAM ELIGIBILITY CRITERIA

Program 1	Program 2	Program 3
No offsite accident history	.....	Process is subject to OSHA PSM.
No public receptors in worst-case circle	The process is not eligible for Program 1 or 3	Process is in SIC code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911.
Emergency response coordinated with local responders.	.....	

TABLE 2—COMPARISON OF PROGRAM REQUIREMENTS

Program 1	Program 2	Program 3
Hazard Assessment:		
Worst-case analysis	Worst-case analysis	Worst-case analysis.
	Alternative releases	Alternative releases.
5-year accident history	5-year accident history	5-year accident history.
Management Program:		
	Document management system	Document management system.

TABLE 2—COMPARISON OF PROGRAM REQUIREMENTS—Continued

Program 1	Program 2	Program 3
Prevention Program:		
Certify no additional steps needed	Safety Information	Process Safety Information.
	Hazard Review	Process Hazard Analysis.
	Operating Procedures	Operating Procedures.
	Training	Training.
	Maintenance	Mechanical Integrity.
	Incident Investigation	Incident Investigation.
	Compliance Audit	Compliance Audit.
		Management of Change.
		Pre-startup Review.
		Contractors.
		Employee Participation.
		Hot Work Permits.
Emergency Response Program:		
Coordinate with local responders	Develop plan and program	Develop plan and program.
Risk Management Plan Contents:		
Executive Summary	Executive Summary.	Executive Summary
Registration	Registration	Registration.
Worst-case data	Worst-case data	Worst-case data.
5-year accident history	Alternative release data	Alternative release data.
Certification	5-year accident history	5-year accident history.
	Prevention program data	Prevention program data.
	Emergency response data	Emergency response data.
	Certification	Certification.

The owner or operator of a covered process must: (1) prepare and submit a single risk management plan (RMP), including registration that covers all affected processes and chemicals; (2) conduct a worst-case release scenario analysis, review accident history, ensure emergency response procedures are coordinated with community response organizations to determine eligibility for Program 1 and, if eligible, document the worst case and complete a Program 1 certification for the RMP; (3) conduct a hazard assessment, document a management system, implement a more extensive, but still streamlined prevention program, and implement an emergency response program for Program 2 processes; and (4) conduct a hazard assessment, document a management system, implement a prevention program that is fundamentally identical to the OSHA PSM Standard, and implement an emergency response program for Program 3 processes.

Measures taken by sources to comply with OSHA PSM for any process that meets OSHA's PSM standard are sufficient to comply with the prevention program requirements of all three Programs. EPA will retain its authority to enforce the prevention program requirements and the general duty requirements of CAA Section 112(r)(1). EPA and OSHA are working closely to coordinate interpretation and enforcement of PSM and accident prevention programs. EPA will also work with state and local agencies to coordinate oversight of worker and public safety and environmental protection programs.

C. Hazard Assessment

EPA has adopted the worst-case definition proposed in the SNPRM. For all substances, the worst-case release scenario will be defined as the release of the largest quantity of a regulated substance from a vessel or process line failure, including administrative controls and passive mitigation that limit the total quantity involved or the release rate. For most gases, the worst-case release scenario assumes that the quantity is released in 10 minutes. For liquids, the scenario assumes an instantaneous spill; the release rate to the air is the volatilization rate from a pool 1 cm deep unless passive mitigation systems contain the substance in a smaller area. For flammables, the worst case assumes an instantaneous release and a vapor cloud explosion.

For the final rule, EPA has adopted the term ''alternative release scenarios'' to replace the term ''other more likely scenarios'' found in the NPRM and SNPRM. The non-worst-case accidental releases for the hazard assessment portion of the risk management plan were presumed ''more likely to occur'' and ''more realistic'' than the worst case. EPA believes sources should have flexibility to select non-worst-case scenarios that are the most useful for communication with the public and first responders and for emergency response preparedness and planning. Catastrophic accidental releases are typically rare events; the words ''more likely'' suggests certainty of occurrence. Consequently, the scenarios other than worst case provided in the hazard assessment are called alternative release scenarios. For alternative scenarios, sources may consider the effects of both passive and active mitigation systems.

One worst-case release scenario will be defined to represent all toxics, and one worst-case release scenario will be defined to represent all flammables held above the threshold at the source. Additional worst-case release scenario(s) must be analyzed and reported if such a release from another covered process at the source potentially affects public receptors that would not be potentially affected by the first scenario. EPA recognizes that this approach may be problematic for some sources such as batch processors and warehouses where use of listed substances or inventory may vary considerably within an RMP reporting period. EPA suggests that owners or operators of such processes develop a worst-case scenario for future chemical use and inventory based on past practices to minimize the need for frequent revision of their worst-case scenario. For alternative release scenarios, one scenario is required for each toxic substance and one to represent all flammable substances held in covered processes at the source.

An endpoint is needed for the offsite consequence analysis. Appendix A of today's rule lists the endpoints for toxic substances that must be used in worst-

case and alternative scenario assessment. The endpoint for a toxic substance is its Emergency Response Planning Guideline level 2 (ERPG–2) developed by the American Industrial Hygiene Association (AIHA). If a substance has no ERPG–2, then the endpoint is the level of concern (LOC) from the Technical Guidance for Hazards Analysis, updated where necessary to reflect new toxicity data. EPA recognizes the limitations associated with ERPG–2 and LOC values and is working with other agencies to develop Acute Exposure Guideline Limits (AEGLs). When these values have been developed and peer-reviewed, EPA intends to adopt them through rulemaking as the toxic endpoints for this rule. For flammables, vapor cloud explosion distances will be based on an overpressure of 1 psi; for alternative flammable releases, radiant heat distances will be based on an exposure of 5 kW/m^2 for 40 seconds. For vapor cloud fires and jet fires, the lower flammability limit provided by the National Fire Protection Association (NFPA) or other sources shall be used.

EPA selected 1.5 meter per second (m/s) wind speed and F atmospheric stability class as the default worst-case scenario meteorological conditions. If the owner or operator has meteorological data that show that higher minimum wind speeds or less stable atmospheric class conditions existed at the source at all times in the previous three years, then the higher wind speed and different stability class may be used. Alternative release analyses may use site-specific, typical meteorological conditions. If the owner or operator has no data on typical meteorological conditions, then conditions used in the RMP Offsite Consequence Analysis Guidance (3 m/s and D stability), may be used. Although EPA is providing technical guidance and reference tables for worst-case and alternative release scenario assessments, owners or operators may use any generally recognized, commercially or publicly available air dispersion modeling techniques, provided the modeling parameters specified in the rule are used.

For the hazard assessment and the RMP, populations potentially affected are defined as those within a circle that has as its center the point of release and its radius the distance to the toxic or flammable endpoint. Owners or operators may use Census data to define this population, and may update those data if they are inaccurate. EPA suggests that owners or operators use LandView, an electronic publication of environmental, geographic and demographic information published by EPA and the Bureau of Census. The presence of schools, hospitals, other institutions, public arenas, recreational areas, and large commercial and industrial developments that can be identified on street maps within this circle must be noted in the RMP, but the number of people occupying them need not be enumerated. The presence of environmental receptors within this circle must also be listed. EPA has defined environmental receptors as natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that can be exposed to an accidental release. All of these can be identified on local U.S. Geological Survey maps or maps based on USGS data.

The five-year accident history will cover all accidents involving regulated substances, but only from covered processes at the source that resulted in serious on site or certain known offsite impacts in the five years prior to the submission of each RMP. EPA has replaced the definition of significant accidental release with specific definitions of the types of releases to be covered under each of the specific requirements previously associated with this definition.

D. Prevention Programs

EPA has retained the management system requirement proposed in the NPRM, but only for Program 2 and 3 processes. EPA has moved the management system requirement from the prevention program section to the general requirements section because it should be designed to oversee the implementation of all elements of the risk management program. The owner or operator must designate a qualified person or position with overall responsibility for the program and specify the lines of authority if responsibility for implementing individual requirements is assigned to other persons or positions.

In the SNPRM, EPA proposed a Program 2 prevention program that covered training, maintenance, safety precautions, and monitoring, but did not specify any particular actions. EPA solicited comment on whether specific prevention activities should be required for Program 2 sources, such as any of the specific activities initially proposed in the NPRM. For today's rule, EPA has developed seven specific elements for the Program 2 prevention program: safety information (§ 68.48), hazard review (§ 68.50), operating procedures (§ 68.52), training (§ 68.54), maintenance (§ 68.56), compliance audits (§ 68.58), and incident investigation (§ 68.60). Most Program 2 processes are likely to be relatively simple and located at smaller businesses. EPA believes owners or operators of Program 2 processes can successfully prevent accidents without a program as detailed as the OSHA PSM, which was primarily designed for the chemical industry. EPA combined and tailored elements common to OSHA's PSM and EPA's NPRM to generate Program 2 requirements and applied them to non-petrochemical industry processes. EPA is also developing model risk management programs (and RMPs) for several industry sectors that will have Program 2 processes. These model guidances will help sources comply by providing standard elements that can be adopted to a specific source. EPA expects that many Program 2 processes will already be in compliance with most of the requirements through compliance with other Federal regulations, state laws, industry standards and codes, and good engineering practices.

The Program 3 prevention program includes the requirements of the OSHA PSM standard, 29 CFR 1910.119 (c) through (m) and (o), with minor wording changes to address statutory differences. This makes it clear that one accident prevention program to protect workers, the general public, and the environment will satisfy both OSHA and EPA. For elements that are in both the EPA and OSHA rules, EPA has used OSHA's language verbatim, with the following changes: the replacement of the terms ''highly hazardous substance,'' ''employer,'' ''standard'' and ''facility'' with ''regulated substance,'' ''owner or operator,'' ''part or rule,'' and ''stationary source''; the deletion of specific references to workplace impacts or to ''safety and health;'' changes to specific schedule dates; and changes to references within the standard. The ''safety and health'' and ''workplace impacts'' references occur in OSHA's PSM standard in process safety information (29 CFR 1910.119 (d)(2)(E)), process hazards analysis (29 CFR 1910.119(e)(3)(vii)), and incident investigation (29 CFR 1910.119(m)(1)). These changes are designed to ensure that OSHA retains its oversight of actions designed to protect workers while EPA retains its oversight of actions to protect public health and the environment and to remove possible interpretations that certain elements of process safety management fail to account for offsite impacts. Commenters were particularly concerned about the phase-in of process hazard analyses

(PHAs). Under the final rule, PHAs conducted for OSHA are considered adequate to meet EPA's requirements. They will be updated on the OSHA schedule (i.e., by the fifth anniversary of their initial completion). This approach will eliminate any need for duplicative analyses. Documentation for the PHA developed for OSHA will be sufficient to meet EPA's purposes.

EPA anticipates that sources whose processes are already in compliance with OSHA PSM will not need to take any additional steps or create any new documentation to comply with EPA's Program 3 prevention program. Any PSM modifications necessary to account for protection of public health and the environment along with protection of workers can be made when PSM elements are updated under the OSHA requirements. EPA has modified the OSHA definition of catastrophic release, which serves as the trigger for an incident investigation, to include events ''that present imminent and substantial endangerment to public health and the environment.'' As a result, this rule requires investigation of accidental releases that pose a risk to the public or the environment, whereas the OSHA rule does not. EPA recognizes that catastrophic accidental releases primarily affect the workplace and that this change will have little effect on incident investigation programs already established. However, EPA needs to ensure that deviations that could have had only an offsite impact are also addressed.

E. Emergency Response

EPA has adopted the emergency response requirements found in the statute, without additional specific planning requirements beyond those necessary to implement the statute. This action is consistent with the Agency's effort to develop a single Federal approach for emergency response planning. The Presidential Review of Federal release prevention, mitigation, and response authorities (required under section 112(r)(10) of the Clean Air Act) found that there is seldom harmony in the required formats or elements of response plans prepared to meet various Federal regulations. Accordingly, EPA has committed not to specify new plan elements and/or a specific plan format in today's rule beyond those that are statutorily required. EPA believes that plans developed to comply with other EPA contingency planning requirements and the OSHA Hazardous Waste and Emergency Operations (HAZWOPER) rule (29 CFR 1910.120) will meet most of the requirements for the emergency response program. In addition, EPA and other National Response Team agencies have prepared Integrated Contingency Plan Guidance (''one plan'') (NRT, May 1996). The NRT and the agencies responsible for reviewing and approving federal response plans to which the one plan option applies agree that integrated response plans prepared in the format provided in this guidance will be acceptable and be the federally preferred method of response planning. An emergency response plan that includes the elements specified in this guidance can be used to meet the requirements in today's rule. The final rule also provides relief for sources that are too small to respond to releases with their own employees; these sources will not be required to develop emergency response plans provided that procedures for notifying non-employee emergency responders have been adopted and that appropriate responses to their hazards have been addressed in the community emergency response plan developed under EPCRA (42 U.S.C. 11003) for toxics or coordinated with the local fire department for flammables.

F. Risk Management Plan (RMP)

Owners or operators must submit their first RMP by the date specified in § 68.10. After the RMP is submitted, changes at the source may require updates to the RMP other than the standard update every five years. If a new substance or new process is added, the RMP will need to be revised and submitted by the date the substance is first in the process above the threshold quantity. If changes to processes require revised hazard assessments or PHAs, or if a process changes Program level, the source must submit a revised RMP within six months.

EPA intends that the RMP will be submitted in a method and format to a central point as specified by EPA. States, local entities including local emergency planning committees (LEPCs), and the public will be able to access all RMPs electronically. This process will relieve states and local entities of the burden of filing documents and providing public access to them without limiting these agencies' or the public's access to the information.

The RMP is a multi-purpose document. The CAA requires that the RMP indicate compliance with the regulations and also include the hazard assessment, prevention program, and emergency response program. EPA is mandated to develop a program for auditing RMPs and requiring revisions, where appropriate. The RMP, therefore, must include enough data to allow the implementing agency to determine, through review of the RMP, whether the source is in compliance with the rule. EPA, however, believes that the RMP must serve another function; to provide information to the public in a form that will be understandable and will encourage the public to use the information to improve the dialogue with sources on issues related to prevention and preparedness.

To meet both of these purposes, the RMP will consist of the source's registration; an executive summary that will provide a brief description of the source's activities as they relate to covered processes and program elements; and data elements that address compliance with each of the rule elements. While the public and implementing agencies could make use of all sections of the RMP, the executive summary will provide text descriptions and give the source a chance to explain its programs in a format that will be easy for communities to read and understand. The data elements will provide the implementing agency with the basic data it needs to assess compliance without asking for detailed documentation. The Agency is considering development of an RMP form where the data elements of the form would provide the implementing agency with the basic data it needs to assess compliance without asking for detailed documentation. All data elements would be checkoff boxes, yes/no answers, or numerical entries.

This approach will provide data that anyone can download or search. States, communities, trade associations, or public interest groups may want to use the data or a subset of the data to create databases that allow them to compare sources in the same industry or same area. For example, a local entity will be able to download data from all reporting sources that are similar to ones in its community to determine whether the quantities stored and process controls used are typical. The information will provide the public with data that will enhance their dialogue with sources. It will also help sources and trade associations to understand practices in their industries and identify practices that could be used to reduce risks. The risk management program documentation will remain at the source and will be available for review by EPA and the implementing agency.

G. Air Permitting

The SNPRM discussed the relationship between section 112(r) and CAA air permitting requirements for sources subject to both provisions. Under the CAA, air permitting authorities must ensure that sources are

in compliance with applicable requirements to issue a permit. Because section 112(r) is an applicable requirement, EPA has identified in the final rule the permit conditions and the actions owners or operators and air permitting authorities must take to ensure compliance. The permit must identify part 68 as an applicable requirement and establish conditions that require the owner or operator of the source to submit either a compliance schedule for meeting the requirements of part 68 by the date specified in § 68.10(a) or, as part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that, to the best of the owner or operator's knowledge, the source is in compliance with all requirements of this part, including the registration and submission of the RMP. The owner or operator must also submit any additional relevant information requested by the air permitting authority or designated agency to ensure compliance with the requirements of this section. If a permit is already issued that does not contain the provisions described above, then, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures in 40 CFR 70.7 or 71.7 to incorporate the terms and conditions as described above. EPA also allows the state to assign the authority to implement and enforce these requirements to another agency or agencies (the ''designated agency'') to take advantage of resources or accident prevention expertise that might be available in these other agencies. Finally, the air permitting authority or designated agency must: (1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required; (2) verify that the source owner or operator has submitted the proper certification or compliance schedule; (3) for some or all sources, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews or facility inspections to ensure that permitted sources are in compliance; and (4) initiate enforcement action, based on the requirements of this section, as appropriate.

H. Other Issues

In the SNPRM, EPA discussed three other issues raised by commenters: accident information reporting, public participation, and inherently safer technologies. EPA has decided not to develop any requirements related to these issues at this time. Although EPA continues to believe that accident reports that provide more detail on the causes and impacts of accidents could be useful, the Agency has decided to limit such reporting required under this rule to the five-year accident history mandated by the CAA. When necessary, EPA will use its authority to investigate individual accidents and to seek additional information to the extent authorized by CAA section 114 (i.e., to determine compliance with this rule and CAA section 112(r)(1), to support further rule development, and to assist research on hazard assessment).

Secondly, the Agency encourages sources, the public, and local entities to work together on accident prevention issues, but believes that the wide variety and large number of sources subject to this rule make any single mandatory approach to public participation inappropriate. RMP information should be used as the basis for dialogue between the community and sources on accidental release prevention, risk reduction and preparedness for emergency response. Industry and the public should continue to use the LEPC as a mechanism for this dialogue.

Finally, EPA does not believe that a requirement that owners or operators conduct searches or analyses of alternative process technologies for new or existing processes will produce significant additional benefits. Many commenters, including those who support these analyses, indicated that an assessment of inherently safer design alternatives has the most benefit in the development of new processes. Industry generally examines new process alternatives to avoid the addition of more costly administrative or engineering controls associated with a design that may be more hazardous in nature. Although some existing processes may be judged to be inherently less safe than others, EPA believes most of these processes can be safely operated through management and control of the hazards without spending resources searching for unavailable or unaffordable new process technologies. Application of good PHA techniques often reveals opportunities for continuous improvement of existing processes and operations without a separate analysis of alternatives. EPA encourages owners or operators to continue to examine and adopt viable alternative processing technologies, system safeguards, or process modifications to make new and existing processes and operations inherently safer. Through the process and prevention program information in the RMP, sources can demonstrate, and users of the RMP information can observe and promote, progress toward safer processes and operations.

EPA is considering the development of incentives and awards to stimulate inherently safer alternative research and development, public outreach and education, and risk communication efforts. The Agency welcomes ideas and participation in this effort.

III. Discussion of Comments

EPA received 1220 comments, including 180 relevant comments submitted for the List Rule, 757 comments on the NPRM, and 283 comments on the SNPRM. The commenters represented 92 chemical manufacturers, 81 other chemical users, 111 petroleum industry companies, 174 industry trade associations, 40 other trade associations, 58 agricultural supply retailers, 102 propane retailers, 132 explosives users, 29 water treatment facilities, 26 utilities, 66 state agencies, 63 local governments, 8 other Federal agencies, 52 academics and consultants, 61 environmental groups, 6 labor unions, and 31 private citizens. The remaining 88 letters were requests for extensions of the comment period, interim or duplicate sets of comments, or had been sent to the incorrect docket. The major issues raised by the commenters are briefly addressed below; a complete presentation of the Agency's response to the comments received on this rulemaking is available in the Risk Management Program Rule: Summary and Response to Comments in the docket (see **ADDRESSES**).

Many commenters requested that EPA's list be identical to OSHA's list of highly hazardous substances and no thresholds should be less than OSHA's. These comments were addressed in the final list rule (59 FR 4478; January 21, 1994) and background material related to these issues is available in docket number A–91–74 (see **ADDRESSES**).

A. Tiering

Commenters on the NPRM suggested that EPA create different levels of requirements for sources that pose different risks. In the SNPRM, EPA proposed three tiers: a low hazard tier for sources whose worst-case release would not affect any public or environmental receptors of concern; a medium hazard tier for sources that were not eligible or covered by the low or high hazard tiers; and a high hazard tier based on either industry sector accident history and number of employees or simply based on the number of employees. Generally, commenters were concerned that all processes at a source would need to be eligible for Program 1 before any process could be. EPA has revised the rule to clarify that eligibility for any tier

(Program) is based on process criteria, not source. If a process meets Program 1 criteria, the owners or operators need only meet Program 1 requirements for that process even if other processes at the source are subject to Program 2 or Program 3.

1. Rationale. Only 2 of the 57 commenters opposed tiering arguing that the CAA mandates that all covered sources be required to complete a full prevention program and that Congress had considered and rejected exemptions. One commenter argued that EPA had already accounted for ''differences in size, operations, processes, class and categories of sources'' in developing the list and thresholds. Most commenters supported tiering as an appropriate way to recognize different levels of risks and to allow sources and emergency responders to focus on the highest risk processes.

EPA disagrees that the CAA requires all covered processes to comply with the same detailed risk management program. EPA listed regulated substances because of their inherent hazards, such as toxicity and volatility. EPA did not consider, nor does the CAA indicate that it may consider, ''differences in size, operations, processes, class and categories of sources'' in selecting chemicals or setting thresholds. In establishing section 112(r)(7) requirements, however, Congress clearly recognized that a ''one-size-fits-all'' approach may not be appropriate for these regulations and directed EPA to consider these factors in the development of the accident prevention regulations. Furthermore, EPA strongly disputes the assertion that it has exempted any source from regulation by creating different programs for different sources. As noted below, all covered processes will be addressed in RMPs that contain hazard assessment, prevention, and response information, as required by statute.

2. Program 1 vs. Program 2 and Program 3 Criteria. Commenters generally supported Program 1 for low-risk sources, but argued that few, if any, sources would qualify because the requirements were too stringent.

a. Potential for Offsite Impact. Commenters generally agreed that sources that can demonstrate no offsite impact should be eligible for Program 1, but only public health should be considered, not environmental impacts. Others stated that only sources posing a threat of ''considerable'' impacts should not be eligible for Program 1. One commenter stated that EPA's worst-case scenario is unrealistic and its use as a Program 1 trigger is unreasonable. Other commenters want EPA to allow site-specific modeling for the offsite consequence analysis, rather than look-up tables.

In today's rule, EPA specifically allows owners or operators to use site-specific air dispersion modeling for their offsite consequence analyses. EPA disagrees that offsite impacts should be limited to ''considerable'' impacts. When offsite impacts are possible, it may be reasonable to implement some additional measures to reduce accidental releases, especially when the burden of measures such as additional training or safety precautions is low. Programs 2 and 3 provide flexibility to allow source-specific consideration of the appropriate level of effort. Program 1 requires no additional prevention measures, which is only categorically justifiable if such measures would not reduce offsite impact. It is reasonable to couple a no impact criterion with a conservative worst-case scenario to conclude categorically the public would not benefit from additional prevention measures. If no impact can be demonstrated for a conservative worst-case release, then no impact is likely to occur for any other release event, and the process could be judged to pose a low threat to the surrounding area.

EPA has decided that potential impact on environmental receptors resulting from a worst-case scenario will not be a criterion to determine eligibility for Program 1. EPA agrees that very little, if any, data exist on the potential acute environmental impacts or environmental endpoints associated with listed chemicals upon accidental release. In addition, the offsite consequence distances estimated using human acute toxicity or overpressure effects may not be directly relevant to environmental effects. However, owners or operators will be required to document in the RMP the presence of such receptors within the distance determined for the worst case. EPA believes that natural resource agencies and the public will be able to benefit from the environmental receptors information in the RMP in discussions with the source.

b. Accident History for Program 1. Many commenters objected to accident history as a Program 1 criterion, arguing that a process that had a significant accidental release in the previous five years may have been changed to reduce or eliminate future events and public impact. Several commenters suggested that such processes that otherwise meet Program 1 criteria should remain eligible, but be required to justify and document the changes. Some commenters also objected to EPA's proposed definition of significant accidental release, arguing that many companies and emergency responders conservatively evacuate or shelter-in-place during minor incidents. Under the proposed definition, these actions disqualify a process from Program 1 even if there were no offsite impacts. Some commenters stated that the accident history provision was unnecessary because, by definition, a Program 1 process is not capable of an accidental release that could affect public receptors.

EPA has decided to retain the accident history criterion for Program 1 processes, excluding events with evacuations and shelterings in place, and to drop the definition of significant accidental release. Program 1 eligibility is not a one-time exercise; owners or operators must certify in each RMP that no qualifying releases have occurred since the previous RMP submission and provide current worst-case release data indicating no offsite impacts are anticipated in the future. Program 1 criteria and accident history provide owners or operators an opportunity to demonstrate to the community ongoing excellence in accident prevention and an incentive to search for and implement ways, such as inventory reduction, to reduce the potential for offsite impacts associated with large scale accidental releases. Further, the unique circumstances surrounding past accidents can provide a reality check on the theoretical modeling and worst-case scenario claims used for the offsite consequence assessment and serve to verify that administrative controls and passive mitigation measures work as intended. EPA decided to delete public evacuations or shelterings-in-place as criteria for Program 1 eligibility. EPA is that inclusion of these criteria in Program 1 eligibility may create a perverse incentive not to report releases and it may encourage sources and local emergency officials to take more chances during an event when there may be potential exposures that do not rise to the endpoint specified in this rule but would otherwise be worthy of precautionary actions by the source or by local officials. If the evacuation or sheltering takes place because of a concern for public exposure to an endpoint as specified in this rule, then public receptors necessarily would be under the worst case distance and the process would not be eligible for Program 1 under the criteria of the rule. Owners or operators of processes that meet Program 1 eligibility requirements are required to report a 5 year accident history for that process. If local

emergency planners, first responders or the public have concerns about processes in Program 1 because of a past evacuation or sheltering-in-place event, then mechanisms under EPCRA could be used to gather more information from the source about its prevention program (such as EPCRA sections 302(b)(2) [designation of a facility if it does not already handle extremely hazardous substances listed under section 302] and 303(d)(3) [provision of information to the emergency planning committee]) and involve the source in emergency planning. Sources and local first responders should be discussing evacuation and sheltering-in-place criteria and decisions as part of emergency response planning.

c. Other. Many commenters asked that specific industries such as ammonia refrigeration, retail fertilizer outlets, all flammables, and all non-PSM sources be assigned to Program 1. EPA disagrees because each source has unique surroundings that must be considered in the worst-case assessment and each source must demonstrate favorable accident history. All ammonia refrigeration units covered by this rule are already subject to OSHA PSM; many of these have had accidents that affected the community and should be required to complete the requirements of the hazard assessment and emergency response program and provide the community with full RMP information. According to the industry, a typical ammonia fertilizer retailer handles 200 tons of ammonia. Some retailers may be very geographically isolated and can qualify for Program 1, but EPA expects that most will be subject to Program 2. Given the large quantity of ammonia involved, EPA considers it important that the community have information on offsite consequences from these sources and that the owner or operator takes the necessary steps to address accidental release prevention and emergency response.

EPA expects that some sources handling flammables will qualify for Program 1 because the distance to a 1 psi overpressure is generally less than distances to toxic endpoints. Nonetheless, those sources handling flammables in sufficient quantity to generate a potential offsite impact should provide the community with information on hazards and address prevention and response steps. Many sources handling flammables are already subject to PSM; the only additional steps required under this rule are completion of the hazard assessment and emergency response programs and submission of an RMP.

EPA does not agree that non-PSM sources should be assigned to Program 1. Many of these sources could have an accidental release that can affect the community. OSHA exempted retailers because they are covered by other OSHA or state regulations that address workplace safety, not because they are incapable of having offsite impacts. All retailers are in Program 2 unless they can meet Program 1 criteria; thus, they should be taking prevention steps and will be providing the community with information. Compliance with other existing Federal and state programs may satisfy many Program 2 prevention requirements, thereby limiting the burden. In addition, EPA expects to develop model risk management programs for these sectors. Public sources in states without delegated OSHA programs are not covered by OSHA PSM because OSHA is barred by law from regulating them. Nonetheless, these sources may pose a threat to the community. Today's rule places these sources in Program 2.

3. Program 2 vs. Program 3 Criteria. In the SNPRM, EPA's preferred approach assigned sources to Program 3 based on SIC code and number of employees; sources in specified SIC codes with 100 or more full-time employees (FTE) would have been subject to the full program in 3 years; sources in a subset of these SIC codes with 20 to 99 FTEs would have been subject to the full program in 8 years. The alternative was to impose the full program on all sources with more than 100 FTEs. Most SNPRM commenters submitted suggestions and arguments about this approach.

a. Number of Employees. Only two commenters supported using the number of employees as the sole criterion, arguing it would be the easiest approach to implement with the greatest amount of industry participation. Commenters opposed it because the number of employees proposed does not reliably correlate with risk, hazard, or quantity on site, and because it could act as an incentive to reduce employment. In addition, some commenters stated that smaller sources may have fewer resources to manage hazards and, therefore, may pose a greater risk to the public.

EPA agrees and has deleted the number of employees as a Program 3 criterion. Although size of a source in the manufacturing sectors may be related to the quantities on site and complexity of the processes, many other sources may have similar characteristics with fewer employees. Complexity is more directly associated with the type of industry (i.e., SIC code) than with number of employees; a highly automated process may involve fewer employees and be more complex than a more labor intensive process. Quantity, if relevant, can be directly measured rather than indirectly by number of employees. In addition, EPA was concerned that the data on which the Agency based its proposed approach may not be representative of all accidental releases. These data, drawn from reports to the National Response Center and EPA regions, appear to indicate that larger sources have more and larger accidental releases than do smaller sources. This finding, however, may in part reflect different levels of reporting, rather than different levels of accidents. Both Federal and state officials report that the number of releases has risen in recent years as more sources learn about their reporting obligations. EPA has decided that, because the processes within the SIC codes basically handle the same chemicals in the same way, smaller sources should not be moved to a different Program based on the number of employees.

b. SIC Code. Fifty-seven commenters, particularly those in the oil industry, utilities, and public systems, supported the use of SIC codes based on accident history; 28 commenters opposed it. Supporters argued that industry accident records represented a reasonable criterion for identifying high-risk sources. If an entire industry has a long history without accidental release, it may indicate that the materials handled and handling conditions generate a smaller potential for serious releases or that the industry is effectively controlled by government or industry standards. Some commenters argued that industry accident histories reflect underlying risk better than individual source accident histories because accidents are rare events; a source with no accidental releases over the previous five years is not necessarily safe.

Commenters opposing the use of SIC codes stated that the approach is arbitrary, that accidents with only onsite effects should not be used, that sources in other industry sectors handle similar quantities and pose similar risks, and that sources within an industry that have successful risk management practices are penalized by a few isolated sources within the industry.

EPA has decided to retain the use of SIC codes, adding SIC 2865 based on further review of accident histories, and to add coverage by the OSHA PSM standard as a separate criterion for Program 3. EPA selected the SIC codes by analyzing accident data filed by

sources in response to EPA's request for information in the Accidental Release Information Program (ARIP). ARIP collects data from certain sources that report releases under CERCLA section 103. EPA selected the SIC codes that showed a high frequency of the most serious accidents across a significant percentage of all sources within the SIC code to avoid mischaracterizing an industry based on isolated, problematic sources. Data on the selection criteria were summarized in the SNPRM and the docket at the time of the SNPRM. The accident history of the cyclic crudes industry (SIC code 2865) is similar to that of the categories selected. EPA disagrees that only offsite impacts should be considered; accidental releases that caused death, hospitalizations, or injuries on site are also of concern because they indicate significant safety problems that could lead to releases that cause impacts offsite. The SIC codes selected by EPA are basically the same ones OSHA selected for its PSM program inspection focus. EPA disagrees that sources are ''penalized'' by this approach because owners or operators of processes in these SIC codes have an opportunity to present their safety record, demonstrate the success of their accident prevention programs, and communicate with the local community the basis for their risk management practices. Sources that receive Merit or Star status in the OSHA Voluntary Protection Program will be favorably distinguished from others in the same industry when implementing agencies are selecting sources for audits (see section III.T.1 below).

EPA agrees that serious accidents occur infrequently even at sources with poor safety practices and that industry-wide accident records provide a better mechanism than the accident history at a single source for identifying those sectors whose chemicals and processes may lead to serious releases. A high proportion of the sources in some SIC codes reported releases; EPA's analysis specifically took into account the number of reports from individual sources to avoid selecting an SIC code because of a small number of sources with serious safety problems.

The OSHA PSM already applies to most covered processes in the selected SIC codes. EPA expects that there will be fewer than 400 additional processes assigned to Program 3 that are not already subject to the OSHA PSM standard at the approximately 1,400 sources in these SIC codes and that all of these sources will already have other processes covered by OSHA PSM. Consequently, fulfilling the RMP requirements imposes little additional burden.

EPA decided to include all covered processes currently subject to the OSHA PSM standard in Program 3 to eliminate any confusion and inconsistency between the prevention requirements that the owners or operators of such processes must meet. EPA's Program 3 prevention program is identical to the OSHA PSM standard. Including OSHA PSM processes in Program 3, therefore, imposes no additional burden on these processes; the only new requirements for such processes are the hazard assessment, emergency response program, and the RMP, which are the same under Programs 2 and 3.

c. Site-Specific, Risk-based Criteria. Many commenters stated that Program assignment should be based on site-specific risk-based criteria. Accident history is one such criterion and is discussed separately in Section III.A.3.d. Other criteria suggested include population density or proximity, quantity on site, number of substances held above the threshold, process conditions, toxicity, volatility, alternative release scenario results, or combinations of these factors as a risk index.

EPA agrees with commenters that Program assignments should be risk-based to the extent possible; however, as the variety of suggestions indicates, a considerable number of variables would need to be considered. EPA knows of no standard approach or equation that is used and generally accepted. The variety of suggestions indicate the likelihood that any proposed formula would meet opposition. No commenter provided a method to comprehensively address these factors on a nation-wide basis.

An important consideration for EPA in developing the rule provisions for Program assignment was to avoid undue complexity, confusion, and resource expenditure by sources and implementing agencies implementing the rule's criteria. To some extent, EPA has incorporated risk factors, including site-specific factors, in determining which sources are eligible for which Program. For example, Program 1 eligibility already considers the potential for offsite impacts; any process for which there are no public receptors within the distance to an endpoint from a worst-case release may be eligible for Program 1, provided there have been no releases with certain offsite consequences within the previous five years. Today's rule allows sources to consider passive mitigation and administrative controls in conducting the worst-case release analysis. Such site-specific considerations affect the extent of potential exposure to a worst-case release, and thus are reflected in the Program 1 eligibility criteria. Elements of risk such as process complexity and accident history are also reflected the design of Program 2 and Program 3 requirements and the assignment of processes to these Programs. Program 2 sources generally handle and store regulated substances, but do not react or manufacture them. EPA believes Program 2 sources can take prevention steps that are less detailed than those in the OSHA PSM standard and still accomplish accident prevention that is protective of any population nearby. Program 3 is reserved for processes already subject to the OSHA PSM standard and processes with high accidental release histories. The SIC codes with an accident history selected by EPA for Program 3 are typically complex processes. The PSM standard was designed for, and is particularly appropriate for, these processes.

EPA takes issue with the appropriateness of some of the suggested factors. Meteorological conditions vary too much to be considered in determining a risk level. Chemical quantity alone does not accurately relate to risk because the location and handling conditions can dramatically change the potential for exposures.

In addition, EPA has implementation concerns about a detailed, national, multi-factor, risk-based approach, were it to be feasible. States such as Delaware have used a simple version of a risk-based approach and found that it created serious problems for the state and the sources. Smaller sources and those without technical staff have had great difficulty in implementing the approach and have had to rely on state officials to determine applicability for them. Delaware specifically recommended that EPA not attempt implementing a similar approach on a national basis because of the burden it imposes on the state and the confusion and uncertainty it creates for sources. Delaware has fewer than 100 sources; nationally, EPA estimates that 66,000 sources will be subject to the rule, approximately 62,000 of which are outside of the chemical and refining sectors. If implementing agencies had to help most of these sources determine the index score and Program for each process, not only would the burden on the agencies be extreme, but implementation would also be delayed. Furthermore, were EPA to simply identify risk factors without an index and leave the determination of Program

level to sources or implementing agencies, the process for such site-specific determinations would be even more complex and resource intensive for sources and implementing agencies; it would create disincentives for a state to become involved and to take on the role of an implementing agency. EPA believes it is better to have sources and agencies focus their resources on prevention activities.

EPA considered, but decided against, a less comprehensive risk-based approach using proximity or population density as criteria for distinguishing between Program 2 and 3. EPA recognizes that accidental releases from sources near or in densely populated areas may harm more individuals and be perceived to pose a greater risk than other sources. However, as stated above, EPA believes that the type of process, its complexity and accident history should be considered for Program 2 or 3 assignment, regardless of the number of people potentially exposed. In other words, EPA does not believe the streamlined Program 2 prevention elements should apply to a complex Program 3 process just because fewer persons could be potentially exposed or that the Program 3 prevention elements should apply to a Program 2 process because more people could be potentially exposed. EPA believes that populations offsite should be protected from harm based on the type of process; the Program 2 prevention elements, properly applied to the expected types of Program 2 processes, serves to protect off-site populations, just as the Program 3 prevention elements for complex processes serves to protect offsite populations.

If Program assignments were based on the alternative release scenario results, sources would not have the flexibility and latitude in today's rule for these scenarios because more definite criteria would need to be considered to ensure the proper scenarios and results are assessed. This places more emphasis and burden for sources on the offsite consequence assessment rather than on accident prevention and communication with the public and first responders. Furthermore, because active mitigation includes process and control equipment that may fail, considering such equipment in evaluating risk would not be appropriate without detailed review by the source and oversight by the implementing agency.

Some commenters suggested yet another variation of a less comprehensive, ''risk''-based approach that would have EPA use a site-specific analysis of likelihood of release to assign Program levels. Many of the same difficulties in developing a ''risk index'' for determining Program assignments would apply to an attempt to incorporate likelihood in a more sophisticated manner than EPA was able to do in its analysis of accident history by SIC code. In addition to the substance-specific properties considered as part of the chemical listing criteria, the site-specific likelihood of a release depends on a number of factors, including the appropriateness of the equipment in use, the maintenance of that equipment, operator performance, and safety systems and their performance. Evaluating site-specific likelihood of release requires data on each of these items; such data rarely exist especially for complex processes where a variety of equipment must be evaluated along with the performance of multiple operators and maintenance workers. Using surrogate data (e.g., manufacturer's failure rate data) introduces error of an unknown magnitude to the analysis. Such analyses are very costly and produce results that are, at best, questionable.

EPA also believes that assessing the likelihood of a release at most sites for site-specific individualized Program-level determinations is neither technically feasible nor cost-effective. In most cases, the data do not exist to conduct a meaningful analysis; where they do exist, the cost of developing a defensible analysis and overseeing it could well exceed the cost of compliance with the rule. Such an approach would resemble a permit program, which would be resource-intensive for sources and implementing agencies. EPA determined that the simpler approach for assigning sources to Program 1 would provide regulatory relief for those sources that could not affect the public while allowing other sources to devote their resources to prevention activities rather than to analyses that would be subject to legal challenges.

EPA notes that sources have the flexibility to implement appropriate accident prevention measures based on the hazards and risks discovered in the hazard review or process hazard analysis. The structure of Programs 2 and 3, therefore, reflect site-specific risk criteria. Further, the purpose of the risk management program and RMP effort is to prevent accidents and facilitate local level dialogue about the risks, prevention measures, and emergency response effort in place at the source. The local community and first responders may have far different concerns that should, and can be addressed better through today's approach than those reflected by a risk index approach.

d. Accident History. Some commenters argued that EPA should assign sources to Program 3 based on the accident history of the source. One commenter suggested that any source with no accidental release that exceeded a reportable quantity (as defined in CERCLA) for the previous five years should be in Program 2. Others argued that a source should be in Program 2 if it had no significant accidental release in the previous five years. Some commenters said that a one-release standard was too stringent and that two or more significant accidental releases should be allowed before a source was assigned to Program 3. Another commenter suggested that a source with no significant accidental releases in the past five years and with few potentially impacted neighbors should be placed in Program 2.

Other commenters opposed this approach, arguing that, in many cases, sources take steps to prevent recurrences following a serious release. In some cases, the offsite impacts from releases are minor and would not justify assigning a source to a particular Program. Other commenters stated that the absence of an accidental release can be indicative of lower risk, but it can also simply mean that a release has not yet occurred. Several commenters noted that a five-year time period is statistically insignificant because accidental releases are infrequent events.

EPA agrees that source-specific accident history is not a reasonable basis for assigning processes to Programs 2 and 3. Given the relative infrequency of serious accidents, a five- or even ten-year period without an accident may not be indicative of safe operations. In addition, the criteria necessary to define the types of past accidental release for the purposes of program classification would need to be based on a wide variety of variables and site-specific factors, which would lead to confusion and unnecessary complexity. Factors such as weather conditions at the time of the release, rather than the size of a source or its management practices, often determine whether a release has offsite consequences. EPA believes that accident history is appropriately used on an industry-wide basis as described above for selection of Program 3 sources. If accidental releases with consequences appear to occur at a large proportion of sources within an SIC code, where similar processes, equipment and chemicals are used, then it is reasonable to conclude that

processes in that SIC code pose a greater likelihood of a high hazard release than others. This approach removes the need for at least one accident to occur at every source that EPA believes ought to be assigned to a particular Program, especially when such accidents are rare events. EPA is also concerned that using source-specific accident history as a criterion would create an incentive for sources to fail to report releases. Finally, as EPA has stated, assignments to Program 2 and 3 also consider the appropriateness of the prevention steps for the types of sources. EPA believes that both Programs move sources to greater accident prevention.

e. Other. Some commenters asked that the implementing agency be given discretion to move a source into a different Program based on local concerns and knowledge. EPA notes that states have the authority, under the CAA, to impose more, but not less, stringent standards than EPA (see CAA section 112(r)(11)).

A few commenters suggested that Program 2 be limited to sources for which a model risk management program had been developed. The models would be designed to reflect risks associated with categories of sources that all use the same type of equipment and handle the substances in the same way (e.g., propane retailers and users, ammonia retailers). EPA considered this approach and decided that the Program 2 prevention program provides a better, generic prevention approach for processes for which the more detailed PSM program would be inappropriate. Limiting Program 2 to those industrial sectors where industry-specific models are feasible would place some manufacturing sources at a disadvantage simply because their chemical uses, processes, and equipment were too varied to allow development of a model or because there are too few sources to justify use of EPA or industry resources to develop a model. In addition, if EPA were to limit Program 2 to sources with model programs, Program 2 regulations would need sufficient specificity to enforce the use of these models; otherwise, sources would be able to ignore both PSM and the models. EPA is also concerned that codifying the model plans could stifle innovation in safety practices. If industry codes or other Federal regulations on which parts of the models may be based were updated, EPA would have to revise its models; given the time needed to propose and adopt regulations, sources might have to delay implementation of new systems and, in some cases, might be caught between complying with a revised EPA or OSHA regulation or state law or complying with the model. Consequently, EPA decided it was better to have models available as guidance, but not require compliance with them. Further, EPA believes that the key elements of good accident prevention practices are captured within the requirements of the Program 2 prevention program. Model programs and plans are likely to build on these approaches, making it easier for sources in Program 2 to use models that are later developed by others.

EPA is working with industry to develop model risk management programs and RMPs for ammonia refrigeration systems, propane distributors and users, and water treatment systems. EPA also expects to develop models for ammonia retailers and wastewater treatment systems. EPA encourages other industrial sectors to work together on additional model development.

4. Program 1 Requirements. Commenters were generally opposed to posting signs, and certification of no environmental impact.

a. Certification of No Environmental Impact. Many commenters stated that it would be ''virtually impossible'' to certify ''no potential for environmental impacts,'' as required by the SNPRM. Commenters said that the definition of environmental impact was too vague, that the list of environments suggested in the SNPRM was too broad, and that the language seemed to require a full environmental consequence assessment, making the requirement impossible. One commenter noted that companies would find it difficult to assert that there could be ''no environmental impacts'' even after an environmental consequence assessment reveals insignificant impacts. Two commenters suggested that EPA substitute ''low potential for environmental impact'' or ''no potential for long-term, adverse environmental impact.'' Other commenters requested that environmental impact be dropped or that the requirement be changed to mirror the Program 1 eligibility criteria with an indication in the RMP that no environmental receptors of concern were within the worst-case distance to an endpoint.

As described above in section III.A.2.a. Potential for Offsite Impact, EPA has decided not to make the presence of environmental receptors a part of the eligibility criteria for Program 1 and has deleted the certification requirement. Instead, owners or operators of all covered processes will have to identify in the RMP any environmental receptors that are within the distance potentially affected by the worst case.

b. Signs. Commenters generally opposed the SNPRM requirement that sources with Program 1 processes post signs warning of the hazards on site if the only regulated substances present at the site above the threshold quantity were listed for flammability. Commenters stated that local and state fire and safety codes often already require such signs. In addition, sources are already required under EPCRA section 312 to file annual inventories with the LEPC and fire department that identify hazards on site. Signs would have fulfilled the emergency response program requirements for a source. Because Program 1 eligibility will now be determined on a by-process basis rather than by source-wide criteria and because EPA has revised the emergency response program provisions as noted below, EPA has dropped the requirement for signs.

c. Emergency Response Program. In the SNPRM, EPA asked whether additional emergency response planning and coordination should be required for Program 1 processes. Some commenters supported this requirement, while others stated that most sources are already covered by EPCRA and participate in community response planning. Commenters stated that because the worst-case release could not reach public receptors, such efforts were not necessary.

In the final rule, EPA is requiring the owner or operator of a Program 1 process to ensure that any necessary response actions have been coordinated with local response agencies. EPA believes that local responders may become involved in an incident, even if the public is not threatened. No additional CAA-related planning activities are required, however.

d. Other. Many commenters stated that, since Program 1 processes generate no offsite impact, they should be exempt from this rule. One commenter objected to Program 1 because members of the public, particularly first responders and business visitors, could still be hurt by a release. Other commenters suggested that the annual EPCRA section 312 form could be amended to indicate that a source was covered by the rule, replacing the RMP registration form.

The CAA requires that all sources with more than a threshold quantity of a listed substance register an RMP, perform a hazard assessment, and develop accidental release prevention and emergency response programs. Therefore, total exemption of processes that meet Program 1 criteria is not

possible. See S. Rep. No. 228, 101st Cong., 1st session, at 208 (''Senate Report'') (precursor of RMP provision mandating hazard assessments for sources that exceed threshold for listed substance); 136 Congressional Record S16927 (daily ed. October 27, 1990) (remarks of Sen. Durenburger, sources with more than a threshold quantity are subject to regulations); 136 Cong. Rec. H12879 (daily ed. Oct. 26, 1990)(remarks of Rep. Barton)(all users of hazardous chemicals are required to plan for accidents). Moreover, even if an exemption for processes that exceed a threshold were permissible, the owner or operator would need to take steps that are equivalent to the hazard assessment to establish eligibility for the exemption. The offsite consequence analysis is the most significant burden for a Program 1 process under this rule. The minimal additional actions required in today's rule for Program 1 simply establish a record of eligibility and a response coordination mechanism.

EPA recognizes that emergency responders and site visitors could be hurt by an accidental release from any process, but notes that responder safety is covered by OSHA and EPA under the HAZWOPER regulations. It is the owners' or operators' responsibility to inform visitors about the hazards and the appropriate steps to take in the event of an accidental release from any process subject to today's rule.

Finally, EPA has based the registration information requirements in today's rule on the EPCRA section 312 Tier II form. The CAA requires that the RMP be registered with EPA. Because the EPCRA form is not submitted to EPA, it would not substitute for registration with EPA either in its present or amended form. Completion of the registration portion of the RMP should impose little additional burden on owners or operators. However, EPA recognizes the information overlap between the Tier II form and the RMP registration and is considering use of the RMP registration for the Tier II reporting requirement.

5. Program 2 Requirements. Commenters were generally concerned about the lack of specific requirements for the Program 2 streamlined prevention program and emergency response requirements, and how compliance with other regulations would be incorporated.

a. Streamlined Program. Commenters stated that the Program 2 prevention program does not provide much, if any, regulatory relief because sources would need to address most of the ten elements of the Program 3 prevention program. Others said that the majority of the sources affected by the rule are already covered by OSHA PSM and chemical industry standards, the Program 2 requirements do not satisfy the CAA mandate, and that only a full process hazard analysis would meet the hazard assessment requirements under section 112(r). Another commenter argued that EPA's statement that sources must comply with the CAA's general duty clause was inadequate because EPA has not used, and has no policy about, the clause.

EPA agrees that the preferred approach in the SNPRM did not provide sufficient detail on Program 2 prevention requirements to distinguish it from Program 3. EPA solicited comments on whether Program 2 should require additional, specific prevention steps. Today's rule provides specific requirements as discussed in section I.D above and in Section IV below. In the RMP, the owner or operator will be required to report on other Federal or state regulations, industry codes, and standards used to comply with prevention elements as well as any major hazards, process controls, mitigation systems, monitoring and detection systems examined in the hazard review. This streamlined prevention program addresses many of the PSM elements as the basis for sound prevention practices, but is tailored to processes with less complex chemical uses; this program provides considerable regulatory relief by substantially reducing the documentation and recordkeeping burden of PSM. In addition, EPA will provide guidance and model risk management programs to further assist Program 2 processes in developing and maintaining good prevention program practices.

EPA disagrees that only a full PHA would meet the requirements of the Act. Section 112(r) does not contain detailed requirements for the hazard assessment, beyond the key components of accidental release scenarios and a five-year accident history. EPA believes that a PHA is more appropriately considered an element of a prevention program, such as PSM. The statute does not mandate detailed PHA engineering analyses for all sources, whether as part of the hazard assessment or the prevention program. EPA believes PHAs involve a more detailed engineering analysis than is necessary to prevent accidents at Program 2 sources. The ''hazard review'' provisions of Program 2 should be sufficient to detect process hazards at these simpler processes. EPA recognizes that although hazard assessments and PHAs or process hazard reviews are discreet elements that can be performed independently, hazard assessment results can enhance PHA or process hazards reviews and in turn, the results of the PHA or review can enhance the hazard assessment. EPA encourages owners or operators to make maximum use of the PHA or review and hazard assessment information to manage risks and prevent accidents.

Finally, sources with Program 2 requirements, as well as sources with Program 1 or 3 requirements, must comply with the general duty clause of CAA Section 112(r)(1). The general duty clause provides that owners and operators have a general duty to identify hazards that may result from accidental releases, design and maintain a safe facility, and minimize the consequences of any releases that occur. The general duty clause is a self-executing statutory requirement: it requires no regulations or other EPA action to take effect. The clause provides a separate statutory mechanism that EPA will use in appropriate circumstances to ensure the protection of public health and the environment. To date, EPA has undertaken several inspections designed in part to determine compliance with Section 112(r)(1). As appropriate at a future date, EPA may issue policies or guidance on application of the general duty clause.

b. Other Regulations. Commenters generally agree that OSHA PSM, HAZWOPER, the OSHA hazard communication standard (29 CFR 1910.1200), and NFPA–58 are examples of other regulations or voluntary industry standards that could be cited to meet the requirements of a Program 2 prevention program. Commenters requested that EPA provide a matrix or crosswalk that indicates which other regulations, standards, and codes met specific requirements. One commenter opposed the use of other regulations or referencing of voluntary industry standards, stating that, other than OSHA PSM, no other OSHA standard addresses safety precautions or maintenance. Another commenter objected that this approach creates another documentation burden without any commensurate benefit.

EPA agrees that the SNPRM preferred approach for Program 2 was not specific enough and has provided more detailed requirements in this rule as noted above. EPA continues to believe that many of the Program 2 prevention requirements are already met through industry compliance with existing regulations and voluntary standards. For example, ammonia retailers whose processes are designed to meet the OSHA ammonia handling rule (29 CFR

1910.111) should be able to meet the Program 2 requirement that the process design meets good engineering practices. This effectively allows sources to cite compliance with these other regulations and standards instead of developing specific, duplicative elements solely to comply with Program 2. EPA will also use these existing regulations and standards as it develops model programs.

c. Emergency Response Program. Commenters supported considering HAZWOPER programs as adequate to meet the Program 2 emergency response program. A few commenters said that HAZWOPER is inadequate because it does not consider offsite impacts or the environment. Some commenters also said that coverage of a source by an EPCRA community emergency response plan should be sufficient. Others said that any contingency plan developed under Federal or state law should be considered sufficient because the requirements under these programs are generally consistent with EPA's proposed emergency response program; one commenter noted that, for flammable processes, compliance with 29 CFR 1910.38 should be adequate because the response is usually evacuation of employees. Five commenters opposed any requirement that sources with Program 2 processes conduct drills or exercises because they represent lower hazards.

Consistent with its efforts to consolidate Federal emergency planning requirements, EPA has included language in the final rule that will allow any source in compliance with another Federal emergency response program that includes the elements specified in this rule to use that program to meet these requirements. In particular, this applies to response plans prepared in accordance with the National Response Team's Integrated Contingency Plan Guidance (''one plan'') (NRT, May 1996). EPA believes that sources should have a single response plan; creation of multiple response plans to meet slightly different Federal or state standards is counterproductive, diverting resources that could be used to develop better response capabilities.

EPA recognizes that some sources will only evacuate their employees in the event of a release. For these sources, EPA will not require the development of emergency response plans, provided that appropriate responses to their hazards have been discussed in the community emergency response plan developed under 42 U.S.C. 11003 for toxics or coordinated with the local fire department for flammables.

B. Offsite Consequence Analysis

1. Worst-Case Release Scenario. EPA proposed in the NPRM to define the worst-case release as the ''loss of all of the regulated substance from the process * * * that leads to the worst offsite consequences'' and that the scenario should assume ''instantaneous release.'' Hundreds of commenters stated that instantaneous loss of the total process contents is not technically feasible for complex systems and, therefore, represents a non-credible worst case that would provide no useful information to the public or the source for risk communication, accident prevention, and emergency preparedness. Many commenters also argued that this approach differed from the release modeling assumptions contained in EPA's Technical Guidance for Hazards Analysis, which has been the basis for community emergency planning activities under EPCRA. Although some commenters were generally opposed to the concept of worst case, most of the commenters were supportive of an approach similar to that taken in the Technical Guidance.

In response to these comments, EPA proposed in the SNPRM to redefine a worst-case scenario as the release, over a 10-minute period, of the largest quantity of a regulated substance resulting from a vessel or process piping failure. The 10-minute release time is drawn from the Technical Guidance for Hazards Analysis. EPA believes this duration is reasonable and accounts for comments arguing that an ''instantaneous'' release is unrealistic for large-scale releases.

EPA has decided to adopt the SNPRM approach for worst-case toxic vapor releases in the final rule because most of the SNPRM comments agreed that the redefinition is generally more credible and that the 10-minute time frame particularly applies to vapor releases. Although some commenters argued that this approach still does not account for all process-specific conditions, EPA believes it is reasonable and representative of accident history. EPA notes that owners or operators may use air dispersion modeling techniques that better account for site-specific conditions, provided modeling parameters as specified in the rule are applied. This release scenario will apply to substances that are gases at ambient conditions, including those liquefied under pressure. Gases liquefied by refrigeration only may be analyzed as liquids if the spill would be contained by passive mitigation systems to a depth greater than 1 cm.

Under the SNPRM, worst-case liquid spills were assumed to form a pool in 10 minutes, with the release rate to the air determined by volatilization rate. EPA recognized that this approach differs from the use of an instantaneous release in the Technical Guidance, which EPA cited as an alternative to its favored approach. The few comments received were divided between support of this approach and arguments that the 10-minute time frame was unrealistic for liquid releases (particularly for pipelines and connected equipment) and thus did not properly account for process-specific conditions.

EPA's approach for the liquid worst-case scenario in the final rule is similar to the Technical Guidance methodology, in which the total quantity of liquid in a vessel or pipeline is instantaneously spilled upon failure, considering administrative controls or passive mitigation discussed below. The rate of release to the air is not instantaneous; it is determined by the volatilization rate of the spilled liquid, which depends on the surface area of the pool formed after the spill. The pool surface area is determined by assuming the spilled liquid rapidly spreads out and forms a one-centimeter deep pool, unless passive mitigation systems contain the pool to a smaller area. EPA believes this approach is reasonable because total vessel or pipeline failure will generally lead to immediate and rapid spillage followed by pool volatilization. Further, if the liquid were assumed to spill over a particular time frame rather than instantaneously, owners or operators would need to calculate the amount of vapor emitted to the air as the liquid is spilled, in addition to the volatilization rate as the pool spreads out and reaches its maximum size. Computer-based models are available for such calculations, but they are complex and require considerable data input to use. EPA believes that liquid spillage from a worst-case scenario is likely to be extremely rapid such that the most significant portion of the release rate is given by pool volatilization; consequently, liquid release time is not necessary. Liquid spill rates and times could be reflected in alternative scenarios discussed below.

As proposed, the worst-case for flammables assumes that the total quantity of the substance in the vessel or pipeline vaporizes, resulting in a vapor cloud explosion. If the vapor cloud explosion is modeled using a TNT-equivalent methodology, then a 10 percent yield factor must be used.

EPA requested comment in the SNPRM on whether the worst-case scenario should include an additional

amount of substance that could potentially drain or flow from process equipment interconnected with the failed vessel or pipeline. Many commenters opposed this option, suggesting that it is technically uncertain and would have little value in terms of what they saw as EPA's intended purpose for the worst-case assessment. Other commenters requested that ''interconnected equipment'' be defined and clarified. Given the assumption of rapid release associated with initial equipment failure, EPA agrees that determination of the spill rate from connected piping and equipment is likely to be technically complex, very different from that of the quantity in the vessel or failed pipeline, and likely to extend the duration of volatilization rather than affecting the rate overall. Therefore, EPA has not included this requirement in the final rule.

EPA also sought comment in the SNPRM on options for the determination of the relevant quantity of regulated substance in a vessel or process piping for a worst-case release scenario: the maximum possible vessel inventory (design capacity) at any time without regard for operational practices and administrative controls; the maximum possible vessel inventory unless there are internal administrative controls (written procedural restrictions) that limit inventories to less than the maximum; or historic or projected maximum operating inventories without regard to administrative controls. EPA preferred that the maximum vessel inventory including administrative controls that might limit or raise the vessel quantity to be used in the worst-case assessment and reported in the worst-case release analysis section of the RMP. If the quantity used in the assessment were exceeded (e.g., an administrative control were ignored), then the source would be in violation of the rule (i.e., failure to perform a worst-case analysis) and RMP reporting unless the administrative control was revised, the worst-case analysis updated to reflect any changes in the analysis, and a revised RMP submitted. This approach acknowledges the efforts by sources to increase process safety by intentionally reducing the inventory of regulated substances (e.g., vessels kept at half capacity to allow for process upsets, emergency shutdowns, and deinventorying or maintenance turnarounds). EPA notes that at some sources, as a result of inventory reduction measures, the largest quantity may be held in a transportation container that is loaded or unloaded at the source (See section P.2).

A few commenters supported the other options, noting that administrative controls may fail, potentially generating a larger scenario. However, the majority of commenters supported EPA's preferred approach based on the historical reliability of such controls at many sources and the role that such a provision could play in encouraging their use at additional locations. Other commenters asked whether mechanical controls, alone or in combination with administrative controls, should be incorporated into the proposal. Although mechanical controls may also serve to limit the quantity, EPA has decided not to include them in the quantity determination for the worst-case release scenario because the definition for administrative control as ''written procedural mechanisms used for hazard control'' provides a backup for possible failure of mechanical controls. For more discussion of mechanical controls, see section III(B)(2), mitigation systems, below.

In the SNPRM, EPA considered providing the implementing agency with the discretion to determine the appropriate quantity for the worst-case release scenario on a site-specific or industry-specific basis. EPA noted in the SNPRM, and most of the few comments received on this issue agreed, that implementing agency discretion would result in increased administrative burden on the implementing agency and cross-jurisdictional differences in the methodology used for the worst-case analyses. EPA has decided not to incorporate this approach in the final rule. States, however, may impose more stringent requirements, such as additional modeling, under state authority.

In the NPRM worst-case definition, EPA did not specify what constitutes or how to determine the worst offsite consequences. Some commenters indicated that without clear direction, EPA's proposed worst case might not actually capture the scenario that leads to the most severe offsite impact. In the SNPRM, EPA indicated that the worst-case scenario should be the scenario that generates the greatest distance to a specified endpoint (i.e., the toxic vapor cloud or blast wave from a vapor cloud explosion that travels the farthest).

EPA recognizes that there may be other release scenarios that could generate a greater distance than the release from the largest vessel or pipeline. Consequently, EPA has added paragraph (h) to § 68.25 to require owners or operators to consider other scenarios if those scenarios generate greater distances to the endpoint than the distance generated by the largest vessel or pipeline scenario. Owners or operators need to consider releases from smaller vessels if those vessels contain the substance at higher temperature or pressures or if they are closer to public receptors. In some cases, the largest vessel will be a storage vessel where the substance is held at ambient conditions. A reactor vessel may hold a smaller quantity, but at high pressures and temperatures, generating a release that could travel farther offsite to an endpoint. Vessel location is important, especially at large sources. A smaller vessel located nearer to the stationary source boundary may generate a greater impact distance than a larger vessel farther away. This difference may be particularly important for flammables, because impact distances for flammables are generally shorter than those for toxic releases.

2. Mitigation Systems

a. Worst-case scenario. In the NPRM worst-case scenario, EPA indicated that sources must assume that both active and passive systems fail to mitigate the release. Commenters were generally split between those who wanted passive (as well as certain redundant active) mitigation systems to be included and those who argued that historical evidence from catastrophic releases suggests that the worst case should assume the failure of all such systems. Those who supported mitigation argued that inclusion provides a more credible scenario for improved risk communication, accident prevention, and emergency planning.

EPA proposed in the SNPRM to include passive mitigation systems in the worst-case release scenario as long as the system is capable of withstanding, and continuing to function as intended during and after a destructive event, such as an earthquake, storm, or explosion, which causes a vessel or pipeline to fail. Passive systems such as dikes, catch basins, and drains for liquids, and enclosures for both liquids and gases, could be assumed to mitigate the release. Some commenters opposed this approach, arguing again that the worst case should account for the possibility of passive mitigation failure. The majority supported this approach because the assumption that passive systems specifically designed and installed as protection against a potential catastrophe fail is unrealistic. Furthermore, the approach recognizes and encourages prevention through additional passive mitigation and supports more realistic emergency

planning. A few commenters also suggested that active mitigation measures that were unlikely to fail (e.g., redundant or backup systems) should be considered, for similar reasons. Historical data, however, indicate that certain events compromise active mitigation systems (e.g., explosions have destroyed fire water piping systems).

For the final rule, EPA has decided to adopt the SNPRM approach. Passive mitigation systems would be defined as those systems that operate without human, mechanical, or other energy input and would include building enclosures, dikes, and containment walls. EPA also agrees that reservoirs or vessels sufficiently buried underground are passively mitigated or prevented from failing catastrophically. In this case, sources should evaluate the failure of piping connected to underground storage for the worst case or alternative case scenarios. In addition to the requirements outlined in § 68.25, EPA provides guidance on how passive mitigation would affect release rate and distance to endpoints in its RMP Offsite Consequence Analysis Guidance.

b. Alternative scenarios. EPA initially proposed that sources could include passive mitigation systems in their alternative scenario assessments, but that active mitigation systems (e.g., excess flow valves, fail-safe and automatic shutdown valves, scrubbers, flares, deluge systems, and water curtains) would be assumed to fail. Some commenters generally opposed inclusion of any mitigation systems in the hazard assessment, while other commenters noted that the alternative release scenario should recognize and encourage industry accident prevention efforts, specifically the installation of additional mitigation systems, and support more realistic emergency planning.

EPA proposed in the SNPRM to allow sources to consider passive and active mitigation measures in the alternative release scenario assessment. Commenters supported this approach and EPA has decided to retain it in the final rule. EPA agrees that the assumption that both passive and active mitigation measures fail when such measures are specifically designed and installed to mitigate catastrophic releases is unrealistic for the alternative scenarios. Although not required, EPA notes that sources may choose to apply passive and active mitigation measures to a worst-case type scenario to illustrate the capabilities of such systems to reduce the potential impact of a worst-case accidental release. In addition to the requirements outlined in § 68.28, EPA provides guidance in its RMP Offsite Consequence Analysis Guidance on how passive and active mitigation would affect release rate and distance to endpoints.

3. Populations Affected. EPA described in the NPRM preamble certain locations (e.g., schools and hospitals) where sensitive populations might be present and proposed in the rule that owners or operators identify potentially exposed populations as part of the offsite consequence assessment. Commenters generally opposed requirements for population surveys; several commenters suggested that Census data or other readily available population information should be sufficient, while other commenters indicated that the LEPC or other local planning entities were the appropriate entity to prepare these data.

EPA believes owners or operators need to be aware of the magnitude of impact on populations associated with the worst-case and alternative scenarios. However, EPA learned that, although much of this information is readily available, identification of some sensitive populations could require considerable effort, especially if the distance to an endpoint generated in the offsite consequence assessment is large or crosses several jurisdictions. Consequently, EPA proposed in the SNPRM that offsite populations be defined using available Census data; information on the number of children and people over 65 could be considered a proxy for sensitive populations, thereby accomplishing the same objective as the proposed rule. EPA also indicated that it has developed a geographic information system, LandView, that will facilitate analysis of resident populations. (LandView can be ordered from the U.S. Bureau of the Census customer service at (301) 457–4100.) In general, commenters agreed with the SNPRM approach. However, some commenters questioned the accuracy of potentially ten-year-old Census data and requested additional flexibility, or a greater role for local government, in this analysis.

EPA has decided to adopt the approach outlined in the SNPRM for the final rule. Sources will be allowed to use available Census data to estimate populations potentially affected. Sources may update these data if they believe the data are inaccurate, but are not required to do so. Populations shall be reported to two significant digits. Because Census data are limited to residential populations, sources will also have to note in the RMP whether other, non-residential populations, such as schools, hospitals, prisons, public recreational areas or arenas, and major commercial or industrial areas, are within the distance to an endpoint. These institutions and areas are those that can generally be found on local street maps. Sources will not be required to estimate the number of people who might be present at these locations. EPA provides further guidance on the identification of affected populations in its RMP Offsite Consequence Analysis Guidance.

4. Number of Scenarios In the NPRM. EPA required a worst-case release scenario for each regulated substance. Commenters requested clarification, because one substance could be present in more than one process at the source and sources would need to select the ''worst'' worst case for substances in multiple processes. In addition, one process may have several, similar listed substances and multiple worst-case analyses of similar substances (e.g., flammables) would not provide additional useful information to the public.

EPA proposed in the SNPRM that sources report in the RMP one worst-case release scenario representative of all toxic substances present at the source and one worst-case release scenario representative of all flammable substances present at the source. Even though additional screening analyses to determine the appropriate worst-case scenario might be necessary, this approach reduces to a maximum of two the number of worst-case analyses reported in the RMP by a source. In general, commenters favored this approach, particularly for flammables, which do not produce markedly different adverse effects. A few commenters argued that a single toxic substance should not be considered representative of all toxic substances at a source, since there are considerable differences in toxic endpoint and adverse affect.

EPA has decided to adopt the approach outlined in the SNPRM for the final rule: report one worst-case release scenario for all flammables and one worst-case release scenario for all toxics at the source. EPA notes that the worst-case scenario is designed principally to support a dialogue between the source and the community on release prevention, and not to serve as the sole or primary basis for local emergency planning. The ''worst'' worst-case release scenario will inform the broadest range of individuals that they may be impacted by the source so that they may participate in dialogue with the source about prevention, preparedness, and emergency response actions. Lesser worst-case release scenarios would not

inform any person not already within the range of the ''worst'' worst case even though the health effects may be different; consequently, EPA believes that only a single toxic worst case is necessary. However, sources must also analyze and report another worst-case release scenario (for flammables or toxics) if such a release from another location at the source potentially affects public receptors different from those potentially affected by the first scenario (e.g., if a large-sized source is located between two communities and has a covered process adjacent to each community).

In the NPRM, EPA did not specify the number of alternative scenarios to be reported for each regulated substance. EPA noted in the preamble that this approach, while providing flexibility, may also create uncertainty about what EPA will consider to be an adequate number of scenarios. While a few commenters argued against scenarios beyond the worst case, many commenters supported a requirement for a maximum of two: the worst case plus one additional scenario; others supported a maximum of three. Many of the commenters noted that local entities could request further information under EPCRA section 303(d)(3) authority if they desired. At the same time, a number of commenters suggested that this determination should be made by the source based on their scenario analysis, perhaps in coordination with a local agency.

In the SNPRM, EPA proposed to require one alternative release scenario for all flammable substances at the source and one alternative scenario for each toxic substance at the source. As discussed above, the listed flammable substances behave similarly upon release and have the same endpoint, while each toxic substance has a different endpoint and different atmospheric behavior. EPA sought comment on whether one toxic substance alternative scenario could represent all toxic substances at a source or in a process. Although commenters generally agreed with the approach for flammables, only a few argued that a single alternative scenario for all toxics was also appropriate; most others supported EPA's proposal.

Upon review of the comments, EPA has decided to adopt the approach outlined in the SNPRM: an alternative release scenario must be reported in the RMP for each toxic held above the threshold at the source, and one alternative scenario must be reported that represents all flammables held above the threshold. As EPA noted in the SNPRM preamble and commenters echoed, the differences in the hazards posed by individual toxic regulated substances are significant and should be reflected in the alternative scenarios. This information has significant value for emergency planning purposes and could increase public interest in prevention at the source.

5. Technical Guidance The proposed rule required sources to evaluate the consequences (vapor cloud dispersion, blast wave, or radiant heat modeling calculations) associated with the worst-case and alternative release scenarios. EPA did not specify a methodology or models, expecting that sources would have, contract for, or find the expertise and modeling tools needed to perform potentially complex modeling calculations. Because of the potential burden associated with this approach, EPA began working on the development of a set of simple, generic tools that could provide useful results and become part of the technical guidance for the rule. Based on its experience in developing the Technical Guidance for Hazards Analysis and on advice from commenters, EPA understands that a generic methodology depends on approximations to capture a wide variety of situations, will likely ignore site-specific conditions, and potentially may generate overly conservative or less realistic estimates of offsite impacts. In spite of these limitations, EPA believes that generic modeling tools are capable of supporting greater understanding of the hazards posed by substances and emergency planning. Commenters agreed this approach would reduce the burden on smaller sources unfamiliar with such activities as long as use of the guidance was not mandatory, and the guidance addressed specific industry sectors or was used as part of a screening process to focus resources on significant problem areas. Many commenters recommended that sources be given the flexibility to use any appropriate modeling techniques for the offsite consequence analysis to take advantage of expertise and to apply site-specific considerations to the hazard assessment. Other commenters argued that EPA should establish mandatory guidelines or specify certain dispersion modeling tools to make release scenario results more comparable across sources. Some commenters were concerned about the development of modeling tools by EPA outside of the rulemaking process and requested the opportunity to participate in their development.

In the SNPRM, EPA stated it would develop a generic methodology and reference tables in an offsite consequence assessment guidance to assist sources with the analyses required by the rule. EPA believed that the Technical Guidance could be revised, expanded, and updated to address the rule requirements. The methodologies and tables would be subject to public review prior to publication of the final rule; once finalized, the tables would replace the Technical Guidance. EPA added that sources that wish to conduct more sophisticated modeling could do so, provided the techniques used account for the modeling parameters described in the rule. Alternatively, EPA proposed that only Program 2 sources use the guidance; Program 3 sources would be required to conduct their own dispersion modeling.

Most commenters supported the SNPRM approach, especially if sources were given the option to use their own site-specific modeling. Some commenters argued that the generic methodology and reference tables and the option for site-specific modeling should be applied to processes in all three Programs, while others suggested that they be applied only to a specific Program. In recognition of these comments, EPA prepared draft modeling methodologies and reference tables, provided an opportunity for their review (see 61 FR 3031, January 30, 1996), and has published them as the RMP Offsite Consequence Analysis Guidance. EPA intends to conduct peer review of the RMP Offsite Consequence Analysis Guidance and will revise it as appropriate. For the final rule, EPA will allow sources in all Programs to use the guidance or conduct their own site-specific modeling, provided the modeling techniques used account for the parameters described in the rule. For example, EPA's Office of Air Quality Planning and Standards has prepared a publicly available modeling tool called TScreen that can assist owners and operators with consequence assessments. EPA also encourages local emergency planners, fire departments, and others who use tools such as CAMEO/ALOHA or other modeling techniques to assist businesses in their community who may need help in their modeling efforts. EPA believes the final rule approach takes advantage of the broad range of expertise and modeling tools already available and will provide more useful results at the local level for chemical emergency prevention, preparedness, and response. This approach will also stimulate accidental release modeling research, new and existing model development, and model validation to generate new tools for better understanding of hazards and the behavior of substances in accidental release situations.

6. Modeling Parameters. a. Endpoints. In the NPRM, EPA did not specify toxic or flammable substance endpoints that must be used in the offsite consequence assessment modeling. Most commenters recommended that EPA specify endpoints to provide a consistent basis for modeling; many favored the use of existing standards or guidelines, primarily the emergency response planning guidelines (ERPGs) developed by the American Industrial Hygiene Association for toxic substances. For flammables, commenters suggested overpressure, heat radiation, and explosion or flammability limits. In addition to other specific standards, a few commenters recommended a hierarchy of values if certain levels for some chemicals were not available.

In the SNPRM, EPA indicated that it would select one endpoint for each toxic substance for use in the offsite consequence assessment methodology and sought comment on whether it should use a single endpoint to the extent possible (e.g., the Immediately Dangerous to Life and Health (IDLH) value developed by the National Institute for Occupational Safety and Health (NIOSH), unless one does not exist for a substance), or a hierarchy of endpoints (e.g., ERPGs; if one does not exist, then the IDLH; and finally toxicity data if no other value is available). EPA also asked whether overpressure or both overpressure and radiant heat effects should be used for flammable substance endpoints. Some commenters supported the use of ERPG values for the toxic substance endpoint, or a hierarchy of values beginning with the ERPG. Others opposed IDLH or the IDLH divided by 10 for technical reasons.

EPA agrees with commenters that one toxic endpoint should be set for each substance. The endpoint for each listed toxic substance is provided in Appendix A to the final rule. The endpoint, applicable whether the source uses the EPA guidance or conducts site-specific modeling described below, is the AIHA ERPG–2 or, if no ERPG–2 is available, the level of concern (LOC) developed for the Technical Guidance, corrected where necessary to account for new toxicity data. The LOCs that were based on IDLHs have been updated only if the IDLHs were revised between the original LOC listing in 1987 and the 1995 IDLH revisions. The most recent IDLH revisions were not used because they are based on a methodology that EPA has not reviewed; the previous IDLH methodology was reviewed by EPA's Science Advisory Board for use as LOCs. EPA chose the ERPG–2 first because ERPGs are subject to peer review and are specifically developed by a scientific committee for emergency planning to protect the general public in emergency situations. The ERPG–2 represents the maximum airborne concentration below which the committee judges that nearly all individuals could be exposed for up to an hour without experiencing or developing irreversible or other serious human health effects or symptoms that could impair their ability to take protective action. EPA rejected the ERPG–3, which is a lethal exposure level, because it is not protective enough of the public in emergency situations. About 30 listed toxic substances have ERPGs. EPA chose to use LOC levels for substances with no ERPG because LOCs have been peer reviewed by EPA's Science Advisory Board, they are intended to be protective of the general public for exposure periods of up to an hour, they are widely used by the emergency response planning community, and, for a majority of the listed toxic substances, there are no acceptable alternatives. EPA notes that, for substances with both values, the LOC is comparable to, and in some cases is identical to, the ERPG–2.

EPA recognizes potential limitations associated with the ERPG and LOC and is working with other agencies to develop Acute Exposure Guideline Limits (AEGLs). See Establishment of a National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances, (60 FR 55376; October 31, 1995). When these values have been developed and peer-reviewed, EPA intends to adopt them, through rulemaking, as the toxic endpoint for substances under this rule.

As proposed, vapor cloud explosion distances will be based on an overpressure of 1 psi, and for analysis of worst-case releases, a yield factor of 10 percent. Yield factors (the percentage of the available energy released in the explosion process) can vary considerably. EPA selected 10 percent to generate conservative worst-case consequences. For flammables, EPA selected a radiant heat exposure level of 5 kW/m^2 for 40 seconds as recommended by the commenters, and, for vapor cloud fire and jet fire dispersion analysis, the lower flammability limit (LFL) as specified by NFPA or other recognized sources.

b. Meteorology. In the NPRM, EPA proposed that sources model the downwind dispersion of the worst-case release scenario using an F atmospheric stability class and 1.5 m/s wind speed and model the alternative release scenarios using both the worst-case conditions and the meteorological conditions prevailing at the source. EPA did not revise the meteorological assumptions in the SNPRM.

Several commenters argued that the worst-case meteorological conditions were too conservative or not applicable on a national basis and that site-specific conditions should be used, while others agreed that for worst case, minimum wind speeds and the most stable atmospheric conditions should be used. In the final rule, EPA has decided that sources must conduct worst-case dispersion modeling using an F atmospheric stability class and a 1.5 m/s wind speed. A higher wind speed or less stable atmospheric stability class may be used if the owner or operator has local meteorological data applicable to the source that show that the lowest recorded wind speed was always greater or the atmospheric stability class was always less stable during the previous three years.

In the final rule, EPA also requires sources to conduct alternative release scenario dispersion modeling using the typical meteorological conditions applicable to the source. If meteorological data are not available, typical conditions in the RMP Offsite Consequence Analysis Guidance may be used. EPA believes typical meteorological conditions should be used to generate realistic hazard assessments for communication with the public and first responders and for emergency planning.

C. Consideration of Environmental Impact

The issue of whether and how environmental impacts should be addressed in the hazard assessment and the rule in general drew considerable comment. The comments divide into three questions: Should EPA consider environmental impacts from accidental releases? If so, which environments should be identified? What constitutes an environmental impact?

1. Inclusion of Environmental Impacts. Environmental groups argued that the CAA requires assessment of potential impacts to the environment and that the environmental receptors listed in the SNPRM should be broadened. One commenter stated that since the CAA Amendments of 1990 strengthened limits of continuous air toxic emissions, wildlife is now threatened more by accidental releases. However, the majority of commenters on this issue, principally industry groups, opposed consideration of the environment because it is adequately protected by other environmental statutes, environmental protection in section 112(r) relates only to emergency

response, and Congress intended in section 112(r) for the environment to be addressed only to the extent that human health is protected. Several commenters argued that flammable substances were unlikely to generate environmental impacts. Commenters also stated that many industries have voluntarily developed nature reserves around their sources, often at the urging of government agencies. Additional regulations based on ''environmental'' impact consideration would ''penalize'' these sources for their efforts. Finally, two commenters noted that EPA's endpoints are based on acute human effects; applying these to the environment may not be valid.

EPA disagrees that section 112(r) was not intended to protect the environment as well as human health. Although section 112(r)(5) links the threshold quantity to human health, section 112(r)(3) requires EPA to select substances that could impact human health and the environment. EPA agrees that the only time sections 112(r)(7)(B)(I) and (ii) mention protection of the environment is in conjunction with emergency response; however, this is also true for protection of human health. Congress did not intend to limit concern about either impact strictly to emergency response procedures; Congress may not have mentioned either impact relative to prevention because the act of preventing an accident eliminates the impact on both. When accidents occur, human health and the environment need protection. By mentioning both impacts in the response or post accident phase, Congress was stressing its concern for the environment as well as human health. Given the integrated nature of the RMP, it would be an inappropriately narrow reading of CAA section 112(r)(7)(B) to say environmental impacts must be ignored in hazard assessments and in the design of the prevention program, but must be accounted for in emergency response. In addition, section 112(r)(9) provides authority for EPA to take emergency action when an actual or threatened accidental release of a regulated substance may cause imminent and substantial endangerment to human health, welfare, or the environment. Clearly, section 112(r)(9) allows EPA to take action to prevent, as opposed to simply respond to, accidental releases to protect the environment. Because section 112(r)(7) is intended to prevent situations that could lead to emergency orders under section 112(r)(9), it is logical to conclude that Congress meant EPA to develop regulations that would prevent accidental releases that could cause environmental damage. Although the consequences may not be precisely known, EPA believes that impacts could occur at environmental receptors located within the distance to a human acute exposure endpoint associated with a worst-case or alternative scenario because wildlife may be more sensitive or require less exposure to cause an adverse effect than humans.

2. Environmental Receptors to Be Considered. In the SNPRM, EPA proposed that sources report in their RMP which sensitive environments listed by the National Oceanographic and Atmospheric Administration (NOAA) for the Clean Water Act are within the distance determined by the worst-case or alternative case scenario. A few commenters argued that the list should include state and local level analogues to Federal entities (e.g., state parks), all surface waters that are fishable or swimmable or supply drinking water, and ground water recharge areas. Many commenters opposed the NOAA list, arguing that the list is extremely broad, covers millions of acres in primarily rural areas, and contains areas that are difficult for both the regulated community and the government to clearly identify (e.g., habitat used by proposed threatened or endangered species, cultural resources, and wetlands). They stated that the NOAA list is not appropriate for this rule because it represents guidance applicable to offshore sources, and to a limited number of very large onshore sources, that could have catastrophic oil spills. A few commenters suggested limiting the list to Federal Class I areas designated under the CAA prevention of significant deterioration program, or reducing the list of sensitive areas to national parks and the designated critical habitat for listed endangered species, and limiting environmental concern to those accidents that generate a significant and long-term impact, such as an actual ''taking'' of an endangered species.

For the final rule, EPA has not used the NOAA list. Instead EPA requires owners or operators to indicate in the RMP the environmental receptors located within circles whose radii are the distances to an endpoint for the worst-case and alternative release scenarios. EPA agrees with commenters that the locations of certain natural resources are difficult to identify. Consequently, EPA has defined environmental receptors as natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that can be exposed to an accidental release. All such receptors typically can be found on local U.S. Geological Survey (USGS) maps or maps based on USGS data. Habitats of endangered or threatened species are not included because the locations of these habitats are frequently not made public to protect the species. Natural resource agencies will have access to the RMP information and can raise concerns with local officials about potential harm to these habitats, as necessary. Local emergency planners and responders may want to consult with environmental management agencies as part of emergency preparedness.

3. Level of Analysis Required. In the SNPRM, EPA proposed that sources only identify sensitive environments within the area of the worst-case release, rather than analyzing potential impacts. A few commenters opposed this approach, stating that the CAA requires that sources analyze impacts. Most commenters supported EPA's position because extensive expertise at considerable cost is required to adequately assess all environmental impacts associated with the environments list EPA provided. Commenters stated that this cost would make fewer resources available for prevention activities and providing no benefit. Other commenters noted that much of the data needed for such analyses is not available.

EPA agrees that extensive environmental analysis is not justified. Irreversible adverse effect exposure level data for the wide variety of environmental species potentially exposed in an accidental release event are not available for most of the listed substances. EPA believes that identification of potentially affected environmental receptors in the RMP is sufficient for purposes of accident prevention, preparedness, and response by the source and at the local level.

D. Program 3 Consistency with OSHA PSM Standard

1. Prevention Program. In EPA's original proposal, the prevention program requirements were based on the elements of OSHA's PSM standard (29 CFR 1910.119), and some commenters supported this approach. But EPA added a paragraph to each OSHA prevention program element to explain the purpose of the provision and, in some instances, added additional recordkeeping, reporting, or substantive provisions to ensure that statutory requirements were met. Several commenters argued that these additions cause confusion and appear to require sources to create two separate

prevention programs, which could cause conflicting inspection and enforcement actions and greater cost for sources that must comply with both the OSHA and EPA requirements. Many commenters suggested that EPA simply reference the OSHA requirements.

EPA agrees that the Program 3 prevention program requirements should be identical to OSHA's PSM standard to avoid confusion and redundant requirements and to ensure that sources develop one accidental release prevention program that protects workers, the general public, and the environment. Therefore, EPA has moved the Management System requirement (see section I.D) supported by most commenters to a section separate from the Prevention Program and deleted the introductory paragraphs and modifications to the PSM language. The Agency recognizes that many workplace hazards also threaten public receptors and that the majority of accident prevention steps taken to protect workers also protect the general public and the environment; thus, a source owner or operator responsible for a process in compliance with the OSHA PSM standard should already be in compliance with the Program 3 prevention program requirements.

EPA did not cross-reference sections of the PSM standard in today's rule because, under Office of Federal Register requirements at 1 CFR 21.21(c)(2), EPA cannot adopt OSHA's requirements. EPA and OSHA have separate legal authority to regulate chemical process safety to prevent accidental releases. Furthermore, cross-referencing the OSHA standard would be tantamount to a delegation of authority to set standards in this area from the Administrator of EPA to the Secretary of Labor, because OSHA would be able to modify the PSM requirements without an EPA rulemaking under CAA § 307(d). The Senate explicitly considered and rejected the possibility of the Administrator delegating to OSHA responsibility for hazard assessment. Senate Report at 226. As that term was used in the Senate bill, hazard assessment included many of the elements of PSM.

With the exception of some key terms and phrases, the Program 3 prevention program language in the final rule is identical to the OSHA standard language (the rulemaking docket contains a side-by-side analysis of the OSHA standard and EPA rule text with word differences highlighted). Most of the differences are terms based on specific legislative authorities given to OSHA or EPA that have essentially the same meaning:

OSHA term	EPA term
Highly hazardous substance	Regulated substance.
Employer	Owner or operator.
Facility	Stationary source.
Standard	Rule or part.

EPA also agrees with commenters that sound process safety management systems ideally address chemical accident prevention in a way that protects workers, the public, and the environment. Since OSHA's responsibility is to protect workers, there are phrases in the OSHA standard that are designed to focus employer attention on accidents that affect the workplace. It could be argued that these phrases inadvertently exclude consideration of offsite impacts. EPA has deleted the phrases noted below to ensure that all sources implement process safety management in a way that protects not only workers, but also the public and the environment:

OSHA PSM requirement	EPA program 3 requirement
1910.119(d)(2)(E) An evaluation of the consequences of deviations, including those affecting the safety and health of employees.	68.65(c)(1)(v) An evaluation of the consequences of deviations.
1910.119(e)(3)(ii) The identification of any previous incident which had a likely potential for catastrophic consequences in the workplace.	68.67(c)(2) The identification of any previous incident which had a likely potential for catastrophic consequences.
1910.119(e)(3)(vii) A qualitative evaluation of a range of the possible safety and health effects of failure of controls on employees in the workplace.	68.67(c)(7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.
1910.119(m)(1) The employer shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a highly hazardous chemical in the workplace.	68.81(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

EPA also made changes to specific schedule dates to coordinate with the OSHA PSM requirements, made internal references consistent, and added a provision to the PHA section specifically grandfathering all OSHA PHAs and allowing sources to update and revalidate these PHAs on their OSHA schedule. EPA believes these modifications do not cause source owners or operators to make major adjustments to their PSM systems established under OSHA. These minor modifications ultimately lead to the development of one comprehensive process safety management system satisfying both OSHA and EPA that works to prevent accidents affecting workers, the public, and the environment.

EPA also modified the OSHA definition of catastrophic release, which serves as a trigger for an accident investigation, to include events ''that present imminent and substantial endangerment to public health and the environment.'' This modification, in combination with the changes noted above, ensure that sources covered by both OSHA and EPA requirements must investigate not only accidents that threaten workers, but also those that threaten the public or the environment. EPA agrees with commenters and recognizes that most catastrophic accidental releases affect workers first. However, the Agency also believes that there are accidental release situations where workers are protected but the public and the environment are threatened, e.g. vessel overpressurizations that cause emergency relief devices to work as designed and vent hazardous atmospheres away from the workplace and into the air where they are carried downwind. Although many sources through the PHA process will have recognized and addressed the potential impact offsite associated with safety measures that protect workers (e.g. an

emergency vent scrubber system), EPA believes that the requirements in today's rule ensure that all sources routinely consider such possibilities and integrate the protection of workers, the public, and the environment into one program.

2. Enforcement. Many commenters expressed concern for conflicting audit procedures, interpretations, and enforcement actions when EPA and OSHA auditors inspect the same processes. EPA has no authority to exempt a source covered under the PSM standard and today's rule from any prospect of an EPA enforcement action for violations of section 112(r) and EPA regulations issued under it. EPA and OSHA are working closely to ensure that enforcement actions are based on consistent interpretations and coordinated to avoid overlapping audits. Such coordination in enforcement was recognized as an appropriate method for exercising the Administrator's duty to coordinate the EPA program with OSHA (Senate Report at 244).

3. Exemptions. Many commenters suggested that the Agency exempt small businesses or certain industry sectors because the rule is too costly, some industries are already subject to substantial regulation by other Federal or state agencies, OSHA exempts certain industries from the PSM standard, and some sources have effective self-policing regimes in place.

Regardless of whether the source is covered under some other Federal, state, or local program, EPA has no authority to exempt a source that has more than a threshold quantity of a regulated substance from complying with the risk management program rule (CAA section 112(r)(7)(B)(ii)). EPA established the tiered approach to acknowledge that different industries pose different potential risks to human health and the environment and that elements of other regulatory programs may serve to prevent accidents. EPA believes that owners or operators can indicate in their Program and RMP how compliance with other particular regulations and standards satisfies Program or RMP elements, thereby, avoid duplication. Only those processes in certain SIC codes or covered by OSHA's PSM standard must implement the full PSM program under Program 3. A source owner or operator can demonstrate compliance with the Program 2 or 3 prevention program under today's rule for a covered process by showing that it complies with the PSM standard. This approach is consistent with the authority to set different standards for different types of sources under CAA section 112(r)(7)(B)(I).

E. Relationship to Air Permitting

Several commenters on the NPRM requested that EPA clarify the relationship between the risk management program and the air permit program under Title V of the CAA for sources subject to both requirements. In the SNPRM, EPA indicated that in Title V, section 502(b)(5)(A), Congress clearly requires that permitting authorities must have the authority to ''assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act.'' EPA further states in part 70.2 that ''Applicable Requirement means * * * (4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act; * * *'' Consequently, EPA must require that air permitting authorities implementing Title V permit programs be able to assure compliance with section 112(r). In the SNPRM, EPA attempted to identify the section 112(r) ''applicable requirements,'' clarify the minimum content of part 70 permits with respect to these requirements, and to specify the role and responsibilities of the part 70 permitting authority in assuring compliance with these requirements.

The sections below address the major issue areas raised by commenters on the SNPRM. More detail can be found in the Risk Management Program Rule: Summary and Response to Comments in the Docket. The SNPRM also addressed the role and responsibilities of the implementing agency with respect to section 112(r). This issue is addressed separately in Section R below.

1. General relationship between the part 68 and air permitting programs. Some commenters agreed with EPA's proposed role for the air permitting authority with respect to section 112(r), but encouraged EPA to avoid new, confusing, and duplicative state and source permitting requirements. A few commenters suggested that all part 68 requirements should become permit conditions, that it be fully enforced through the part 70 permitting program, and that anything less violates the CAA. Most commenters (state air permitting authorities and industry), opposed EPA's proposal stating that Congress did not intend, and legislative history does not support, section 112(r) to be implemented or enforced through the Title V permit program.

EPA agrees that Congress did not intend for section 112(r) to be implemented and enforced primarily through Title V and recognizes the potential for confusion and burden on sources and air permitting authorities associated with section 112(r). EPA believes that the requirements in today's rule are flexible, impose minimal burden, address the concerns raised by commenters and satisfy the CAA requirement for assurance of compliance with section 112(r) as an applicable requirement for permitting. The requirements apply only to sources subject to both part 68 and parts 70 or 71; there are no permitting requirements on sources subject solely to part 68. EPA agrees that ideally, one authority should implement part 68 oversight; however, air permitting authorities should not be responsible for implementation just as implementing agencies should not be responsible for permitting (see implementing agency discussion in Section R, below). The air permitting authority has the flexibility under today's rule to obtain assistance, expertise or resources from other agencies in fulfilling its responsibilities with respect to section 112(r). This will foster interaction and coordination of air pollution, pollution prevention, public and worker safety and health and environmental programs at the state and local levels leading to more effective oversight.

2. Impact of EPA's proposal on air permitting programs. Several commenters stated that EPA's proposal places an unreasonable burden on air permitting programs because states would need to amend or develop new legislative authority and implementing regulations which diverts limited state resources away from the development and operation of more important routine emissions permit programs.

EPA disagrees that today's rule places an unreasonable burden on air permitting programs. Part of the approval process for a state air permitting program is confirmation that states have the authority to ensure that sources are in compliance with air toxics requirements under section 112 including section 112(r). The provisions of section 68.215 are sufficient to meet the obligations under part 70. Thus, for state and local agencies that have approved part 70 programs, states would need to develop new legislative authorities only if they seek delegation to implement part 68 beyond the narrow responsibilities provided in § 68.215 (see Section R, below). State obligations under § 68.215, which should be covered by permit fees (see section E.11, below), should not impose a substantial burden on state resources because the rule streamlines the RMP requirements and establishes centralized recordkeeping for RMPs.

3. Part 68 as an ''applicable requirement'' under part 70. As described above, the CAA requires that air permitting authorities ensure that sources are in compliance with applicable requirements as a condition of permitting. In the preamble of previous rulemakings for part 70 (57 FR 32301), EPA indicated that the definition of ''applicable requirement'' under Title V includes ''any requirement under section 112(r) to prepare and register a risk management plan (RMP).'' This explanatory statement preceded development of part 68, which implements section 112(r)(7). In the SNPRM, EPA proposed more specific provisions to assure compliance with applicable requirements for section 112(r) than the part 70 preamble so that air permitting authority responsibility is clear. EPA believed that all elements of part 68 are applicable requirements; however, compliance with applicable requirements could be assured by including generic terms in permits and certain minimal oversight activities. Together, these steps ensure that permitted sources fulfill their accident prevention and information sharing responsibilities.

EPA proposed standard permit conditions that would allow air permitting authorities to verify compliance with part 68. Commenters stated that alteration of the part 70 rule definition of the term 'applicable requirement' under the part 68 rulemaking is inappropriate and that the role of the air permitting authority with respect to section 112(r) should be defined in part 70 rulemakings rather than in part 68.

EPA's action today does not alter the definition of ''applicable requirements'' under 40 CFR 70.2, which already includes ''any requirement concerning accident prevention under section 112(r)(7).'' Rather, EPA is establishing very simple permit terms and flexible, minimal oversight responsibilities that will assure compliance with part 68. EPA disagrees that part 68 cannot establish more specific terms for permits than those given in part 70 or 71 with respect to section 112(r). As mentioned in the SNPRM preamble, part 70 does not preclude EPA from clarifying or even expanding air permitting responsibilities. Specific permit requirements are useful to clearly establish the minimum permit conditions and state responsibilities essential to ensuring compliance with part 68 and to reduce uncertainties that may lead to overly broad interpretations of the requirements. However, air permitting authorities still have the flexibility to establish additional terms for the permit if it so chooses.

4. Role of the air permitting authority. In the SNPRM, EPA proposed certain air permitting authority responsibilities necessary to ensure that sources are in compliance with part 68 for purposes of permitting. Commenters stated that the role of the Title V permitting authority should be defined in part 70, not in part 68 and opposed EPA's proposal arguing that it causes unnecessary confusion for sources. Commenters also argued that air permitting authorities do not have the relevant expertise needed and that states should have the flexibility to implement risk management programs in whichever agency they see fit. Other commenters argued that air permitting authorities, without section 112(l) delegation, could not accept the responsibilities assigned by the SNPRM and that EPA was unlawfully attempting to delegate the responsibility for implementing section 112(r) to the state permitting authorities. Several commenters believed the permitting authority should have no responsibilities beyond those set forth in EPA's April 13, 1993, policy memorandum from John Seitz, Director of the Office of Air and Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, available in the docket because states invested significant resources and effort into the development of their programs, guided by this EPA memorandum. However, a state permitting authority stated that the EPA memorandum did not account for many of the key program elements, including the necessary incorporation of standard permit conditions. Many commenters also opposed requiring extensive details or all aspects of part 68 compliance in the permit, finding this approach excessive and overly burdensome on both state air permitting authorities and sources and contrary to the law and Congressional intent in that it would have required section 112(r)(7) to be fully implemented by state permit programs.

Several commenters were concerned that a single violation of part 68 could potentially be enforced by both the permitting authority and the implementing agency. One commenter suggested that the only case where a violation of a part 68 requirement should also be considered a violation of part 70 would be the failure to register an RMP on time under the requirements of § 68.12. Another commenter requested that, at § 68.58(b)(3), EPA should allow the state the discretion to determine whether a penalty should be assessed. Several commenters, uncertain how the Programs proposed by EPA in the SNPRM would affect the role of the permitting authority, suggested that EPA develop a process to inform states of the tiering approach and to exclude Program 1 and 2 sources from additional permitting requirements.

EPA believes that part 68 should more clearly define the role of the air permitting authority with respect to section 112(r). Part 70 requirements were established well before part 68 and are therefore vague. Consequently, EPA is using part 68 to clarify the applicable requirements, to specify permit terms and to establish the minimum permit conditions and activities to avoid misinterpretations and to ensure compliance with part 68. EPA agrees that air permitting authorities may not have the expertise necessary with respect to part 68; consequently, the requirements in today's rule only specify the actions the state must take to assure that sources have met their part 68 responsibilities while giving the state flexibility to assign or designate by agreement entities other than the permitting authority to carry out these activities. The elements in today's rule are the minimal components of a successful compliance program; anything less falls short of the statutory requirements of assuring compliance with all applicable requirements. EPA also disagrees that it is forcing delegation on air permitting authorities to implement section 112(r). As described in the SNPRM and above, air permitting authorities must ensure that sources are in compliance with applicable requirements for purposes of permitting. This is not section 112(r) implementation (see section R below). EPA is merely specifying more clearly the requirements already upon air permitting authorities; without the specification given in today's rule, it could be argued that air permitting authorities are obligated to review and evaluate the adequacy of RMP submissions. EPA agrees that oversight of the adequacy of part 68 compliance, including RMPs, is not an appropriate activity for the air permitting authority and is more appropriately an implementing agency duty. Delegation of these implementing agency activities can only be accomplished through a delegation consistent with part 63, subpart E.

EPA also maintains that the air permitting authority role should be more specifically defined than that offered by the April 13, 1993, memorandum. The April 1993 policy was prepared prior to the NPRM and SNPRM, it does not account for implementation of the risk management program by the source (as opposed to

implementation of the plan), and there is no mechanism, such as a review of the RMP by the permitting authority, to ensure that the plan contains the elements required by part 68. These deficiencies were previously indicated by EPA in a June 24, 1994, memorandum from John Seitz and Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office (CEPPO) to EPA Regional Division Directors, which stated that ''approval criteria in the April 13 memorandum may not be sufficient to ensure compliance with all 'applicable requirements' established'' in the risk management program rule. EPA acknowledges that states may have invested considerable resources and effort in development of air permitting programs based on the April 13, 1993 policy. However, EPA also believes that the minimum requirements and flexibility offered by today's rule allow air permitting authorities to fold these activities into their programs with minimal burden. EPA recognizes that there may be multiple agency oversight related to permitting and part 68. As mentioned above, today's rule allows the air permitting authority the flexibility to use other agencies, such as the implementing agency or a designated agency (upon agreement), to better coordinate at the state and local level. In addition, EPA must note that there is no 'approval' of either initial or revised RMP submissions.

EPA agrees that requiring the permit to contain extensive details of part 68 compliance goes well beyond the need for part 70 permits to assure compliance with applicable section 112(r) requirements and it would impose considerable resource and expertise burdens on the permitting authority. EPA has maintained that it is not appropriate to include risk management program elements as permit conditions since these elements will be highly source-specific and subject to change as the source develops and implements its programs.

While enforcement would primarily occur using part 68 authority, EPA agrees that the permitting authority also has the authority to pursue violations under part 70 and sources could be subject to multiple violations. This is no different from any other standard promulgated by EPA that becomes an applicable requirement for permitting. EPA agrees that the air permitting authority has the discretion to coordinate with the implementing agency with respect to penalty assessment associated with § 68.58(b)(3) in the SNPRM (§ 68.215(e)(4) under today's rule).

Finally, the tiering (Program) approach benefits sources as well as air permitting authorities. EPA has simplified the tiering provisions so sources and air permitting authorities should be able to readily determine the Program requirements each process must satisfy, leading to more effective oversight. EPA has also streamlined the RMP reporting requirements and is working on electronic submission of RMP information which serve to reduce the burden on air permitting authorities and implementing agencies.

5. Title V permit application contents. Many commenters stated that sources regulated under parts 70 or 71 and part 68 should only be required to certify whether they are subject to section 112(r) in their initial permit application to allow timely processing. Although EPA indicated that it did not want the RMP included in permit applications or in the permit, many commenters stated their opposition because the additional time required for RMP review could delay permit grants and, in some states, the RMP could be included in the source's permit. Several commenters suggested that the air permitting authority should decide whether it wants the RMP; one commenter stated that sources would have a significant incentive to comply with such a request, given the permitting authority's ability to withdraw an application shield. Others stated that the permitting authority should be prohibited from asking for the RMP as part of the permit application.

As EPA has indicated, the RMP should not be submitted with the permit application or made part of the permit. EPA is working to streamline permit application requirements and has indicated that the minimum with respect to section 112(r) is a ''check box'' for the source to note whether it is subject to section 112(r), and either certification that the source is in compliance with part 68 or has a plan for achieving compliance. Any other requirements are up to the air permitting authority. All sources will be required to submit their RMP to a central point to be specified by EPA and will be immediately available to local responders and the state which may elect to make it available to air permitting authorities.

6. Air permit contents. EPA proposed in the SNPRM that each permit contain standard conditions that address key compliance elements in part 68 and mechanisms for compliance plans, certifications and revisions. Although EPA indicated it did not believe the RMP should be part of the permit, two commenters suggested that it should be included while most others indicated that it should not or that the air permitting authority should decide. Several commenters supported no more than the four conditions proposed in the SNPRM while others suggested requirements including: prompt development and updating of a complete RMP; no conditions other than an indication that a source is subject to part 68; provisions stating the need to register according to § 68.12; a condition stating that the source will comply with all part 68 requirements; and a standard provision recognizing that the implementing agency has the section 112(r) enforcement authority.

Except for the provisions of § 68.215(a), EPA does not believe that the RMP or all or any portion of the remainder of part 68 should become permit conditions because the RMP and part 68 elements will be highly source-specific and subject to frequent change introducing unnecessary complexity and delaying permit implementation. The provisions of § 68.215 should allow the air permitting authority to implement the conditions in a standardized way across many sources with minimal burden. EPA has revised § 68.215 to require that all permits contain a statement listing part 68 as an applicable requirement and that conditions shall be added that require the source to submit a compliance schedule for meeting the requirements of part 68 or, as part of the compliance certification all permitted sources must submit under 40 CFR 70.6(c)(5), a certification statement that, to the best of the owner or operator's knowledge, the source is in compliance with all requirements of this part, including the registration and submission of the RMP. EPA had amended the authority citation for part 68 to include CAA Title V because EPA is promulgating permit terms and oversight duties. Consistent with parts 70 and 71, the permit shield provisions of parts 70 and 71 would not apply to the substantive requirements of part 68 because the detailed substantive requirements of part 68 are not addressed in the Title V permit or permit application. If a permit without these conditions has already been issued, then when the permit comes up for renewal under part 70 or 71 requirements (40 CFR Part 70.7), the owner or operator shall submit an application for a revision to its permit to incorporate these conditions. The suggested alternative conditions, not adopted, generally help assure compliance only with portions of part 68, such as registration or the preparation of the RMP, or omit critical

information, such as whether the source is subject to part 68 or what its compliance status is. The implementing agency's enforcement authority is apparent on the face of the CAA.

7. Completeness review. As part of ensuring compliance, EPA proposed in the SNPRM that within a certain time-frame the air permitting authority must verify that an RMP containing the required elements had been submitted and indicated in the preamble that it would assist air permitting authorities by developing a checklist. EPA stated that this review is independent of completeness reviews required for permit applications to avoid interfering with the permit process. Further, air permitting authorities could arrange for other agencies, including the implementing agency, to perform the completeness review. EPA also requested comment on whether the permitting authority should be able to require sources to make revisions to an RMP.

Most commenters disagreed with this proposal arguing that if a completeness check is necessary, it should be performed by the implementing agency since most air permitting authorities will not have the technical expertise (e.g., chemical process safety) required to adequately review RMPs for technical completeness. Commenters also argued that a completeness review would be merely procedural, it duplicates effort without creating any real benefit, it consumes scarce resources, and it leads to inconsistent RMP review without ensuring the source is in compliance with risk management program requirements. Some commenters suggested that the completeness review could be better defined only as a review of source self-certification that a complete RMP was submitted rather than a substantive review. Some commenters generally agreed that completeness checks should be completed within sixty days. Finally, most commenters argued that only the implementing agency should be able to require revisions to the RMP. Otherwise, another revision review, appeal and verification process would be necessary, duplicating the process already established for the implementing agency.

Based on these comments, EPA has decided not to require that air permitting authorities perform a completeness check as part of the verification of compliance with part 68. EPA has modified the rule requirements so that the air permitting authority may select for itself one or more appropriate mechanisms (such as source audits, record reviews, source inspections or completeness checks) and time-frame in conjunction with source certifications, to ensure that permitted sources are in compliance with the part 68 requirements. Without some kind of oversight, source self-certification is not a sufficient means of compliance assurance, given that an RMP contains information essential at the local level for emergency prevention, preparedness, and response and is not subject to routine, case-by-case review for quality. These oversight mechanisms do not need to be used on each source in order to be effective. EPA agrees that the review for quality or adequacy of the RMP is best accomplished by the implementing agency on a frequency and scope that may vary. EPA is willing to work with air permitting authorities on guidance, checklists or other tools to assist in the development of compliance mechanisms related to the RMP. In addition, EPA is willing to assist air permitting authorities in electronic checks once the electronic system for RMP submittal is developed. EPA emphasizes that if an RMP completeness check is used by the air permitting authority, it should remain independent of the completeness determination for the permit application. The RMP will most likely be submitted at a different time than a permit application, since almost all permit applications will have been submitted well in advance of the risk management program rule deadline. If the completeness check determines that an incomplete RMP has been submitted, the permitting authority can request additional information under § 68.215(b) and should coordinate with the implementing agency on necessary RMP revisions. The completeness checks are facial reviews of RMPs to verify that there are no omissions. Such checks could be performed on a select basis and occasionally integrated with a multi-purpose source inspection conducted to ensure that the air source is in compliance with its permit.

8. Interaction of the implementing agency and the permitting authority. In the SNPRM, EPA attempted to delineate the specific requirements unique to the air permitting authority and the implementing agency. The role of the state is described in more detail in E.4 while the implementing agency is discussed in R. Commenters on the SNPRM suggested that EPA should require the implementing agency to certify to permitting authorities whether part 68 sources regulated under part 70 are in compliance with part 68 requirements. Such certification should be deemed sufficient to ''assure compliance'' with the applicable requirement under part 70. Other commenters suggested that the permitting authority could simply consult with the implementing agency when it believes there is a problem requiring attention or that the implementing agency should notify the permitting authority of any problems in part 68 compliance, so that the permitting authority may then expand the permit conditions accordingly.

EPA does not believe it is necessary to define the interaction between the permitting authority and the implementing agency. Ideally, this coordination and interaction should occur at the state or local level. Coordination of other CAA programs (Title V, SBAP, and other 112 programs) with the 112(r) program will ensure that the programs are more consistently implemented and enforced, while easing regulatory burden and providing the public greater access to information. However, when EPA is the implementing agency, it stands ready to work with air permitting authorities on oversight associated with permitting and enforcement of the part 68 requirements. Today's rule also provides the state the flexibility to assign some or all of its responsibilities by prior cooperative agreements or memoranda of understanding to the implementing agency or another state, local, or Federal ''designated agency.'' EPA recognizes that each state is structured differently and will have different impediments and opportunities; therefore each state has the flexibility to place the program in an appropriate agency or department, including the air permitting agency.

9. The ''designated agency.'' In the SNPRM, EPA proposed to define the designated agency as the state or local agency designated by the air permitting authority as the agency responsible for the review of an RMP for completeness. This provision was designed to give the air permitting authority the flexibility to obtain expertise from other agencies to fulfill its responsibilities. Several commenters believed the SNPRM does not clearly allow the permitting authority to delegate tasks to a designated agency and the permitting authority should be able to delegate more than the completeness review, e.g., enforcement. Some commenters requested that EPA redefine the term to allow permitting authorities to delegate tasks to EPA or other Federal agencies; while one commenter argued that EPA should not allow the permitting authority to designate EPA as the designated agency.

EPA agrees that the definition should be revised to give the air permitting authority more flexibility. EPA has dropped the mandatory completeness review, added broader implementation and enforcement activities, and included Federal agencies in the designated agency definition. Thus, a ''designated agency'' may be any state, local, or Federal agency designated by the state as the agency to carry out the provisions of § 68.215, provided that such designation is in writing and, in the case of a Federal agency, consented to by the agency. The parties to any such designation should negotiate the terms and details of any agreements.

10. Reopening part 70 permits to incorporate section 112(r) requirements. In the preamble to the SNPRM, EPA indicated that part 68 requirements should be incorporated into part 70 or 71 permits using the part 70 administrative amendment process because of the timing difference between part 68 and air permitting. Most commenters agreed with this approach or indicated that permits should not be reopened at all; instead, sources that submitted permit applications prior to promulgation of the final section 112(r) regulations should not be subject to enforcement action under Title V until after the first renewal of the permit (i.e., after 5 years).

As discussed under section E.6, if a permit without the necessary part 68 conditions has already been issued, then the owner or operator or air permitting authority shall initiate a permit revision or reopening according to the procedures detailed in 40 CFR 70.7 or 71.7 to incorporate the terms and conditions under paragraph (a) of § 68.215. Although EPA has not completed part 70 permit streamlining efforts, the requirements for permit revisions or reopenings should be complete by the time sources will be required to be in compliance with the part 68 requirements. Under the most recent part 70 proposal, the part 68 requirements would be classified as ''less environmentally significant'' and the associated procedures would be followed. Sources with such permits shall be subject to enforcement under authorities other than Title V.

11. Use of Title V funds. In the SNPRM, EPA indicated that activities conducted by air permitting authorities should be covered by fees collected under part 70 since part 68 is an ''applicable requirement.'' EPA also acknowledged that air permitting authorities may not have planned for section 112(r) activities and requested input on alternative funding mechanisms or whether resources would need to be reduced in other programs to allow completion of part 68 responsibilities.

Several commenters raised concerns about the impact of the section 112(r) requirements on state and local air permitting authorities because funding will be needed and it may not be possible in the current political climate for the permitting authorities to raise the necessary fees through Title V. Some commenters argued that funding decisions should be left up to the air permitting authorities.

EPA agrees that funding decisions regarding the part 68 program should be made at the discretion of the state and local agencies. However, air permitting authorities need to be aware that the CAA requires states to impose permit fees that are sufficient to cover the direct and indirect costs of implementing the permit program, including part 68 activities and activities conducted by state designated agencies. EPA believes the straight-forward and flexible requirements established in today's rule impose minimal additional burden on air permitting authorities. Funding associated with section 112(r) implementation is addressed in section R, below.

12. Other issues. In the SNPRM preamble, EPA stated that it worked closely with and directly involved several state and local air program officials and state emergency response and prevention representatives in the development of the preamble and regulatory language to prepare the approaches described. EPA stated that the proposed approaches ''best reflect the concerns of the states about air permit program implementation and the needs for comprehensive participation in chemical accident prevention, preparedness, and response at the state and local level.'' Two commenters disagreed, arguing that in January 1995, the National Governors Association (NGA) and ECOS (organization of state environmental officials) presented numerous recommendations to EPA Assistant Administrator Mary Nichols for changes in several clean air programs; regarding section 112(r), NGA/ECOS recommended that Title V permitting authorities be required only to certify that an RMP has been submitted. These commenters believe that the SNPRM fails to adequately address states' central concern; requiring permitting authorities to review RMPs will encumber an already overtaxed system.

Although EPA disagrees that the proposal fails to adequately address states' concerns, EPA agreed that the air permitting authority requirements could be more sharply focused to minimize the burden. EPA believes that today's rule is the product of many hours of hard work with state and local air permitting authorities to recognize their concerns and to develop a rule that is effective, flexible and imposes the least economic burden possible.

F. General Definitions

1. Significant Accidental Release. In the NPRM, EPA proposed to define significant accidental release as ''any release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter in place or be evacuated to avoid such consequences.'' This definition was key to the applicability of a number of rule requirements, including hazard assessment, accident history, and accident investigation. Only four of more than 115 commenters supported this proposal arguing that the definition should be protective of the public and should consider inconvenience to the public and precautionary measures taken. Other commenters argued that Congress intended for the section 112(r) rules to address catastrophic releases, not those with minor impacts, and that this definition overly broadens the scope of the rule diverting resources and increasing cost for little additional benefit. Many commenters stated that ''injury'' and ''adverse effects'' are undefined and could mean any health impact from irreversible effects to minor irritation requiring no medical treatment. ''Potential to cause'' was also considered too vague. As discussed in Section III.C, many commenters objected to consideration of environmental impacts. Commenters also opposed sheltering-in-place and evacuation as criteria because these actions are often precautionary and, in many cases, are later viewed as unnecessary and may discourage owners or operators from making recommendations to evacuate or shelter-in-place. Several commenters submitted alternative definitions where injuries were limited to those that require hospitalization, adverse effects were limited to serious effects, and environmental effects were limited to those that generate human deaths or hospitalizations. Some suggested that all environmental effects be dropped.

EPA agrees that the definition as proposed was too vague and subject to a wide variety of interpretations. In addition, EPA decided that a single definition does not adequately address

the criteria needed for all affected sections of the rule. For example, the five-year accident history requirement depends on the offsite impacts generated by the accident while endpoint criteria are used for the worst-case and alternate scenario offsite consequence assessments. Consequently, EPA has decided to drop the definition and instead identify the criteria for the types of releases or impacts that should be addressed by the appropriate requirement. EPA has considered the suggestions offered by commenters and added definitions of the terms ''environmental receptor,'' ''injury,'' ''medical treatment,'' and ''public receptor'' and adopted (with modifications as described above) the OSHA definition of catastrophic release. EPA notes that sources should be aware that within the definition of Injury, direct consequences include effects caused by shrapnel and debris set in motion by a vapor cloud explosion. EPA adopted its Medical Treatment definition from one OSHA uses for logging occupational injuries and illness. Finally, under the environmental and public receptor definitions, sources should note that certain parks and recreational areas may be both if the public could be exposed as a result of an accidental release.

2. Stationary Source. Commenters requested that EPA state whether the term stationary source covers the entire ''facility'' or simply a single process and provide guidance on which requirements apply source-wide and which are process-specific. EPA also received comments regarding the relationship or overlap between the stationary source definition and DOT regulations. These are discussed in section III.P.2 below.

In the List and Thresholds rule, EPA defined stationary source to include an entire ''facility.'' Sources will be required to submit one RMP and one registration as part of that RMP for all processes at the source with more than a threshold quantity of a regulated substance. Although the management system applies to all Program 2 and 3 processes, the prevention program elements are process-specific. The hazard assessment requirements apply to the regulated substances, but only in covered processes. As a practical matter, the emergency response program will probably apply to the entire source although technically it applies only to covered processes.

3. Process. Several commenters argued that the definition of process was susceptible to overly expansive interpretations and asked that certain activities such as storage at sources or distribution terminals be excluded. Many commenters sought clarification of ''close proximity'' and ''interconnected vessel.'' Commenters also wanted the definition to be consistent with OSHA.

EPA adopted OSHA's definition of process in the original proposal and for the final rule. This definition specifically covers storage (as well as handling and processing) of regulated substances. EPA disagrees that storage-only sources are adequately covered by SPCC regulations since the regulations under SPCC and OPA–90 cover oil terminals and releases to water. This rule is directed at accidental releases of regulated substances (not including oil) to the ambient air. Generally, OSHA PSM also covers these chemical terminals; consequently, the only additional steps these sources will need to take will be to conduct the hazard assessment and submit the RMP, as existing emergency response plans may meet the emergency response program requirements.

Since EPA's definition is identical to OSHA's, EPA will coordinate interpretations of the definition of process with OSHA to ensure that the rule is applied consistently. OSHA has stated that processes are in ''close proximity'' if a release from one could lead to a release from the other. Owners or operators must be able to demonstrate that an ''effective barrier'' exists to prevent a release from one process from affecting another. OSHA has interpreted ''interconnected vessel'' to mean vessels connected by any means, such as piping, valves or hoses, even if these are occasionally disconnected. EPA will also adhere to these interpretations.

4. Offsite. One commenter stated that EPA's proposed definition of offsite should be expanded to include the air above and below the point of release to cover exposure to the upper atmosphere and groundwater. Another asked EPA to limit the definition to areas frequented by the public. Two commenters opposed including areas on site where the public has access because OSHA already covers these areas.

In the final rule, EPA has retained a definition of offsite as ''areas beyond the property boundary of the stationary source or areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.'' OSHA's jurisdiction includes visitors that may be on the property of a facility who are conducting business as employees of other companies but does not necessarily extend to casual visitors or to areas within a facility boundary to which the public has routine and unrestricted access at any time.

5. Other Definitions. Commenters raised questions about several other definitions. Three commenters suggested changes or clarifications to the definition of accidental release. EPA's definition is the statutory definition. Commenters also proposed modifications to the definition of ''analysis of offsite consequence.'' As noted above, EPA has determined that this definition is not needed and has deleted it from the final rule.

Commenters sought clarification of the definition of mitigation systems and whether personnel should be considered an active mitigation system. Others asked for a list of passive mitigation systems and provided proposals. These commenters also objected to limiting passive systems to those that capture or control released substances; they suggested that systems that are designed to prevent releases or control the volume or rate of a release, such as vent/catch tanks, quench tanks, blowdown tanks, elevated stacks and high velocity stacks, adsorbents including carbon beds, neutralization tanks, double-walled vessels or pipelines, chemical sewers, closed drain header systems for flammables, vapor-liquid separators, fire barriers, explosion-resistant walls, isolation distances, barriers to prevent free access of air flow after a release, containment buildings, pre-charged water spray systems, closed vent systems, and filters should also be considered passive mitigation. One commenter suggested that active mitigation systems should be defined as those that require manual activation or an energy source (other than gravitational attraction) to perform their intended function.

For the final rule, EPA has decided to define passive mitigation systems as those systems that operate without human, mechanical, or other energy input and would include building enclosures, dikes, and containment walls but excludes active mitigation systems such as excess flow valves, fail-safe systems, scrubbers, flares, deluge systems, and water curtains. In addition to the requirements outlined in §§ 68.25 and 68.28, EPA provides further guidance on the consideration of the effect of passive mitigation in its RMP Offsite Consequence Analysis Guidance. EPA does not believe that all systems designed to prevent releases or control the volume or rate of a release should be considered passive mitigation, consistent with its intent to reflect the potential for failure of any system that requires human, mechanical, or other energy inputs.

G. Risk Management Plan (RMP)

In the NPRM, EPA proposed that owners or operators of stationary sources covered by the requirements submit an RMP summarizing the key elements of its risk management program. In the NPRM preamble, EPA indicated that summaries of the information requested (e.g., hazard assessment and emergency response program) would provide the most useful information to the public and local agencies without overburdening them with unneeded detailed information. EPA further stated that the RMP should serve to provide local and state agencies and the public with sufficient information to determine if additional details are needed. These details would be available, if needed, to implementing agency officials conducting audits or compliance inspections.

1. Level of Detail. Most commenters agreed with EPA's proposal noting that the public should be able to identify key hazard and risk management information from the RMP without being overwhelmed by extraneous documentation that is more appropriately maintained on site. A detailed submission would not be cost-effective and could threaten plant security; these commenters expressed fears of terrorism, thieves, and saboteurs.

Other commenters disagreed and argued that summaries would not provide enough information while ''full disclosure'' would support an informed public. Some commenters argued that the public could be misled by a summary derived from a ''full'' RMP withheld from the public by the source. Further, several commenters made the general argument that right-to-know provisions should be strengthened and that the public should be given full access to all risk management program information including PHAs and actual operating procedures. Individual commenters also requested public access to specific information regarding such details as worst-case scenarios and descriptions of chemical accidents. Some commenters argued that an informed public and public scrutiny, in general, can act as a powerful force in reducing risk and preventing accidents at stationary sources.

EPA agrees that an informed public is a key element of sound chemical emergency prevention, preparedness, and response. However, EPA also believes that it is essential for the public to focus on the information essential at the local level for prevention, preparedness, and response and has decided to maintain its proposed requirement that the RMP provide certain information about the risk management programs at a source. EPA notes that its previous use of the word summary was not intended to imply that the source prepares a ''full'' RMP document from which a source extracts summary information that is shared with the public. Rather, the source is obligated to develop certain information about the hazards, prevention, and emergency response programs from the array of documentation at the source to prepare an RMP. EPA believes it would be impractical to require sources to share all documentation used for the safe operation of the processes at a source. Not only is much of this information likely to be confidential, but significant technical expertise and time are necessary to extract, understand, and to make meaningful judgments about the adequacy of the information. The RMP will consist of an executive summary and required data elements addressing all elements of the risk management program as described below. Detailed supporting documentation will be maintained on site available to the implementing agency for review.

2. RMP Contents. Most commenters requested that EPA generally limit the level of detail required, the number of scenarios, or the number of pages in the RMP. Other commenters recommended EPA require submission of only information specified in the CAA and incorporate other detailed information by reference. Commenters also noted that documenting each action taken to address a hazard, the date on which the action started (or is scheduled to start), and the actual or scheduled completion date would prove impractical. EPA received many comments stating that the requirement that exact dates on which training, emergency exercises, or rescue drills, are conducted would be impractical and unnecessary.

Commenters seeking more comprehensive RMPs argued in favor of requiring an index or bibliography of detailed information or a catalog of all available documents, an investigation and analysis of all other credible release scenarios, and submission of assumptions, methodology, and modeling methods used to determine worst-case accidents.

As described above, EPA is considering development of a reporting mechanism and form to collect key data elements. As discussed below, this approach will foster electronic submission and immediate availability to Federal, state and local entities, and the public. To make such submission possible, EPA wants to collect data that generally can be reported by numerical information, yes/no answers, and check boxes. For the offsite consequence analyses, owners or operators will be asked to provide distance to the endpoint, populations and environments affected, and enough of the data used to determine these distances so that local entities and the public can check the distance against the distance derived from EPA's reference tables or a model identified in the RMP. If EPA's guidance was not used, sources will need to indicate which models were used. Many of the parameters for modeling are set in the rule and do not need to be respecified in the RMP. The rule requires only one alternative release scenario per toxic substance and one for all flammables; owners or operators may submit additional scenarios.

For prevention programs, owners or operators must provide information (primarily dates) that will allow the implementing agency to assess whether the source is in compliance with the rule elements. For the PHA, owners or operators must state which technique was used for each covered process, the general hazards associated with the chemicals and process, the process controls in use, mitigation and monitoring or detection systems in use, and changes instituted since the last PHA (Program 3) or hazard review (Program 2) update. Through lists and checkoff boxes, EPA can collect a significant amount of information on current safety practices without requiring sources to develop lengthy documentation that would have proved a burden to both the source and any government or public data user and reduced the potential for electronic submission. EPA believes this approach provides the Agency and others with a mechanism for identifying industry practices and controls from almost 70,000 sources that would not be feasible otherwise. EPA notes that some of the largest chemical sources and refineries may be providing data on 30 or more processes. In the format proposed in the NPRM, these sources might have submitted several thousand pages each; analyzing such submissions would have been a daunting task for the implementing agencies and probably would have made it impossible for public interest groups to review an industry as a whole. With electronic submission, such reviews will be easier. The implementing agency or EPA can seek additional details from individual sources, as needed. EPA has eliminated the requirement to provide dates of training and emergency exercises or

drills because the Agency agrees that this amount of detail is unnecessary and impractical.

3. Submission. In the NPRM preamble, EPA proposed that computer software be developed that would provide sources with a standard format for completing the information required in the RMP; that local authorities be allowed to designate the state as the receiving entity; or that RMPs be submitted only on request from the state, or local entity.

Many commenters, particularly those in the potentially regulated community, supported submission of the RMP upon request or mandatory submission to the implementing agency with submission by request to other organizations. Others recommended submission to the LEPC and public with submission by request to the implementing agency, and SERC. Most commenters favored reducing the paperwork burden and electronic submission because it would reduce time and errors, provide more consistency, and make information more useful for the LEPC and regulatory agencies. Only two commenters opposed electronic filing because all sources may not have the computer capability.

Commenters also supported the development of a standard RMP format regardless of whether the RMP is submitted electronically because standardization would ensure submissions were manageable and useful and would ease burdens on both regulated and reviewing entities.

EPA has decided to work toward electronic submission of RMPs. The Agency believes this will meet numerous objectives of the program and will address several issues. First, electronic submission would reduce the burden on regulated and receiving entities. The Agency has noted that information management of regulatory documents is not a cost-free requirement, and that duplication of effort, including system development, personnel resources, and storage and maintenance efforts could be significant. Electronic submissions would reduce the paperwork burden on sources and state and local governments and would further serve to comply with the Paperwork Reduction Act of 1995, which supports the maximum feasible use of electronic submission. Second, EPA wishes to limit the information management burden on local entities so they can focus on the chemical safety issues raised by this rule.

Third, electronic submissions would benefit affected communities and the general public. Besides having the RMP provide the statutorily required information on compliance with the regulations to the implementing agency, EPA believes the specific value of RMP information is for the local community to understand its community's risk from chemical accidents and to help them work with sources using these chemicals to reduce such risks. The Agency believes this objective would not be served well with a centralized paper information source and that using an electronic medium would support better access to information. With electronic submission of RMPs to a central point, states, local entities, and the public will have access to all RMPs electronically. RMP information may also be made available on-line via libraries and other institutions. Electronic submissions further address the issue of standardized RMPs. The RMP data elements included in the submission will be checkoff boxes, yes/no answers, or numerical entries to ease the burden of submission and reception and will promote consistency and uniformity. The Agency intends to develop technical guidance for the submission of the RMPs, which will provide for submission and receipt of an electronic formatted document containing the data elements outlined in §§ 68.160 through 68.180.

4. Other Issues. In the NPRM, EPA proposed that RMPs be resubmitted within six months of an information change. Several commenters argued it would generate a continual flow of paperwork and recommended an update frequency requirement of once a year.

EPA has retained the requirement that the RMP be resubmitted within six months of the elimination of a substance in a process or at the source, a change in Program status for a process, or if a process change at the source requires a revised hazard assessment or hazard review/PHA. To be consistent with the statutory requirements for compliance, the RMP would also have to be updated on the date an already regulated substance becomes present in a process above the threshold or within three years of the date when EPA lists a new substance. EPA believes that with a standardized format and electronic filing, updates can be rapidly and easily made, and this information should be promptly shared. EPA changed the update schedule for hazard assessments to make them consistent with the RMP update. EPA also specified when offsite consequence analyses require update; the rule states that these analyses need to be reviewed and changed if on-site changes may be reasonably expected to change the distance to an endpoint by a factor of two or more. EPA notes that this change is likely to reduce the number of updates required. For PHAs, only major changes to a process or installation of new processes is likely to trigger a revised PHA. EPA expects that relatively few sources will need to update either their offsite consequence analyses or PHAs/hazard reviews more frequently than once every five years because the majority of sources have simple processes that do not change frequently. Chemical industry sources may need to submit more updates if processes are changing significantly. The RMP should reflect such significant changes.

EPA proposed that RMPs be submitted to implementing agencies, SERCs, and LEPCs, and be made available to the public. Several commenters recommended that additional parties, local fire officials in particular, also receive RMPs. One commenter stated that EPCRA requires various reports go to local fire departments, and another commenter noted that RMP information may be better used by emergency management agencies, fire departments, and hazardous materials teams. Because EPA plans to have RMPs submitted to and available from a central point in electronic format, any agency that wants the information will be able to access it directly on-line. The RMP will be immediately available to local responders and the state. Thus, this manner of submission fulfills the requirements of CAA section 112(r)(7)(B)(iii). Additional submission requirements are, therefore, unnecessary.

The Department of Defense (DOD) commented concerning the lack of a rule provision explicitly declaring that information that is classified under applicable laws and Executive Orders (E.O.s) is not to be included in the RMP. EPA is clarifying that such classified information is protected from disclosure by including a specific regulatory exemption for such information. Furthermore, EPA is clarifying that no provision of part 68 requires the disclosure of classified information in violation of Federal law, regulations, or E.O.s. Finally, EPA is also promulgating a definition of ''classified information'' that adopts the definition under the Classified Information Procedures Act.

EPA has found no relevant statutory language superseding or impliedly repealing the Classified Information Procedures Act or applicable E.O.s regarding disclosure of classified information, nor has EPA found any legislative history indicating that Congress intended to supersede or repeal these provisions when it established the requirement to prepare

publicly-available RMPs. The provision for exemptions from standards and limitations established under CAA section 112 narrowly addresses the procedures for an exemption when ''the President determines that the technology to implement such standard is not available and * * * it is in the national security interests of the United States to do so.'' CAA § 112(i)(4). The focus of section 112(i)(4) is on the technical capability to meet a limitation; for example, the provision would apply when an emission standard requires a control device that precludes national security-related equipment from functioning. Section 112(i)(4) does not consider or address the availability or distribution of classified information to the public, nor does the legislative history demonstrate that such disclosure was contemplated.

The requirement of section 112(r)(7)(B)(iii) to make RMPs publicly available must read in congruence with the provisions prohibiting disclosure of classified information. ''Classified information,'' as defined by the Classified Information Procedures Act, 18 U.S.C. App. 3, section 1(a), is ''any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security. * * *'' ''National security * * * means the national defense and foreign relations of the United States'' 18 U.S.C. App. 3, section 1(b). Criminal penalties exist for unauthorized disclosure of classified information that has been designated by the Department of Defense or defense agencies for limited or restricted dissemination or distribution. 18 U.S.C. 793. It is not reasonable to interpret the CAA to require the disclosure of classified information in violation of criminal law. It has been EPA's long-standing policy to interpret information disclosure provisions in its statutes as being consistent with national security law to the maximum extent possible and to require such information to be maintained in accordance with the originating agency's requirements. *Federal Facilities Compliance Strategy* (November 1988), at page V–6. Therefore, EPA is promulgating language in § 68.150(d) to clarify its intent with respect to the disclosure of classified information in RMPs by specifically exempting classified information from the RMP except by means of a classified annex submitted to appropriately cleared Federal or state representatives with proper security clearances. Furthermore, EPA is promulgating § 68.210(b) to clarify that disclosure of classified information is controlled by the Classified Information Procedures Act, E.O.s 12958 and 12968, and other laws, regulations, and E.O.s applicable to classified information. Finally, in § 68.3, EPA is defining classified information by promulgating the definition under the Classified Information Procedures Act.

H. Prevention Program

In the NPRM preamble, EPA noted that the CAA requires the risk management program to include a prevention program that covers safety precautions and maintenance, monitoring, and employee training measures. Because OSHA PSM covers this same set of elements, EPA proposed a prevention program that adopted and built on OSHA PSM. The proposed requirements for EPA's prevention program included a management system requirement and sections covering nine elements: process hazard analysis, process safety information, operating procedures (SOPs), training, maintenance, pre-startup review, management of change, safety audits, and accident investigation.

To assist in describing its prevention program, EPA included a section in its preamble comparing its prevention program to OSHA PSM standard. EPA noted that with the exception of the management system requirement, the proposed prevention program covered the same elements as OSHA's PSM and generally used identical language except where the statutory mandates of the two agencies dictated differences. EPA added introductory paragraphs to most sections to provide additional information. Further, in some of the sections, EPA proposed additional requirements and established different deadlines. The majority of comments EPA received concerned conflicts and differences between EPA's proposed requirements and OSHA PSM standard.

In the final rule, the Program 3 prevention program is the OSHA PSM standard for parallel elements, with minor wording changes to address statutory differences. For elements that are in both the EPA and OSHA rules, EPA has used OSHA's language verbatim, changing only certain regulatory terms (e.g., highly hazardous chemical to regulated substance and employer to owner/operator) and dates. The sections of the OSHA PSM standard were not cross-referenced for the reasons discussed in section III.D of this preamble. Key issues under PSM are discussed below; the remainder are addressed in the Response to Comments Document.

Management. In the NPRM preamble, EPA stated the purpose of its proposed management system is to ensure integration of all prevention program elements. EPA proposed that owners or operators identify a single person or position that has the overall responsibility for the development, implementation, and integration of the risk management program requirements. When responsibility for implementing individual requirements of the risk management program is assigned to persons other than the person designated, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

Several commenters agreed with this approach because it serves a useful purpose and many PSM sources already implement management systems. Many commenters opposed the requirement for submission of an organization chart of their source because it would be of no value to EPA and that continual updating would waste company resources.

EPA has decided to maintain its management system requirements in the final rule for sources with processes in Program 2 and 3, but has moved it to general requirements (§ 68.15) because it is the entire risk management program that should be managed, not just the prevention program. EPA has also revised the requirement to provide flexibility in indicating lines of authority; an organization chart is not absolutely required and is not included in the RMP.

Management of Change. Some commenters objected to EPA's definition of replacement in kind, asking that EPA adopt the OSHA PSM definition. Other commenters stated that management of change procedures should only be implemented when the changes had the potential to increase the risk (e.g., an increase in inventory, an introduction of a new substance).

As part of its efforts to strengthen coordination between the two programs, EPA will use the OSHA definition for ''replacements in kind'': ''a replacement which satisfies the design specification.'' OSHA defined this term to address a concern expressed by commenters on its standard that failing to define ''replacements in kind'' could result in misunderstandings such as employers believing that only a replacement with the same brand and model number could be characterized as a ''replacement in kind.'' OSHA promulgated a definition in recognition of these comments, and EPA

understands it to reflect a concept understood in industry.

Further, EPA does not agree that management of change requirements should exclude changes that reduce the risk of an accidental release. The Agency does not believe that only changes to ''critical systems'' should be subject to management of change procedures. As EPA stated in the NPRM preamble, most process changes improve process safety or efficiency. However, even these changes may result in unintended effects when source owners and operators fail to evaluate the consequences of the change. Therefore, the Agency continues to believe that a change that reduces the risk of an accidental chemical release may, nonetheless, be an appropriate subject for a management of change procedure. Failure to subject such changes to a management of change process could inadvertently result in a change that was believed to lower risk when such a change, in fact, increases risk. Regarding the comment about critical systems, EPA notes that chemical processes are integrated systems, and that a change in one part of the process can have unintended effects in other parts of the system—irrespective of whether the system is ''critical.'' Consequently, EPA agrees with OSHA that source owners and operators must establish and implement written management of change procedures for any change to a regulated substance, process technology, or equipment and any change to a source that affects the covered process.

Other Provisions. Several commenters stated that EPA should include in its risk management program the OSHA PSM provisions on contractors, employee participation, and hot work permits that EPA had not proposed in its prevention program. The NPRM solicited comment on whether to include these provisions (58 FR 54205; October 20, 1993). Commenters argued that contractors have been responsible for a number of accidents that have affected the public and the environment. Commenters presented the same argument to support inclusion of the hot work permit requirements. A substantial number of commenters also argued that employee participation is a key factor in successful implementation of PSM. A few commenters supported EPA's initial position that these requirements were more properly OSHA concerns.

In response to the former commenters' arguments and to ensure consistency between the elements of the two rules, EPA has decided to add these sections to its Program 3 prevention program. EPA believes that each of these elements is important to the implementation of an effective prevention program. Worker participation in PHAs and other elements is critical to the success of process safety because workers are intimately familiar with the process and equipment operation, possible failure modes and consequences of deviations. It also serves as a mechanism for greater communication and understanding of specific process hazards (as opposed to the general chemical hazards) and the importance of developing and following proper procedures. Similarly, contract employees have been involved in a number of major accidents in recent years; for example, the explosion in Pasadena, Texas, in 1989, which killed 23 workers, has been attributed to improper maintenance practices by contractor employees. Oversight of contractors, therefore, can be critical for accident prevention. Finally, hot work permits ensure that use of flame or spark-producing equipment is carefully controlled. Not only are many of the listed substances highly flammable, but fires in the vicinity of vessels or pipes containing the toxic substances can lead to releases of these substances.

I. Accident History

In the NPRM, EPA required sources to document a five-year history of releases that caused or had the potential to cause offsite consequences for each regulated substance handled at the source. EPA specified that the accident history should include the nature of any offsite consequences, such as deaths, injuries, hospitalizations, medical treatments, evacuations, sheltering-in-place, and major offsite environmental impacts such as soil, groundwater, or drinking water contamination, fish kills, and vegetation damage.

A few commenters argued that releases with only the potential for offsite consequences should not be included, while other commenters were evenly divided on whether near-miss events should be included in the accident history. A number of commenters indicated that releases with on-site consequences should be added to the accident history. Several commenters requested that EPA clarify that the accident history applies only to covered processes.

In recognition of these comments, in the final rule, only those accidents from covered processes that resulted in deaths, injuries, or significant property damage on-site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage need to be included in the five-year accident history. Near-miss accidents or accidents with only the potential for offsite consequences (that did not meet any of the previous criteria) would not need to be included. Because the accident history is, by statute, an aspect of the hazard assessment, and the hazard assessment provisions apply only to covered processes, EPA believes that requiring the accident history to address accidental releases from processes not covered by this rule would be inconsistent with the structure of part 68. EPA notes that such releases may be subject to reporting under other statutes; the Agency may investigate such releases to determine the need for a response action under CERCLA and to determine whether CAA section 112(r)(1) has been violated.

J. Emergency Response Program

In the proposed rule, EPA required sources to develop an emergency response plan that defines the steps the source and each employee should take during an accidental release of a regulated substance. EPA noted that most sources are already required to have at least part of the emergency response plan in place as a result of other EPA (Spill Prevention, Control, and Countermeasures and Resource Conservation and Recovery Act) and OSHA (emergency action plans and HAZWOPER) regulations and requested comment on how the proposed requirements could best be integrated with these existing programs to minimize duplication. Many of the commenters were particularly concerned with the potential for increased duplication of emergency planning requirements at the state and Federal levels that would require expenditure of additional resources without improving source emergency response capabilities. Most of these commenters suggested that EPA allow compliance with other Federal regulatory programs to meet the mandate of the Clean Air Act for an emergency response program, while other commenters recommended that EPA work with other agencies to develop a format for a single, comprehensive response plan for the source. Some commenters addressed related concerns with respect to state program or voluntary initiatives.

EPA has decided to adopt the emergency response requirements found in the statute, without additional specific planning requirements. This action is consistent with the Agency's effort to develop a single Federal approach for emergency response planning. The Review of Federal Authorities for Hazardous Materials Accident Safety, (required under section

112(r)(10) of the Clean Air Act) reported little harmony in the required formats or elements of response plans prepared to meet various Federal regulations. Accordingly, EPA has committed not to specify new plan elements or a specific plan format in today's rule. EPA believes that plans developed to comply with other EPA contingency planning requirements and the OSHA Hazardous Waste and Emergency Operations (HAZWOPER) rule (29 CFR 1910.120) will meet the requirements for the emergency response program provided that they address the elements in section 68.95(a). EPA believes that coordination of the emergency response plan with the community emergency response plan will help ensure that offsite response issues are addressed. In addition, EPA and other National Response Team agencies have prepared Integrated Contingency Plan Guidance (''one plan'') (NRT, May 1996). An emergency response plan that includes the elements specified in this guidance can be used to meet the requirements in today's rule. The final rule also provides relief for sources that are too small to respond to releases with their own employees; these sources will not be required to develop emergency response plans provided that appropriate responses to their hazards have been discussed in the community emergency response plan developed under EPCRA (42 U.S.C. 11003) for toxics or coordinated with the local fire department for flammables.

K. Registration

In the NPRM, EPA proposed that sources register with the EPA Administrator by three years after the publication date of the final rule, or within three years of the date on which a source becomes subject to the risk management program requirements as mandated by the CAA. While a number of commenters agreed with this proposal, a greater number requested that EPA accelerate the registration to between six months and two years of promulgation of the rule so that implementing agencies could better determine resource allocation and conduct more extensive outreach and technical assistance to sources developing risk management programs and preparing RMPs.

EPA agrees that earlier registration could aid outreach efforts and help implementing agencies focus resources. However, since the first RMP need not be submitted until June 21, 1999, an earlier, pre-registration would impose an additional burden on sources. Some sources may reduce inventories, make process modifications or switch chemicals prior to the first RMP due date and, consequently, will not be subject to the rule. If EPA required a pre-registration, these sources would have to deregister at that time. Further, states and local agencies already have information gathered under EPCRA section 312 that could be used for early identification and outreach to sources covered by this rule. EPA is also working with trade associations and other representatives of affected industries to ensure that sources are aware of the rule. Instead, in today's rule, the registration is included as part of the RMP to limit the number of filings made by sources.

EPA also proposed that sources submit written registration information. A number of commenters advocated either the modification of existing forms (e.g., the EPCRA Tier II form) or an electronic filing system for the submission of this information. Since the RMP and the registration are consolidated into one submission, this issue is addressed generally in Section III.G.

Under the proposed rule sources would need to submit an amended notice to the Administrator and the implementing agency within 60 days if information in the registration is no longer accurate. Many commenters argued that six months or a year is needed to ensure compliance with the certification requirements. EPA agrees with commenters and in the final rule has lengthened the time for submission of an amended registration to six months which should be enough time to modify the information and to electronically resubmit the registration and RMP.

L. Model Risk Management Programs

Commenters supported the development of model risk management programs and RMPs, stating that the models were needed by smaller businesses and public systems that lack the expertise to implement process safety management. Commenters specifically supported development of models for industries with well-understood processes and practices, such as chlorination systems, propane and ammonia retailers, and refrigeration systems. A few commenters asked that the models be made available for public review. Others said the models should be published as guidance, not regulations.

EPA is working with industry groups to develop model programs for ammonia refrigeration, propane handling, and water treatment. After having provided the public with an opportunity to review a draft of the ammonia model program, EPA today is issuing a guidance on a model program for this industry (see Model Risk Management Program for Ammonia Refrigeration). EPA encourages other industry groups to work with the Agency to develop models for their sectors. EPA notes that the models are particularly relevant to sources with Program 2 processes. Because EPA has adopted the OSHA PSM standard, EPA has not provided an EPA guidance on PSM compliance. EPA will also publish general technical guidance to help sources understand and comply with the rule which will include Program 2 prevention program guidance. The RMP Offsite Consequence Analysis Guidance contains reference tables for the offsite consequence analysis, which can be used instead of site-specific modeling. EPA emphasizes that the models are guidance, not regulations; sources are not required to use them.

M. Implementing Agency Audits

EPA originally proposed in § 68.60 seven criteria an implementing agency could use to determine whether to audit a source's RMP. EPA also proposed that the implementing agency have the authority to determine whether an RMP should be revised and to direct the owner or operator to make revisions. Many commenters suggested that the Agency lacked statutory authority to specify measures to correct risk management program elements through the RMP, and that RMP changes based on implementing agency directives will be costly.

EPA or other implementing agencies have general inspection and enforcement authority under CAA sections 112(r)(7)(E), 113, and 114 to compel source owners and operators to correct deficiencies in the risk management program. EPA intends to use the audit process as a way to verify the quality of the program summarized in the RMP. When it is reasonable, EPA will require modifications to the RMP that may lead to quality improvements in the underlying program.

EPA notes that many commenters were uncertain of the distinction among audits conducted under § 68.220, reviews by the permitting authority under § 68.215, and inspections. CAA section 112(r)(7)(B)(iii) requires EPA to develop, by regulation, a system for auditing RMPs. These audits will review the information submitted by sources to determine whether the source is in compliance with the rule elements. For example, the implementing agency will consider whether the dates for reviews and revisions of various elements are consistent with the steps sources are

required to take. If a source reported a major change on a date later than the last date on which safety information and operating procedures were reviewed, the implementing agency could seek further information about why such reviews had not been conducted and require updates if the agency determined that the source should have reviewed the documents. Audits may be detailed paper reviews or may be done at a source to confirm that on-site documentation is consistent with reported information.

In contrast, the air permitting authority or its designated agency may be reviewing the RMP for completeness, rather that the quality of the RMP contents. Inspections are generally more extensive in scope than audits although they may include a review of the accuracy of the RMP information. Inspections will consider whether the source is in compliance with part 68 as a whole, not just with the RMP requirements, and may review both the documentation kept at the source and operating practices.

Regarding comments that making changes to the RMP would be too costly, EPA has endeavored to ameliorate the cost burden of this rule by using a tiering approach to make the risk management program elements on which the RMP rests appropriate for sources of various sizes and complexity. In addition, EPA is considering development of a standard RMP reporting format and data elements, which should significantly reduce the time and effort necessary to revise the RMP. Any source owner or operator can further limit the costs associated with revising its RMP by submitting a timely, complete, and valid plan in the first instance.

N. Public Participation

In the SNPRM, EPA requested comments on how public participation in the risk management program process might be encouraged. EPA's preferred approach was to encourage the public and sources to use existing groups, primarily the LEPC, as a conduit for communications between the source and the public throughout the RMP development process. A substantial number of commenters supported this approach, stating that the LEPC was well placed to interpret the RMP information for the public. Commenters said that LEPCs and their member organizations have considerable experience and have established rapport in dealing with the community. Others stated that this role is a logical extension of current LEPC responsibilities under EPCRA, although funding for LEPCs was a concern.

A number of commenters opposed this approach because some LEPCs are not functional and that LEPCs are not a substitute for public participation. A few LEPCs also objected to assuming any additional role. Commenters suggested that EPA should require public participation in the development of the RMP and require all major sources to have a public participation strategy. Industry commenters generally opposed any mandated public participation requirements because direct involvement in risk management program development would delay the process and would represent an unwarranted and inappropriate interference in management and site control responsibilities. A few commenters supported the SNPRM suggestion that public participation be limited to sources with Program 3 processes because these sources represent the greatest risk. Other commenters opposed this idea, preferring the decision to be left to local authorities.

EPA has not adopted any specific public participation requirements. EPA plans to make the RMP immediately available to any member of the public. LEPCs and others will be able to compare their sources with similar sources in other areas to determine whether quantities on sites, process controls, mitigation systems, and monitoring systems are significantly different. This information will give the public an opportunity to gain a better understanding of local industries and carry on a more informed dialogue with sources on their prevention practices. EPA continues to encourage sources to work with the LEPCs and other community groups to provide information to the public and ensure an on-going dialogue during and after RMP development and submission. The public is a valuable resource and a key stakeholder in chemical accident prevention, preparedness, and response at the local level.

A number of commenters said that EPA should prohibit the public from triggering an audit through petitions because this approach would open the process to litigation; a petition process would be expensive, time-consuming, and increase the time needed to complete the RMP. Some commenters said it would impose an excessive burden on the implementing agency. Two commenters favored public petitions to trigger audits. One said that the audits should be conducted by qualified third parties, subject to community selection and supervision.

EPA has not included public petitions as a mechanism for periodic audits of sources under § 68.220. States, however, are able to adopt more stringent requirements.

O. Inherently Safer Technologies

In response to the NPRM, a number of commenters stated that EPA should require sources to conduct ''technology options analyses'' to identify inherently safer technologies. In the SNPRM, EPA solicited comments on this issue, but did not propose a requirement for such analyses.

A number of commenters stated that EPA should require analyses of inherently safer technologies, at least for sources with Program 3 processes or new processes. Some commenters argued that inherent safety is primary prevention (directed at the source of the hazard), while EPA's proposed requirements are secondary prevention (control of the hazard). One commenter asked that sources be required to provide full economic and technical analyses of options. Commenters argued that without a technology options analysis requirement, industry will not conduct these analyses because, unlike its pollution prevention efforts, EPA has provided no incentive for safer plants.

Other commenters strongly opposed any requirement for these analyses because PHA teams regularly suggest viable, effective (and inherently safer) alternatives for risk reduction, which may include features such as inventory reduction, material substitution, and process control changes. These changes are made as opportunities arise, without regulation or adopting of completely new and unproven process technologies. Commenters said that similar analyses are frequently conducted during the design phase of a process or source where there are sufficient economic incentives to design a process with as few costly additional safety features as possible without new EPA requirements. Commenters also said that a requirement would prove costly, without providing commensurate benefits.

EPA has decided not to mandate inherently safer technology analyses. EPA does not believe that a requirement that sources conduct searches or analyses of alternative processing technologies for new or existing processes will produce additional benefits beyond those accruing to the rule already. As many commenters, including those that support such analyses, pointed out, an assessment of inherently safer design alternatives has the most benefit in the development of new processes. Industry generally

examines new process alternatives to avoid the addition of more costly administrative or engineering controls to mitigate a design that may be more hazardous in nature. Although some existing processes may be superficially judged to be inherently less safe than other processes, EPA believes these processes can be safely operated through management and control of the hazards without spending resources searching for unavailable or unaffordable new process technologies. Good PHA techniques often reveal opportunities for continuous improvement of existing processes and operations. EPA encourages sources to continue to examine and adopt viable alternative processing technologies, system safeguards, or process modifications to make new and existing processes and operations inherently safer. EPA included questions related to process modifications in the RMP so that sources can demonstrate, and users of the RMP information can observe, progress toward safer processes and operations.

P. Coverage by Other Regulations

A large number of commenters expressed concerns about duplication between the risk management program rule and other Federal and state regulations. Issues related to overlap between this rule and OSHA PSM are discussed in Section III.D of this preamble; issues related to overlap between this rule and other emergency response planning regulations are discussed in Section III.J of this preamble.

1. General Issues. A substantial number of commenters stated that EPA had failed to consider other regulations to which sources are subject that cover some of the same requirements as this rule. They noted that many sources are covered by DOT rules, other EPA rules, OSHA rules, and, in some cases, other agency or state rules. Some commenters argued that these other regulations essentially prevent accidents and, therefore, this rule is not needed. Commenters stated that EPA should define jurisdictional and enforcement boundaries so that sources subject to multiple regulations are not subjected to multiple enforcement actions for the same violation. Other commenters said that EPA should clearly identify which similar requirements imposed by other programs satisfy this rule and what additional steps are needed. Some commenters said that any source covered by another, similar rule should be excluded from this rule. Others suggested that EPA explicitly cross-reference other applicable rules. A few commenters stated that EPCRA reporting requirements provide ample information to local entities and no further reporting is needed.

EPA disagrees with some of these comments. Except for the OSHA PSM rule, no other rule cited by the commenters addresses accidental releases of regulated substances to the extent that today's rule does. Some Federal and state rules for certain industries provide design standards; compliance with these rules will satisfy parts of today's rule. For example, sources in compliance with 29 CFR 1910.111 for handling of anhydrous ammonia may not need to take additional steps to ensure the safe design of the process. These other standards generally do not cover training, maintenance, hazards analysis, and accident investigation, which are all key elements in process safety management. In addition, none of the Federal rules require offsite consequence analyses or reporting to the public on the results of these analyses and on prevention steps. Information submitted under EPCRA, which consists primarily of annual inventories, is not equivalent to the RMP information.

Nevertheless, EPA agrees with commenters that duplication should be minimized, which is why the emergency response and Program 2 prevention program steps recognize that meeting other requirements will satisfy elements of this rule. The model risk management programs that EPA is developing with industry will explicitly cite other regulations, as well as codes and standards, that satisfy specific elements of this rule.

2. DOT Transportation Regulations. Commenters concerned with overlap with DOT regulations focused on two issues: pipeline regulations, and loading/unloading and storage regulations. Commenters asked EPA to exclude pipelines and transportation containers connected for loading or unloading since these are adequately covered by DOT regulations. Some commenters disagreed and wanted loading and unloading of transportation containers to be included because many accidents occur during these procedures.

In the final List Rule, EPA defined stationary source to include ''transportation containers that are no longer under active shipping orders and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading.'' One commenter stated that the 1993 oleum release in Richmond, California, demonstrated that DOT regulations do not adequately address risk management of loading and unloading. The other commenters, however, said that loading and unloading were covered by DOT regulations and should not be subject to this rule. They noted that DOT has adopted regulations requiring training for anyone who loads or unloads hazardous materials. They further said that at distribution centers, regulated substances are not used or processed, and, if in packages, the containers are not opened.

Several commenters were concerned that EPA regulation in this area could create problems with DOT's preemption of state rules. Under U.S. law, states may not adopt regulations in certain specified areas that are not substantively the same as DOT rules or in other areas that pose an obstacle to DOT goals under Federal Hazardous Materials Transportation Law. If state laws are authorized by Federal law, however, states could develop different requirements than DOT imposes. In this case, the commenter said, if EPA were to regulate loading and unloading under the CAA, the states would have the authority under the CAA to impose more stringent requirements on this activity.

EPA disagrees with the commenters concerning the scope of the Hazardous Materials Transportation Act preemption authority in this area. EPA's definition of stationary source clearly covers transportation containers only when they are no longer in transportation in commerce and was addressed in the List Rule. EPA believes commenters have overstated the extent of any preemption problem. EPA's interpretation today is consistent with DOT's, as explained in ''California and Los Angeles County Requirements Applicable to the On-Site Handling and Transportation of Hazardous Materials—Preemption Determination'' (60 FR 8774, 8776–78, February 15, 1995). EPA notes that in many cases warehouses and wholesalers take delivery of materials and resell them; EPA considers this storage to be covered by today's rule. EPA believes that DOT standards for container integrity satisfy process safety information requirements. The same applies to DOT standards for training requirements for loading and unloading; that training satisfies the training requirements of this rule for loading and unloading. Requirements for the PHA only apply to connections to transportation containers and for storage of containers.

3. Other EPA Regulations. Many commenters stated that other EPA regulations cover the same activities and

should be deferred to or referenced to prevent duplicative requirements and enforcement. A number of commenters said that regulations under the Clean Water Act, specifically the Spill Prevention, Control, and Countermeasure (SPCC) and Oil Pollution Act of 1990 (OPA–90) rules, duplicate many of the provisions of this rule. Other commenters argued the Underground Storage Tank (UST) rules require sources to comply with requirements equivalent to many of the notification, prevention, and emergency response provisions. A few commenters stated that EPCRA already covers the right-to-know provisions; others stated that the risk management program regulations should support existing EPCRA rules. Three commenters said that EPA should exempt any source covered by the Resource Conservation and Recovery Act (RCRA) because the rules under that act already impose comprehensive risk management requirements.

As discussed in Section III.J, emergency response plans developed under SPCC, OPA–90, or RCRA can be used to meet the emergency response requirements of this rule. EPA notes, however, that SPCC, OPA–90, and UST rules do not address storage, handling, and release prevention for regulated substances. SPCC and OPA–90 rules apply to oil; UST rules apply to oil and gasoline. The processes addressed by these rules, therefore, do not overlap with the processes covered by today's rule.

RCRA requirements apply only to certain activities undertaken at sources that may be subject to the requirements of today's final rule. As noted above, EPA anticipates that emergency response plans developed under RCRA can be used to meet the emergency response requirements of this rule. In addition, certain training and other release prevention activities required under RCRA may satisfy certain of the prevention program requirements for Program 2 processes.

4. Other Federal Regulations. A number of commenters stated that EPA should not cover outer continental shelf (OCS) sources because they are adequately regulated under the Marine Mineral Service, Pipeline Safety Act, and OPA–90. The mining industry said that they should not be covered because their handling of explosives is regulated in great detail by the Mine Safety and Health Administration and the Bureau of Alcohol, Tobacco, and Firearms. In its proposed rule (61 FR 16598, April 15, 1996), EPA has proposed to delist explosives and proposed a stay of the affected list provisions; elsewhere in today's Federal Register, EPA has stayed implementation of the affected provisions until these changes are finalized. OCS sources are not subject to part 68 because the connection between this part and protection of ambient air quality is too remote; therefore, CAA section 328 proscribes EPA's jurisdiction.

5. State and Local Regulations. Commenters sought clarification of how risk management programs implemented under state laws in Delaware, New Jersey, California, and Nevada would be treated. Some commenters said sources complying with these state rules should be grandfathered into EPA's rule for at least five years. California commenters asked that risk management prevention programs (RMPPs) developed and submitted under California's rule be considered in lieu of the required RMP. Some commenters asked that documentation created to meet the state requirements be considered adequate to meet EPA's program so that additional documentation need not be created just to meet slightly different rules. A few commenters suggested that EPA should explicitly preempt any state risk management program regulations that are not submitted to and approved by EPA. Other states said that EPA should defer to state rules on hydrogen sulfide and propane.

None of the four state risk management program rules is identical to EPA's or each other. The Delaware, New Jersey, and Nevada programs closely parallel the OSHA PSM rule; the California program is less specific. EPA expects that sources in compliance with these state programs will have completed most of the steps required under EPA's rule. EPA notes that these sources are generally also covered by OSHA PSM and, therefore, should be in compliance with a significant portion of EPA's rule.

In relation to the request for grandfathering, EPA does not have the authority to grandfather compliance with programs that the Agency has not reviewed and approved. EPA expects that these four states will seek delegation of the 112(r) program under CAA section 112(l). At that time, EPA will review the state programs and approve them if they are as stringent as EPA's rule and meet other section 112(l) requirements. If states are granted delegation, they will have the authority to grandfather previous compliance. Because the CAA specifically grants states the right to impose more stringent regulations, EPA cannot preempt state programs as one commenter requested.

EPA believes that substitution of the RMPP for the RMP for California sources is not feasible. The California RMPPs are voluminous documents, submitted per process, not per source. These documents could not be submitted electronically. Because EPA is concentrating on submission of data elements, EPA believes that its RMP requirements can be met quickly by any source that has completed an RMPP. Completion of the RMP will not impose a large burden on sources. If the RMPP has summary sections, these may be directly transferable for use as the executive summary.

In regard to other state laws, states may include them as part of their CAA section 112(l) submission for EPA's review and approval. These laws, however, must be as stringent as EPA's; that is, they must cover all elements of the rule with requirements that at least match EPA's. EPA notes that state propane laws are generally based on NFPA–58, which EPA is using to help develop its model risk management program for propane distributors and users. Therefore, sources in compliance with NFPA–58 requirements may meet many of the requirements of Program 2, as defined in the model.

Q. Industry-Specific Issues

A number of industries submitted comments on issues that were particular to them, in many cases seeking exemption from the rule.

1. Oil and Gas Facilities. Industry commenters argued that components of the oil and gas industries should be excluded from EPA's risk management program; in particular, that EPA should exempt the following operations and facilities from RMP requirements:

- Atmospheric storage and transfer of flammable liquids;
- Retail facilities;
- Marketing terminals and bulk plants;
- Remote, low-risk petroleum operations;
- Oil and gas exploration, production and processing facilities;
- Crude oil separation, handling, and storage operations;
- Subsurface hydrocarbon reservoirs;
- All transportation and facilities incident to transportation; and
- Outer continental shelf facilities.

Commenters noted that these industries and facilities pose a low risk to the public for a number of reasons. Significant accidental releases are highly unlikely because these facilities handle materials which, given site conditions, have limited potential for release to the air or offsite impacts. Existing regulations reduce the potential

for significant accidental releases. Additionally, commenters argued that the RMP provisions extend beyond EPA's statutory authority and run counter to the Domestic Natural Gas and Oil Initiative established by President Clinton.

Commenters stated that most of the exploration and production facilities are remotely located and argued that even the tiering approach that EPA proposed in the SNPRM did not provide adequate relief for these sources, which pose minimal risks. They noted that OSHA specifically excludes remotely located sources, retail facilities, DOT-regulated sources, and atmospheric storage tanks. A number of commenters said that EPA had never included most of these sources in its economic analysis, implying that EPA did not intend to cover them in these regulations; they requested an explicit statement to that effect. One commenter opposed an exemption for oil and gas sources and pipeline and other transportation companies, arguing that these sources have some of the most common or worst accidents.

EPA does not agree that marketing terminals or bulk plants should be excluded if there are regulated substances present above their threshold quantities. Although EPA did not specifically exempt gasoline and naturally occurring hydrocarbons (e.g., crude oil), it did not intend to cover regulated flammables in these mixtures. In its proposed rule (61 FR 16598, April 15, 1996), EPA has proposed to revise the criteria for flammable mixtures and to exclude naturally occurring hydrocarbons prior to processing at a gas processing plant or refinery. Flammable mixtures would be covered only if they met all of the NFPA–4 criteria. Gasoline and crude oil are listed with NFPA 3 flammability ratings in NFPA 325 M, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids, 1991. Elsewhere in today's Federal Register, EPA has stayed implementation of the risk management program rule for substances and processes that would be affected by the proposed changes. As EPA explained in the preamble to the final list rule, the Agency has not adopted OSHA's exemption for atmospheric storage of flammables because, unlike OSHA, EPA has listed only flammable gases and highly volatile flammable liquids. EPA considers these substances to be intrinsically hazardous, regardless of storage conditions and, therefore, does not believe it is appropriate to provide an exemption for such tanks.

2. Retail Facilities. The rule is expected to cover a substantial number of retail facilities, specifically those handling propane and ammonia as a fertilizer. Approximately 100 commenters requested that EPA exempt propane retailers from coverage under the risk management program, primarily due to the effectiveness of the existing regulatory structure for the industry (in particular, NFPA Standard 58). At the same time, more than 50 commenters requested that EPA exempt agricultural chemical retailers (with inventories of ammonia fertilizer) from coverage under the risk management program because of the existing state and Federal regulation of these operations.

a. Propane Retailers. Commenters argued that the primary thrust of the proposed regulations is to preclude unwarranted risk to the surrounding community from an accidental failure of a storage tank. They stated that the basic purpose of NFPA 58, the Storage and Handling of Liquefied Petroleum Gases, is to prevent such releases through design and engineering. This standard requires fire safety analyses, distance separation between the storage tank and surrounding exposures, and approval of plans for new or existing facilities by local authorities. They noted that NFPA 58 has been adopted as state law in 48 of the 50 states and that the two remaining states (California and Texas) have similar rules. They said that propane storage containers are manufactured strictly to the specifications of the American Society of Mechanical Engineers. According to commenters, emergency response planning is already covered by NFPA–58, OSHA, and DOT. Because of compliance with this standard and state law, commenters argued that the rule would not provide any improvement in safety. A number of commenters argued that propane was a heating fuel, not a chemical, and did not pose the same level of risk as larger quantities of propane held and used as a chemical feedstock. One commenter noted that OSHA had exempted retailers and propane when used as a fuel.

In contrast, one state, which also regulates propane under its state risk management program law, argued that propane is not sufficiently regulated. It stated:

Fire authorities inspect each new facility before propane is introduced. They concentrate on adequate fire water supply, electrical code compliance, and distance separation requirements. Some fire authorities are not technically capable of determining if the facility piping system complies with NFPA 58. There are no follow-up inspections to assure continuing compliance and no requirements under NFPA 58 for training distribution plant operators or mechanics, written maintenance programs, or procedures to control change. During our inspections, we have identified some facilities that were not in conformance with NFPA 58.

EPA does not agree with commenters who are seeking exemption of propane retailers and users. In a supplemental notice, EPA sought comment on whether flammable substances, when used as a fuel, posed a lesser intrinsic hazard than the same substances handled otherwise; no data were submitted to EPA to justify this position. Further, EPA has considerable accident data for propane that illustrates its potential to affect the public located nearby. As a result, EPA continues to believe that the hazard posed by propane is inherent and does not vary with its use. Because of a lack of data justifying a different level of hazard for flammables used as fuel, the Agency will not adopt a fuel use exemption similar to that provided by OSHA.

Furthermore, EPA notes that many propane retailers are relatively close to other commercial buildings and the community. Should a fire or explosion occur, the community could be substantially impacted. EPA believes the community and sources need to be aware of the potential risk and understand the steps the source is taking to limit the potential for a release. Because EPA recognizes that the full PSM standard is not appropriate for propane retailers, EPA has assigned propane retailers and users to Program 2. Compliance with most aspects of Program 2 should be simple. For example, use of tanks that meet relevant ASME standards and retention of the material safety data sheets required by OSHA will satisfy the safety information requirements of § 68.48. Furthermore, EPA is developing a model risk management program to help sources comply. This model is being based on NFPA–58 standards, where they apply, so that sources already in compliance with NFPA–58 will be in substantial compliance with Program 2. The model will help sources comply with other elements in a cost-effective manner.

b. Ammonia Retailers. Ammonia is sold as a fertilizer from agricultural retailers, primarily in the Middle West, Great Plains, and West. Commenters stated that the retail fertilizer industry is already governed by OSHA's Health and Safety Standards, which are specifically applicable to the storage and handling of anhydrous ammonia. They noted that this standard (29 CFR 1910.111) is based on ANSI K61.1 and sets forth extensive

requirements applicable to the design, construction, location, installation, and operation of anhydrous ammonia facilities. Measures designed to adequately provide for the prevention of and response to accidental releases are an integral part of this standard. Some commenters said that if EPA did not exempt retail sources, ammonia retailers should be deemed to be in compliance with the prevention program. In addition, commenters said they are regulated under state laws and are subject to EPCRA reporting requirements. Many commenters argued that retail fertilizer sources have an excellent safety record. They stated that retail fertilizer facilities are limited in size, do not involve complex processing and manufacturing operations, and are located in rural areas; consequently, they present a low risk to the surrounding communities. Commenters objected to the regulations because they would impose a substantial burden on what are small operations. Some commenters argued that, because Congress had granted EPA the authority to exempt ammonia when held by a farmer for use as a fertilizer, EPA could grant retail ammonia sources the same exemption.

Although EPA recognizes that other regulatory programs address safety for agricultural retailers and that such operations do not involve complex processing or manufacturing, EPA disagrees with the conclusions of these commenters. According to the industry, the typical ammonia retailer has 200 tons of ammonia on site at times. Even in rural areas, release of even a fraction of this quantity could affect the community. Sources constructed and operated consistent with the relevant ANSI standard will meet the EPA rule for subjects addressed by both. EPA recognizes the OSHA standard for anhydrous ammonia handling and hopes to work with the ammonia industry to develop a model risk management program for ammonia retailers. This model would be based on the OSHA standard, where applicable. The standard, however, does not include some elements mandated by the CAA as part of the prevention program, specifically training and maintenance programs. In addition, EPA believes that there is a further need to convey information on hazards and risk management practices of these operations to the public and local entities. The model will provide guidance to help sources comply with these elements in a cost-effective manner. Finally, EPA does not agree that the Congressionally allowed exemption of farmers can be extended to non-farmers. See 136 Cong. Rec. S2284 (March 7, 1990) (colloquy between Sens. Kerrey and Chafee).

3. Refrigeration Systems. A number of commenters stated that ammonia used in a refrigeration system should be exempted from this rule because these systems pose little risk to the public. One commenter said that EPA should exempt roof-mounted air handlers, pipes, and components. Some commenters said that the industry was already overregulated and the imposition of this rule would be a burden.

The CAA requires EPA to impose this rule on any source with more than a threshold quantity of a regulated substance. Therefore, EPA cannot exempt ammonia refrigeration systems that contain more than 10,000 pounds of ammonia. In addition, ammonia refrigeration plants have had a substantial number of accidents where the ammonia has migrated offsite, indicating that these systems do pose a risk to the public. At the same time, it should be noted that all of these refrigeration systems are already covered by the OSHA PSM standard. Consequently, the only additional steps sources will have to take are to conduct the hazard assessment, comply with the emergency response requirements, and file the RMP. EPA worked with the International Institute of Ammonia Refrigeration to develop a model risk management program that will facilitate compliance and reduce the burden on sources (Model Risk Management Program for Ammonia Refrigeration). For most of these sources, which have only one chemical, the RMP will be a very brief document.

4. Other Operations. Comments were submitted on a range of other industries.

The warehouse industry said that it should be exempted where material is received and shipped in packages that are not opened; commenters noted that they are covered by DOT packaging regulations. EPA believes that warehouses must be covered if they have more than a threshold quantity of a regulated substance. Under the OSHA definition of process, which EPA has adopted, packages of a substance stored in the same room may be counted toward the threshold quantity if the packages could release their contents in the same event. EPA notes that warehouse fires have created major incidents in the past 10 years, and the Agency believes that warehouses should take the steps necessary to prevent and mitigate such incidents. EPA is interested in working with the industry to create a model risk management program that would help sources develop a hazard assessment process that can account for potentially changing contents of a warehouse.

Batch processors face related problems with changing chemicals on site. EPA is willing to work with industry to develop a generic approach to risk management programs. EPA believes, however, that most batch processors will already be covered by OSHA PSM. The RMP Offsite Consequence Analyses Guidance will reduce the burden of developing multiple release scenario analyses. To minimize the need for continual revision of their worst-case scenario to accommodate periodic inventory changes, sources such as warehouses and batch processors may want to analyze their expected chemical inventory in developing a scenario that represents the worst case for the foreseeable future, even if the substance is not currently in use at the source.

A number of commenters raised questions about coverage of POTWs. A specific concern was EPA's statement in the NPRM that substances in waste streams would not be covered by the rule. This statement is based on the belief that the regulated toxic substances will not constitute more than one percent of any waste stream received by a POTW. Consequently, they will not be considered in calculations of threshold quantities. No waste stream is likely to meet EPA's flammability criteria. POTWs are likely, however, to be covered because of regulated substances they use to treat wastes.

R. Implementing Agency Delegation

EPA received a number of comments to the NPRM regarding the role and potential burden on LEPCs, SERCs, and other local agencies that may result from implementation of the risk management program. In the SNPRM preamble, EPA indicated that EPA and the states share the responsibility for protecting public health and the environment and encouraged state and local agencies to seek delegation for this program because their participation is essential to successful chemical accident prevention, preparedness and response and recognized by the legislative history and the CAA section 112(r) requirements by requiring that RMPs be submitted to states and local planning entities. States are already involved in chemical emergency preparedness and planning through the requirements of EPCRA.

Commenters on the SNPRM requested that the final rule clearly state that EPA is the implementing agency unless a state or local agency is granted a

delegation of authority under section 112(l). Several commenters indicated that EPA should allow states the flexibility to designate the most appropriate implementing agency, such as OSHA or the state agency that administers and enforces the OSHA PSM standard, rather than mandating the air permitting authority or a SERC agency in the final rule. A number of commenters on the SNPRM and NPRM suggested that existing local emergency planning agencies (e.g., LEPCs, fire departments) would be best suited to serve as implementing agencies, in part because they are closest to the communities at risk. However, many commenters (including LEPCs that commented) argued that LEPCs would be unprepared to take on such a burden and that even a minimal role in implementing section 112(r), including mere storage of RMPs, would overwhelm their limited resources and technical expertise. In addition, commenters indicated that LEPCs, as mostly volunteer agencies, would not and could not have the authority necessary to implement and enforce the RMP rule.

The implementing agency is the state or local agency that obtains delegation of the section 112(r) program under section 112(l). As stated in the definition of Implementing Agency in today's rule, until a state or local agency is granted delegation of the risk management program under CAA section 112(l), EPA will serve as the implementing agency. States may select any state or local agency to implement this program, including an air permitting authority or a state OSHA program, provided the agency has the expertise, legal authority and resources to implement the program; the state must also have the authority to enforce the program. EPA realizes that, in most cases, LEPCs will not have the authority to be implementing agencies, but they should be involved as much as possible in the program.

Commenters on the SNPRM suggested that EPA should avoid adding specific implementation details to the final rule so that states would have the flexibility to develop or continue programs that meet local needs. Other commenters, however, suggested that EPA should issue delegation guidance and to define the elements of an adequate state program to avoid inconsistent interpretations and implementation of the rule. Commenters representing companies that operate in several states were particularly concerned about maintaining uniform implementation.

EPA has not added specific state or local implementation requirements to today's rule because the Agency already promulgated sufficient provisions for delegation of accident prevention programs under section 112(r) to states and local authorities under 40 CFR part 63, subpart E, which implements CAA § 112(l). As EPA discussed in the SNPRM, implementing agencies will be responsible for such tasks as reviewing RMP information, auditing and inspecting a percentage of sources annually, requiring revisions to the RMP as necessary, and assisting the permitting authority in ensuring compliance. States have the flexibility to implement their own programs, however the CAA requires that state or local program requirements must be as stringent as EPA's and must include EPA regulated substances and processes. This means that California, Delaware, Nevada, and New Jersey will need to revise their existing program requirements, substance lists, and in some cases, thresholds, to meet EPA's requirements and to obtain section 112(r) delegation. EPA intends to issue additional guidance that will help state and local agencies obtain program delegation. EPA must review delegation requests submitted under 40 CFR part 63, subpart E to ensure that state and local programs requirements are as stringent as EPA's. With respect to nationwide uniform implementation, EPA notes that the CAA specifically grants states the right to develop more stringent requirements; consequently, there may be state-to-state variations. Many states, however, are prohibited under their state laws from adopting regulations that are more stringent than Federal rules.

One commenter on the NPRM indicated that EPA's estimation of the costs of implementing the section 112(r) program is extremely low, representing demands that are 65 to 75 percent lower than those experienced by states implementing similar programs. LEPCs and state governments were concerned about the imposition of section 112(r) requirements on state and local governments as an unfunded mandate. Several state agencies indicated that the considerable financial burden imposed by section 112(r) implementation would prohibit them from seeking section 112(l) delegation. Commenters encouraged EPA to develop guidance on potential funding mechanisms, including descriptions of the fee systems used by existing state programs for accidental release prevention. Several commenters indicated that the political climate at the state and local level would make it impossible to levy new, or raise existing, fees.

Since states are not required to seek delegation of this program, it does not constitute an unfunded mandate (see also section V.C). Before EPA grants delegation, state or local agencies must show that they have the resources to implement and enforce the risk management program rules. EPA recognizes that there is no Federal funding associated with implementation of section 112(r) but believes that the tiered program levels and centralized electronic submission of RMPs in today's rule substantially reduces the cost and resource demand for state and local entities seeking delegation. State and local agencies that fully implement section 112(r) will be able to develop and operate a program that best fits their individual needs, resources, and structures. As part of consideration of the costs to implement section 112(r), state and local agencies should also weigh the benefits of integrating accident prevention with pollution prevention, environmental protection, and worker and public health and safety at the state level, and the benefits to local industry associated with state, rather than Federal, implementation of this program. Many states and local agencies have established a close working relationship with the sources in their jurisdiction. In addition, a number of state and local publicly owned sources are covered by this rule; state implementation can serve to enhance compliance that may otherwise require increased coordination with EPA. Although other states have successfully ''self-funded'' their accident prevention programs with various state authorized fees, EPA recognizes that it may be difficult for state or local agencies to generate the resources necessary to fund full section 112(r) implementation.

Several commenters on the SNPRM requested guidance and training for sources, local entities, and implementing agencies on understanding hazard assessments, and conducting program inspections, reviews, and audits. EPA recognizes the need for guidance and training for implementing agencies and sources. EPA plans to modify and to continue offering its four-day Chemical Safety Audit workshop to other federal agency representatives, state and local government officials, and industry representatives as an introduction to chemical process safety, current industry chemical accident prevention practices and understanding the elements of the risk management program. EPA is ready to assist state and local agencies through its regional offices to coordinate state and local

programs and to help in obtaining program delegation and development of resources to fund state or local programs. Region 4 in Atlanta, Georgia, for example, has developed an integrated section 112(r) work group of state and local air pollution control, SERC, and LEPC representatives who participate in workshops, seminars, and pilot studies designed to foster local program implementation and to build a support network. EPA also continues to work with NOAA to enhance modeling and information management tools contained in the Computer Aided Management of Emergency Operations (CAMEO) and Areal Locations of Hazardous Atmospheres (ALOHA) software for local emergency planners and responders.

Two commenters on the NPRM requested that EPA address the issue of tort liability in the event that an accidental release occurs after an RMP has been submitted to the implementing agency. One other commenter believed that the implementing agency must be held accountable for RMP content while another believed that EPA must ensure that adequate limits to implementing agency liability exist.

The primary responsibility for accident prevention rests with the owners or operators of sources. Section 112(r) does not create a basis for implementing agency tort liability under federal law. CAA § 112(r)(1). When EPA is the implementing agency, it is immune from tort liability under state law. States that are implementing agencies generally will have protection from liability under their state laws. If a state has waived its sovereign immunity, EPA cannot take steps to alter that situation. EPA encourages states concerned about this issue to discuss the matter with their attorneys general to determine whether state law protects them from liability.

S. Accident Information Reporting

In the SNPRM, EPA discussed the possibility of additional accident reporting to support a variety of future accident prevention activities. EPA proposed that sources either submit an OSHA PSM or Program 3 investigation report for certain accidental releases or a survey form that collects certain accident data. Otherwise EPA could use existing authorities to collect additional accident data from existing information, as needed.

Most commenters opposed EPA's proposal for additional accident reporting requirements, especially the collection of accident investigations prepared under Program 3 or OSHA PSM, because it increases costs, it would have no benefit, it generates significant liability issues, and it would divert limited resources away from activities with greater public health benefit. Commenters supported the use of existing reports since this approach should not generate an additional burden, such reports are available through EPA and OSHA under other regulations and they should be adequate for the objectives outlined by EPA.

EPA agrees with commenters and has decided not to adopt any additional accident reporting requirements. EPA will rely on the five-year accident history for the immediate future and, based on that information, determine whether additional information and requirements are needed. EPA has the authority under CAA section 114 to investigate releases and seek additional information as needed.

T. Other Issues

1. OSHA VPP. In the SNPRM, EPA asked whether the OSHA Voluntary Protection Program (VPP) protects public health and the environment and suggested that one approach to third party review (discussed below) would be to assign sources that participate in VPP to Program 2. Many commenters supported VPP participation as a criterion for assigning a source to Program 2. Several of these commenters noted, however, that because VPP sources are probably already covered by OSHA PSM, assigning them to Program 2 would provide no reduction in burden or regulatory relief. One commenter suggested that EPA could allow VPP sources the flexibility to determine, with the LEPC, what the offsite consequence analysis would cover. Seven commenters opposed VPP participation as a Program 2 criterion because VPP does not address offsite consequences, no evidence was presented that PSM is being carried out adequately at VPP sources, and this approach would discriminate against other voluntary programs.

After consideration of the comments, EPA has decided not to use VPP participation as a Program 2 criterion, but has adopted language in the final rule to exempt sources with a Star or Merit ranking under OSHA's VPP from selection for audits based on the criteria in § 68.220 (b)(2) and (b)(7); such a source may be audited if it has an accidental release that requires an accident investigation under these regulations. This decision recognizes that such sources have active accident prevention programs and should not be regarded in the same way as other sources within the same industry or as other sources in general. In addition, it thus provides a similar degree of benefit with respect to EPA auditing as it does with respect to OSHA auditing. EPA agrees that VPP sources would gain no benefit by assignment to Program 2. EPA does not believe it is appropriate to adjust the hazard assessment requirements for VPP sources; this information is essential to local emergency preparedness and response and for public dialogue.

2. Qualified Third Party. In the SNPRM, EPA sought comments on whether sources should be allowed to have qualified third parties assist them in achieving and maintaining compliance. Eight commenters supported third party reviews as a way to reduce implementing agency efforts. One commenter stated that sources should be required to hire a qualified third party to assess their activities. Most commenters, however, expressed some reservations including greater cost if sources were required to hire third parties, when many sources already have staff qualified to implement the risk management program. Commenters said that a third party review would be particularly costly for retailers who will have model programs and stated that use of third parties would add another layer of bureaucracy to the process. A number of commenters said that EPA should fund third parties. Commenters also stated that use of third parties might confuse the issue of who was responsible for safety and for enforcement; they said that EPA must make it clear that the owner or operator of the source remains responsible for accidents and that the implementing agency retains enforcement authority. Finally, several commenters asked who would determine the qualifications of a qualified third party.

EPA is not requiring use of qualified third parties in this rule. EPA, however, endorses the concept of offering sources the option of using third parties to assist owner/operators in meeting their obligations under the rule. Based on the comments, EPA recognizes that any third party proposal must:

- Not weaken the compliance responsibilities of source owner/operators;
- Offer cost savings and benefits to the industry, community, and implementing agencies that significantly exceed the cost of implementing the qualified third party approach;
- Lead to a net increase in process safety, particularly for smaller, less technically sophisticated sources; and
- Promote cost-effective agency prioritization of implementing agency oversight resources.

Several key issues need further discussion before the use of a qualified third party may be offered as an option. These include qualification criteria, certification procedures, liability, and other critical issues associated with the use of a qualified third party. Therefore, following promulgation of this rule, EPA proposes to call a meeting to solicit input from trade associations, professional and technical societies, states, and other interested parties to address these issues and investigate the need for developing a process and a national exam to qualify third parties.

3. Documentation. Commenters expressed a number of concerns about the level of recordkeeping and the availability of information. Some commenters stated that records need to be maintained for longer than five years; commenters suggested 10 years, 20 years, and the life of the source. One commenter suggested that records should be kept for the life of the process and then seven years thereafter to ensure that records would be available if a lawsuit was initiated. Industry commenters said that only current documents and data should be maintained to prevent confusion from having multiple versions of the same document. One commenter stated that policies and procedures should be kept until they are superseded, then they should be destroyed; retaining old, superseded information is unsafe and unacceptable and can result in accidents.

One commenter said that sources should be required to develop and maintain a master index or catalogue of documents relevant to the proposed rule to support public access. Another commenter stated that, in addition to maintaining records supporting the implementation of the risk management program, the owner or operator should submit the records to the implementing agency. A third commenter said that the rule should require that all records supporting compliance with the rule be organized and readily available through the designated contact person at the source to the implementing agency for inspection.

Other commenters said the proposed recordkeeping was excessive. One stated that EPA is forcing industries towards ''defensive universal recordkeeping,'' retaining mountains of documents because EPA has not specified what records need to be kept. Another commenter said that an examination of the proposal indicated that no fewer than about 22 separate written documents are required to be maintained on site or submitted to the responsible regulatory agency and other parties. One commenter noted that more resources will be spent on filling out paperwork than on actual spill prevention.

In the final rule, EPA has adopted the OSHA PSM language for Program 3 processes; therefore, documentation for PSM elements is dictated by that rule. For other elements of the risk management program and for processes in other tiers, EPA has set a period of five years for the maintenance of supporting documentation. EPA agrees with commenters that only current versions of documents and procedures should be retained. On the issue of records submitted to the implementing agency, EPA believes that the provisions outlined in the final rule (as described in Subpart G to part 68) will limit the volume of such documentation. The implementing agency and EPA will have access to all on-site documentation when needed. Much of the on-site documentation will be confidential and protected under Section 114(c) of the CAA. The burden on the implementing agency will be substantially reduced because it will not have to establish protected trade secret files and procedures.

Finally, EPA agrees with commenters that level of recordkeeping should be kept as low as possible consistent with EPA's statutory mandate. EPA has reduced the documentation requirements for Program 2 processes (particularly with respect to the prevention program) because it believes that for these sources, the benefit of the records does not offset the cost of creating and maintaining files.

IV. Section-by-Section Analysis of the Rule

This section discusses specific changes to the rule that are not otherwise described in this preamble. The rule has been renumbered to include new sections and subparts. The hazard assessment requirements have been divided into separate sections in subpart B. The Program 2 prevention program requirements are in subpart C; Program 3 prevention program elements are in Subpart D. Emergency response requirements are in subpart E, RMP requirements in subpart G. The registration requirement, proposed § 68.12, has been moved to the RMP subpart. Tables 3 and 4 present the distribution of NPRM and SNPRM sections and derivation of final rule sections.

TABLE 3.—DISTRIBUTION TABLE

NPRM and SNPRM citations	Final rule citations
68.3 Definitions	68.3 Definitions.
68.10 Applicability	68.10 Applicability.
68.12 Registration	68.160 Registration.
68.13 No Impact Sources (Tier 1)	68.10(b) Applicability. 68.12(b) General Requirements.
68.14 Streamlined Risk Management Program (Tier 2)	Subpart C Program 2 Prevention Program (68.48–68.60).
68.15 Hazard Assessment	Subpart B Hazard Assessment (68.20–68.42).
68.20 Prevention Program—Purpose	Deleted.
68.22 Prevention Program—Management System	68.15 Management.
68.24 Prevention Program—Process Hazard Analysis	68.67 Process Hazard Analysis.
68.26 Prevention Program—Process Safety	68.65 Process Safety Information.
68.28 Prevention Program—Standard Operating Procedures	68.69 Operating Procedures.
68.30 Prevention Program—Training	68.71 Training.
68.32 Prevention Program—Maintenance (mechanical integrity)	68.73 Mechanical Integrity.
68.34 Prevention Program—Pre-Startup Review	68.77 Pre-Startup Review.
68.36 Prevention Program—Management of Change	68.75 Management of Change.
68.38 Prevention Program—Safety Audits	68.58 Compliance Audits. 68.79 Compliance Audits.
68.40 Prevention Program—Accident Investigation	68.60 Incident Investigation. 68.81 Incident Investigation.
68.45 Emergency Response Program	68.95 Emergency Response Program.

TABLE 3.—DISTRIBUTION TABLE—Continued

NPRM and SNPRM citations	Final rule citations
68.50 Risk Management Plan	Subpart G Risk Management Plan (68.150–68.190).
68.55 Recordkeeping Requirements	68.200 Recordkeeping.
68.58 Permit Content and Air Permitting Authority Requirements	68.215 Permit Content and Air Permitting Authority or Designated Agency Requirements.
68.60 Audits	68.220 Audits.

TABLE 4.—DERIVATION TABLE

Final rule citations	NPRM and SNPRM citations
68.3 Definitions	68.3 Definitions.
68.10 Applicability	68.10 Applicability, SNPRM 68.13.
68.12 General Requirements	SNPRM 68.13, 68.14.
68.15 Management	68.22 Prevention Program—Management.
68.20 Applicability (Hazard Assessment)	68.10 Applicability.
68.22 Offsite Consequence Analysis Parameters (Hazard Assessment).	68.15(e) Hazard Assessment.
68.25 Worst-Case Release Analysis (Hazard Assessment)	68.15(c) Hazard Assessment.
68.28 Alternative Release Analysis (Hazard Assessment)	68.15(d) Hazard Assessment.
68.30 Defining Offsite Impacts—Population (Hazard Assessment)	68.15(e)(3) Hazard Assessment.
68.33 Defining Offsite Impacts—Environment (Hazard Assessment)	68.15(e)(4) Hazard Assessment.
68.36 Review and Update (Hazard Assessment)	68.15(g) Hazard Assessment.
68.39 Documentation (Hazard Assessment)	68.15(h) Hazard Assessment.
68.42 Five-year Accident History (Hazard Assessment)	68.15(f) Hazard Assessment.
68.48 Safety Information (Program 2)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.26 Process Safety Information.
68.50 Hazard Review (Program 2)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.24 PHA.
68.52 Operating Procedures (Program 2)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.28 SOPs.
68.54 Training (Program 2)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.30 Training.
68.56 Maintenance (Program 2)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.32 Maintenance.
68.58 Compliance Audits (Program 2)	68.38 Prevention Program—Safety Audits.
68.60 Incident Investigation (Program 2)	68.40 Prevention Program—Incident Investigation.
68.65 Process Safety Information (Program 3)	68.26 Prevention Program—Process Safety.
68.67 Process Hazard Analysis (Program 3)	68.24 Prevention Program—Process Hazard Analysis.
68.69 Operating Procedures (Program 3)	68.28 Prevention Program—Standard Operating Procedures.
68.71 Training (Program 3)	68.30 Prevention Program—Training.
68.73 Mechanical Integrity (Program 3)	68.32 Prevention Program—Maintenance (mechanical integrity).
68.75 Management of Change (Program 3)	68.36 Prevention Program—Management of Change.
68.77 Pre-Startup Review (Program 3)	68.34 Prevention Program—Pre-Startup Review.
68.79 Compliance Audits (Program 3)	68.38 Prevention Program—Safety Audits.
68.81 Accident Investigation (Program 3)	68.40 Prevention Program—Accident Investigation.
68.83 Employee Participation (Program 3)	68.24(f) Process Hazard Analysis.
68.85 Hot Work Permit (Program 3)	NPRM Preamble (58 FR 54205).
68.87 Contractors (Program 3)	NPRM Preamble (58 FR 54205).
68.90 Applicability (Emergency Response)	68.45(a) Emergency Response Program.
68.95 Emergency Response Program	68.45(b)–(f) Emergency Response Program.
68.150 Submission (Risk Management Plan)	68.50(a) Risk Management Plan.
68.155 Executive Summary (Risk Management Plan)	68.50(a) Risk Management Plan.
68.160 Registration (Risk Management Plan)	68.12 Registration.
68.165 Offsite Consequence Analysis (Risk Management Plan)	68.50(c) Risk Management Plan.
68.168 Five-Year Accident History (Risk Management Plan)	68.15(f) Hazard Assessment.
68.170 Prevention Program/Program 2 (Risk Management Plan)	68.14(b) Streamlined Risk Management Program (Tier 2); 68.50(g).
68.175 Prevention Program/Program 3 (Risk Management Plan)	68.50(g) Risk Management Plan.
68.180 Emergency Response Program (Risk Management Plan)	68.50(e) Risk Management Plan.
68.185 Certification (Risk Management Plan)	68.50(g) Risk Management Plan. 68.13(a) No Impact Sources.
68.190 Updates (Risk Management Plan)	68.50(h) Risk Management Plan.
68.200 Recordkeeping	68.55 Recordkeeping Requirements.
68.210 Availability of Information to the Public	42 U.S.C. 7412.
68.215 Permit Content and Air Permitting Authority or Designated Agency Requirements.	68.58 Permit Content and Air Permitting Authority Requirements.
68.220 Audits	68.60 Audits.
Appendix A—Table of Toxic Endpoints	68.15(h)(3)(iii) Hazard Assessment.

Section 68.3, Definitions, has been revised to add or delete a number of definitions. A definition of administrative controls has been added that is derived from the definition used

by the Center for Chemical Process Safety (CCPS).

The definition of analysis of offsite consequences has been deleted.

A definition of catastrophic release has been added that is adapted from OSHA's definition of catastrophic release (29 CFR 1910.119); OSHA's language on danger to employees in the workplace has been changed to imminent and substantial endangerment to public health and the environment.

A definition of classified information has been added. The definition is adopted from the Classified Information Procedures Act.

The proposed definition of covered process is unchanged.

The proposed definition of designated agency has been revised to indicate that the state, not the state air permitting authority, shall select an agency to conduct activities required by § 68.215.

As discussed above, a definition of environmental receptor has been added to list the receptors of concern.

The definition of full-time employee has been deleted.

A definition of hot work has been adopted verbatim from the OSHA PSM standard.

The definition of implementing agency is adopted as proposed in the SNPRM.

A definition of injury has been added.

A definition of major change has been added to clarify the types of changes that necessitate actions to manage change. The definition will help sources understand when they are required to take steps to review their activities for new hazards.

A definition of mechanical integrity has been added to clarify the requirements of maintenance sections.

A definition of medical treatment has been added to clarify what constitutes an injury. The definition is adapted from an OSHA definition used by sources in logging occupational injuries and illnesses.

The proposed definition of mitigation has been changed by adding a definition of active mitigation.

A definition of offsite has been changed to clarify that areas within the source would be considered offsite if the public has routine and unrestricted access during or outside of business hours. Areas within a source's boundaries that may be considered offsite are public roads that pass through sections of the site and natural areas owned by the source to which the public has unrestricted access. For some sites, parking lots within the boundary may be offsite if the source cannot restrict access.

A definition of population has been added. Population is defined as the public.

A definition of public has been added to state that all persons except employees and contractors at the stationary source are members of the public. A number of commenters stated that employees at other facilities should not be considered part of the public. EPA disagrees because these employees may not be trained in protective actions or have protective equipment appropriate for releases from covered processes.

A definition of public receptor has been added. Some commenters stated that EPA should include public roads within this definition. EPA decided that inclusion of public roads was unwarranted. EPA recognizes that people on public roads may be exposed during a release. In most cases, however, vehicles on public roads will be able to leave the area quickly and further access can be blocked, especially in isolated areas. If public roads were included, almost no sources would be eligible for Program 1 because there will be public roads leading to the source. In those cases where public roads are heavily traveled, there will be other public receptors near the source and, therefore, the source's processes will not qualify for Program 1.

OSHA's definition of replacement in kind has been adopted.

The definition of significant accidental release has been deleted.

A definition of typical meteorological conditions has been added which means the temperature, wind speed, cloud cover, and atmospheric stability class prevailing at the source. Data on the first three of these are available from local meteorological stations (e.g., airports). Atmospheric stability class can be derived from cloud cover data.

The definition of worst-case release has been revised to clarify that the release is the one that leads to the greatest distance to the applicable endpoint.

Section 68.10, Applicability, has been revised to change the term ''tier'' to ''Program.'' The section now details the eligibility criteria for all three programs. Paragraph (a) has been revised to be consistent with statutory language on compliance dates. Sources must comply with the requirements by June 21, 1999, three years after EPA first lists a substance, or the date on which a source first becomes subject to this part, whichever is latest. After June 21, 1999, sources that begin using a regulated substance that has been listed for at least three years must be in compliance with the requirements of part 68 on the day they bring the substance on site above a threshold quantity.

The Program 1 eligibility requirements have been revised to clarify that the criteria are applied to a process, not the source as a whole, as discussed above. EPA has deleted requirements for explosives because the Agency is proposing to delist explosives. The types of accidents that will disqualify a process from Program 1 are now specified in the rule as those accidental releases of a regulated substance that led to offsite exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance which resulted in offsite death or injury (as defined by the rule), or response or restoration activities at an environmental receptor. These accidental release criteria eliminate the need for a definition of significant accidental release, which has been deleted. Offsite environmental response or restoration would include such activities as collection, treatment and disposal of soil, shutoff of drinking water, replacement of damaged vegetation, or isolation of a natural areas due to contamination associated with an accidental release. The distance calculation equation for flammables has been dropped, and the worst-case release endpoint for flammables is specified which allows the source to use the reference tables or their own methodology to determine the distance to the endpoint. The requirement that the community have an EPCRA emergency response plan has been replaced by a requirement that the source coordinate emergency response procedures with local community responders.

As discussed above, the eligibility criteria for Program 2 and 3 have been changed. Both apply to processes, not sources.

Paragraph (e) states that if a process no longer meets the eligibility criteria of its Program level, the source must comply with the requirements of the new Program level and the update the RMP according to § 68.190. This paragraph clarifies the responsibility of the source when a process becomes ineligible for a Program level (e.g., public receptors move within the distance to an endpoint for a Program 1 process or OSHA changes the applicability of its PSM standard).

Proposed § 68.12, Registration, has been dropped. Registration requirements are now part of the RMP requirements in subpart G, § 68.160.

New § 68.12, General Requirements, has been added to provide a roadmap

for sources to use to identify the requirements that apply to processes in each of the three tiers. The Program 1 requirements, in proposed § 68.13, have been included in this section. Owners or operators of Program 1 processes are required to analyze and document in the RMP the worst-case release to ensure that they meet the eligibility criteria of no public receptors within the distance to the endpoint. As discussed above, the requirement to post signs has been dropped. The certification statement has been revised to be consistent with the eligibility requirements. If a source has more than one Program 1 process, a single certification may be submitted to cover all such processes.

The Program 2 requirements specify the sections of the rule that apply to these processes.

The Program 3 requirements specify the sections of the rule that apply to these processes.

Proposed § 68.22, Management, has been moved from the prevention program to § 68.15 in subpart A-General. The section has been adopted as proposed except that the purpose sentence in paragraph (a) has been dropped and a phrase at the beginning of paragraph (b) has been deleted as unnecessary.

A new subpart B has been created to cover the hazard assessment requirements. The proposed § 68.15 has been divided into separate sections to cover the parameters, the different types of analyses, the identification of offsite populations and environments, documentation and updates, and the five-year accident history. EPA believes that limiting each section to a single topic will make the rule easier to understand.

Section 68.20 has been added to specify which hazard assessment requirements apply to Program 1, 2, and 3 processes. All sources are required to complete a worst-case release analysis for regulated substances in covered processes, based on the requirements of § 68.25. Program 2 and 3 processes must also perform alternative release analyses required by § 68.28. All sources must complete the five-year accident history for all covered processes.

A new § 68.22 has been added to list the parameters to be used in the offsite consequence analyses. Owners or operators who choose to use their own air dispersion modeling tools must use the parameters specified in paragraphs (a), (e), (f), and (g) of this section; they must use the meteorological parameters specified in paragraph (b) of this section unless they can demonstrate that the conditions do not exist at their site. Paragraph (c) specifies the ambient temperature and humidity for worst case (highest daily maximum over the previous three years and average humidity); if a source uses the guidance, it may use average temperature and humidity (25° C and 50 percent) as default values. EPA recognizes that these values are less conservative than the worst-case meteorological conditions, but determined that they represent a reasonable average to be used for developing tables. Providing tables for a variety of temperatures and humidity would have made the guidance much more voluminous and difficult to use. EPA is requiring sources that use dispersion models instead of the guidance to use actual temperature and humidity data applicable to the site. EPA believes this approach represents a reasonable tradeoff. The guidance generates conservative results even with the less conservative assumptions about temperature and humidity; air dispersion modeling will generally produce less conservative results and, therefore, should be based on actual data for these variables. Average data applicable to the source may be used for alternative scenarios. Paragraph (d) requires that the release height for worst-case be at ground level (zero feet). Paragraph (e) specifies that urban or rural topography be used as appropriate in modeling. Paragraph (f) requires sources to use models or tables appropriate for the density of the substance being released (e.g., dense gases must be modeled using tables or models that account for the behavior of dense gases). Dense gases are typically those that are heavier than air as well as those that form aerosols and behave as if they are heavier than air upon release. For worst-case releases, liquids (other than gases liquefied by refrigeration only) shall be considered to be released at the highest daily maximum temperature or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at ambient or process temperatures as appropriate. Owners or operators may choose to use EPA's RMP Offsite Consequence Analysis Guidance for their offsite consequence analyses. All of the parameters specified here are reflected in this guidance.

A new § 68.25 has been added on the worst-case release analysis. As discussed above, the section requires one worst-case release for toxics and one for flammables. If additional scenarios, for either class of substances, would potentially expose receptors not exposed by the worst-case release, the additional scenario shall be analyzed and reported. This provision is to take into account the possibility that at large sources, vessels at opposite ends of the source may expose different populations.

The section specifies how maximum quantity in a vessel or pipe is to be determined, the scenarios to be considered for toxic gases, toxic gases liquefied by refrigeration only, toxic liquids, and flammables, the parameters to be used, consideration of passive mitigation, and factors to be considered in selecting the worst-case scenario. The section also specifies that sources may use proprietary models if the source provides the implementing agency access to the model and explains differences between the model and publicly available models, if requested. This approach will allow sources to use the most appropriate models available, while preserving the transparency of the results.

A new § 68.28 has been added on alternative release scenario analysis. As discussed above, the section requires one alternative release analysis for all flammables held above the threshold in processes at the source and one alternative release analysis for each toxic held above the threshold in processes. For each scenario, the owner or operator shall select a scenario that is more likely to occur than the worst case; and that will reach an endpoint offsite, unless no such scenario exists. The section includes a list of scenarios that owners/operators may want to consider, but does not dictate a particular scenario. EPA has provided additional direction and suggestions for defining these scenarios in the RMP Offsite Consequence Analysis Guidance. As noted above, the section references the parameters to be used and allows consideration of both passive and active mitigation systems. The section specifies factors to be considered in selecting alternative scenarios; specifically, sources shall consider releases that have been documented in the five-year accident history; or failure scenarios identified through the PHA or hazard review.

A new § 68.30 has been added on defining offsite impacts—population. The section specifies that populations are to be defined for a circle with a radius that is the distance to the endpoint. Owners or operators are required only to estimate the residential population within the circle to two significant digits and may use Census data to make these estimates. Owners or operators are also required to note, in the RMP, the presence of any major institutions, such as schools, hospitals, prisons, public recreational areas, arenas, and major commercial and

industrial developments, but they are not required to estimate the number of people present at such sites. These additional locations are those that would normally be shown on area street maps.

A new § 68.33 has been added on defining offsite impacts to the environment. As discussed above, the owners or operators are required only to identify any environmental receptors within the circle with a radius determined by the distance to the endpoint. The owners or operators are not required to assess the potential types or degree of damage that might occur from a release of the substance. The environmental receptors are those that can be identified on U.S. Geological Survey local topographical maps or maps based on U.S.G.S. data.

A new § 68.36 has been added to list the requirements for reviewing and updating the offsite consequence analysis. As proposed, if no changes occur at the site, the analyses must be reviewed and updated at least once every five years. If changes at the site occur that would reasonably be expected either to increase or decrease the distance to the endpoint by a factor of two or more, owners/operators are required to update the offsite consequence analysis within six months. The time for the reanalysis has been changed to six months to make it consistent with the update requirements for the RMP. The proposed requirement for reviewing the analyses based on offsite changes has been deleted. A number of commenters objected to the requirement because it would have compelled them to track changes over very large areas. Because the distance to the endpoints, especially for toxics, may be as much as 40 km, the area affected could easily exceed 1,000 square miles. EPA agreed with commenters that there was little benefit from requiring sources to track offsite changes and redo analyses because the public is aware of the changes.

A new § 68.39 has been added to list the documentation related to the offsite consequence analyses that must be retained on site. For both types of scenarios, the documentation shall include a description of the scenarios identified, assumptions and parameters used, the rationale for the selection of specific scenarios; assumptions shall include use of mitigation and any administrative controls that were assumed to limit the quantity that could be released. Documentation shall include the effect of the mitigation and controls on the release quantity. The documentation shall also include the estimated quantities released, release rates, and durations of release. The owners or operators shall also identify the methodology used to determine distance to endpoints (i.e., EPA's guidance or an air dispersion model) and the data used to estimate population and environmental receptors potentially affected. EPA has deleted the proposed requirement for documentation of endpoints because these are now dictated by the rule. EPA has also dropped the requirement for documentation of distance calculations; distances will either be determined from EPA's reference tables or by an air dispersion model.

A new § 68.42 has been added to detail the requirements for the five-year accident history. As discussed above, the accident history is limited to accidental releases of listed substances from covered processes only. The only accidental releases that must be included in the history are those that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. Although language related to the types of environmental damage listed in the proposed rule has been dropped, EPA intends that environmental damage not be limited to environmental receptors; events where any known environmental impact of any kind (e.g., fish or animal kills, lawn, shrub, or crop damage), should be included in the history.

The data required on each accident include date, time, and approximate duration of the release; chemical(s) released; estimated quantity in pounds; the type of release event and its source; weather conditions (if known); on-site impacts and known offsite impacts; the initiating event and contributing factors (if known); whether offsite responders were notified (if known); and operational or process changes that resulted from the release. Estimates may be provided to two significant digits. EPA expects that for accidents that occur after the publication of this rule, sources will be able to document weather conditions, initiating events and contributing factors, and notification of offsite responders as these items would be part of the incident investigation. The Agency recognizes, however, that for incidents that occur before the rule is final, sources may not have this information unless OSHA PSM already would require the source to gather such information (e.g., initiating event and contributing factors). EPA has dropped the requirement that the concentration of the released substance be reported. Concentration at the point of release is assumed to be 100 percent except for substances in solution, where the concentration at the point of release is assumed to be the percentage of the solution as held or processed. The data provided will allow the source or the public to estimate the concentration offsite.

Because the five-year accident history will initially cover releases that occurred before this rule is promulgated, EPA is requiring reports on weather conditions only if the source has a record. For future releases, EPA encourages the owners or operators keep a record of wind speed and temperature if possible as these conditions have a significant impact on the migration of a release offsite. The rule specifies that the source must document known offsite impacts. The source is not required to conduct research on this subject, but must report impacts of which it is aware through direct reporting to the source or claims filed, or reasonably should have been aware of from publicly available information. The source is not required to verify the accuracy of public or media reports.

A new subpart C has been created to include the requirements of the prevention program for Program 2 processes.

New § 68.48 details the safety information that sources will be required to develop. The information is a subset of the information required under the OSHA rule and is limited to those items that are likely to apply to Program 2 processes: MSDSs, maximum intended inventory, safe upper and lower process parameters, equipment specifications, and the codes and standards used to design, build, and operate the process. Because Program 2 processes are generally simple, EPA determined that items such as process chemistry, process flow diagrams, detailed drawings on equipment, and material and energy balances are not necessary for these processes. Evaluation of consequences of deviations will be handled under the process review and the offsite consequence analysis.

Paragraph (b) of § 68.48 requires owners or operators to ensure that the process is designed in compliance with good engineering practices. The paragraph states that compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes may be used to demonstrate compliance. NFPA–58 for propane handlers and OSHA's rule for ammonia handling (29 CFR 1910.111) are examples of such design codes.

The final paragraph of § 68.48 requires owners or operators to update the safety information if a major change makes it inaccurate.

New § 68.50 sets the requirements for a hazard review. The section lists the hazards and safeguards that the owners or operators must identify and review. The section states that owners or operators may use checklists, such as those provided in model risk management programs, to conduct the review. For processes that are designed to industry standards (e.g., NFPA–58) or Federal/state design rules, owners or operators need only check their equipment closely to ensure that it has been fabricated and installed according to the standards or rules and is being operated appropriately. In this case, the standard or rule-setting body has, in essence, conducted the hazard review and designed the equipment to reduce hazards. Like the PHA required under PSM, the hazard review must be documented and the findings resolved. The review must be updated at least once every five years or when a major change occurs. A streamlined version of the PHA requirement, the review recognizes that for simple processes some of the OSHA requirements, such as the requirement for a team and a person trained in the technique, may not be necessary. Most Program 2 processes will have model risk management programs that will assist owners or operators in conducting the review.

New § 68.52 covers operating procedures. The section allows owners or operators to use standardized procedures developed by industry groups or provided in model risk management programs as a basis for the SOPs. Owners or operators will need to review standardized SOPs to ensure that they are appropriate for their operations; some may need to be tailored. The steps covered in the SOP are adapted from the OSHA PSM standard. Certain elements of the PSM requirement (e.g., safety and health consideration) were dropped because they are generally covered in training provided under the OSHA hazard communication standard. Other elements were not included because they are covered by other OSHA rules or may not apply to the kinds of sources in Program 2. The section requires that the SOPs be updated whenever necessary.

New § 68.54 covers training and is a streamlined version of the OSHA PSM requirement. The primary difference with the OSHA PSM training element is that the documentation requirements have been dropped. EPA believes that for Program 2 sources, which generally will have simple processes and few employees involved in the process, the level of documentation required by OSHA PSM is not needed. The section specifically states that training conducted to comply with other Federal or state rules or industry codes may be used to demonstrate compliance with the section if the training covers the SOPs for the process. Workers must be retrained when SOPs change as a result of a major change.

New § 68.56 covers maintenance and requires owners or operators to prepare and implement procedures for maintenance and train workers in these procedures. The owners or operators are also required to inspect and test process equipment consistent with good engineering practices. The OSHA list of equipment has been dropped because it seemed too detailed for the simpler Program 2 processes. Similarly, the OSHA PSM requirements for documentation, equipment deficiencies, and quality assurance seem too burdensome given the type of processes in Program 2. EPA emphasizes that sources should address equipment deficiencies when they arise.

New §§ 68.58 and 68.60 on compliance audits and accident investigation are adopted directly from the OSHA PSM standard. EPA believes that these two elements are critical to good prevention practices and that no changes are needed from the OSHA requirements. EPA has added a provision to clearly indicate that audit reports more than five-years old need not be retained.

The Program 3 prevention program is codified in new subpart D. As explained above, the subpart adopts the OSHA PSM standard with only minor editorial changes necessitated by the different statutory authorities of the two agencies. Throughout the subpart, ''employer'' has been changed to ''owner or operator,'' ''facility'' to ''stationary source,'' and ''highly hazardous chemical'' to ''regulated substance.'' EPA has reordered the elements somewhat so that the order reflects the progression in which sources will generally implement the program. For example, process safety information, which is needed for the PHA, now precedes that section. Pre-startup review, which is the last step of management of change procedures, now follows management of change. The reordering does not reflect any change in the content.

Section 68.65, process safety information, is adopted directly from OSHA. The only changes are the following: references to other requirements have been changed to reflect the appropriate EPA section numbers; the phrase ''highly hazardous chemical'' has been changed to ''regulated substance''; the word ''standard'' has been changed to ''rule'' in paragraph (a); and the date when material and energy balances are needed for new processes has been changed to June 21, 1999. The words ''including those affecting the safety and health of employees'' has been deleted from the requirement for the evaluation of the consequences of deviations (paragraph (c)(1)(v)) because EPA has no authority to regulate the workplace. Further, EPA believes this change reflects EPA's desire that sources implement one prevention program that protects the safety and health of workers, the public and the environment and should have no effect on sources already complying with the OSHA PSM rule.

Section 68.67, process hazard analysis, has been adopted from the OSHA rule with a few changes. The OSHA schedule for completion of PHAs has been replaced with the compliance date of this rule; a new sentence has been added to state that PHAs conducted to comply with OSHA PSM are acceptable as the initial PHA under this rule. These PHAs shall be updated and revalidated based on their OSHA completion date. This provision will ensure that sources do not need to duplicate PHAs already completed or change their update schedule.

In paragraph (c)(2), the phrase ''in the workplace'' has been deleted from the requirement to identify previous incidents with the potential for catastrophic consequences because EPA does not have the authority to regulate the work place. EPA believes that this change will have no effect on the rule; any incident with the potential for catastrophic consequences in the workplace will also have had the potential for catastrophic consequences offsite. Similarly, the phrase ''on employees in the workplace'' has been deleted from paragraph (c)(7), which requires a qualitative evaluation of a range of the possible safety and health effects of failure of controls. By deleting the language, rather than changing it, EPA is consistent with its authority without imposing any new requirements on sources. A new sentence has been added to paragraph (f) to state that PHAs updated and revalidated under the OSHA rule are acceptable for EPA's purposes. Throughout this section, internal references have been changed.

To maintain consistency with OSHA PSM, proposed paragraph (j), which would have required the evaluation of mitigation and detection systems, has been dropped, as have proposed

references to offsite consequences and public health and the environment. Evaluation of mitigation and detection systems is normally part of the PHA process and of management's decisions on implementing recommendations and, therefore, EPA decided that a separate requirement was not needed. EPA will collect information on monitoring, detection, and mitigation systems used in each Program 2 and 3 process as part of the RMP. Proposed paragraph (a), which was advisory, has been dropped.

Section 68.69, Operating Procedures, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator.'' Proposed paragraph (a) has been deleted to ensure consistency with OSHA.

Section 68.71, Training, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator'' and changes in referenced sections. Proposed paragraph (a) has been deleted to ensure consistency with OSHA, as has proposed paragraph (e).

Section 68.73, Mechanical Integrity proposed as Maintenance, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator.'' Proposed paragraph (a) has been deleted to ensure consistency with OSHA. The proposed requirements to develop a critical equipment list, document training, and ''maintain'' as well as inspect and test under paragraph (d) have been dropped to ensure consistency with OSHA.

Section 68.75, Management of Change, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator'' and changes to referenced sections. Proposed paragraph (a) has been deleted to ensure consistency with OSHA. EPA's proposed paragraph (b), which defined changes not covered by the section, has also been dropped in favor of OSHA's definition of ''replacement in kind.''

Section 68.77, Pre-Startup Review, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator'' and changes to referenced sections. Proposed paragraph (a) and the reference to emergency response training in proposed paragraph (c)(4) have been deleted to ensure consistency with OSHA.

Section 68.79, Compliance Audits, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator'' and changes to referenced sections. Proposed paragraph (a) has been deleted to ensure consistency with OSHA.

Section 68.81, Accident Investigation, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator'' and ''highly hazardous chemical'' to ''regulated substance'' and changes to referenced sections. Proposed paragraphs (a) and (b), the latter of which would have required written procedures, have been deleted to ensure consistency with OSHA. References to significant accidental release have been dropped because the phrase is no longer used. Although EPA has adopted OSHA's language, EPA has changed the definition of catastrophic release. Consequently, this section requires owners or operators to investigate accidents that resulted in or could reasonably have resulted in a release that presented serious danger to public health or the environment. EPA does not believe that, except in isolated cases, the modification to this provision will require sources to investigate accidents that they would not investigate under the OSHA rule.

Section 68.83, Employee Participation, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator.'' Although EPA did not propose adopting this section, the Agency solicited comments on this issue, and commenters convinced the Agency that employee participation is an important component of a complete prevention program.

Section 68.85, Hot Work Permit, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator.'' Although EPA did not propose adopting this section, the Agency solicited comments on this provision and decided that it was valuable to maintain consistency with the OSHA PSM elements and that the hot work permit was important to good prevention practices.

Section 68.87, Contractors, has been adopted verbatim from OSHA except for changing ''employer'' to ''owner or operator,'' changing to referenced sections, and deleting OSHA's paragraph 29 CFR 1910.119(h)(2)(vi). Although EPA did not propose adopting this section, the Agency solicited comments on this issue. Commenters argued that contractor practices are an important component of a complete prevention program. A number of major accidents have resulted from contractor mistakes. EPA agrees with the commenters and has included the provision in the final rule. EPA has, however, deleted the requirement that employers maintain an occupational injury and illness log for contract employees because the Agency does not have the authority to impose this requirement.

EPA has placed the emergency response requirements in a new Subpart E and divided the proposed emergency response section into two separate sections, an applicability section and a section to cover the emergency response program.

A new § 68.90, Applicability, has been added. Because many sources covered by this rule may be too small to handle emergency response themselves, EPA has provided, in this new section, the actions they must take if they will not respond to releases. Specifically, for sources with regulated toxic substances, the source must be addressed in the community emergency response plan developed under EPCRA section 303. Sources with regulated flammable substances must coordinate response actions with the local fire department. These sources must also establish a mechanism to contact local emergency responders. Sources that do not meet these requirements must comply with EPA's emergency response program requirements.

Section 68.95, Emergency Response Program, is adopted from § 68.45 of the proposed rule. The program has four components: an emergency response plan, procedures for use of response equipment and its maintenance, training for employees, and procedures to update the plan after changes to the source. The required elements of the plan are those specified in CAA section 112(r)(7)(B)(ii): procedures for informing the public and local response agencies; documentation of emergency medical treatment; and procedures and measures for emergency response. As explained above, EPA decided that, to avoid inconsistency with other emergency response planning regulations, the rule would be limited to the statutory requirements. Consequently, EPA has deleted the following proposed requirements: documentation of evacuation routes (which should be covered under the emergency action plans required by OSHA under 29 CFR 1910.38); descriptions of all response and mitigation technologies available at the source; documentation of the maintenance and training programs; emergency response drills and exercises; revision of the plan based on the findings of the drills and exercises; and documentation of management's response to findings and a schedule for completion. EPA believes that these requirements are addressed in other Federal regulations and, therefore, sources are already doing them. By not including them, EPA, however, avoids the possibility that slightly different wording could lead to unnecessary additional effort on the part of sources.

EPA has added a paragraph (b) to this section to state that compliance with other Federal contingency plan regulations or use of the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') that results in a written plan that addresses the elements in paragraph (a) shall satisfy the requirements of the rule, provided that the owner or operator also complies with paragraph (c) of this section.

Paragraph (c) is adopted from proposed paragraph § 68.45(g) and requires coordination of the plan with the local community emergency response plan. References to the local emergency planning committee (LEPC) have been changed to 'local emergency response officials' to recognize and include other local groups that may be in charge of coordinating emergency planning. LEPCs would be included in this category.

A new Subpart G has been created to cover the Risk Management Plan. The Risk Management Plan includes three main sections, an executive summary, the registration, and data elements that provide information on the offsite consequence analyses, the five-year accident history, the prevention program, and the emergency response program. The subpart includes separate section to address each of these, plus sections on submission, certifications, and updates.

New § 68.150, Submission, has been added. As discussed above, an owner or operator shall submit a single RMP for the source, regardless of the number of covered processes or the tiers for which they are eligible. All RMPs will be submitted in a manner and method EPA will specify by the compliance date to a point designated by EPA; no other submission will be required because other agencies and the public will have access to the submissions on-line. As required by the CAA, the first RMP must be submitted by June 21, 1999, three years after EPA first lists a substance, or the date on which a source first becomes subject to this part, whichever is latest. As discussed above under applicability, after June 21, 1999, sources that begin using a substance that has been listed for at least three years will be required to submit their RMPs on the date the substance is first on site above the threshold quantity. Sources that begin using such a regulated substance prior to June 21, 1999 will need to be in compliance with the rule on June 21, 1999. The final paragraph states that, except for a classified annex that would not be publicly available, the RMP shall exclude classified information.

New § 68.155 details the requirements for the executive summary. The summary shall include brief descriptions of the following items: the source's prevention and emergency response approach; the stationary source and regulated substances; worst-case release scenario(s) and alternative release scenario(s), including any administrative controls applied to limit the release quantity; the general prevention program and chemical-specific prevention steps; the five-year accident history; the emergency response program; and planned changes to improve safety. EPA anticipates that none of these items should require more than a half page of text. Because this information may be filed electronically, EPA is not asking sources to submit maps of the worst-case or alternative release scenario circles. The data submitted under each of these sections will allow state or local agencies and the public to map the circles.

Section 68.160, Registration, replaces proposed § 68.12. The registration shall include the following data: stationary source name, street, city, county, state, zip code, latitude, and longitude; the stationary source and corporate Dun and Bradstreet numbers; the name, telephone number, and mailing address of the owner/operator; the name and title of the person responsible for implementation of the risk management program; the name, title, telephone number, and 24-hour telephone number of the emergency contact; the stationary source EPA identifier; the number of full-time employees at the stationary source; whether the stationary source is subject to 29 CFR 1910.119; whether the stationary source is subject to 40 CFR part 355; and the date on which the stationary source last had a safety inspection by a Federal, state, or local government agency.

For each covered process, the source must list the regulated substances present above a threshold quantity (name and CAS number), the maximum quantity of each substance in the process, the SIC code of the process, and the Program level that applies to the process. This process information provides a simple method for describing covered processes and identifying Program levels.

The reporting of the quantity has been changed; rather than have sources report in ranges, the rule requires that the quantity be reported to two significant digits. EPA has found that the reporting ranges are so broad (generally an order of magnitude) that data analysis is extremely difficult. By limiting the reporting to two significant digits, EPA will allow sources to estimate quantities, but still provide more precise data than are currently available. EPA has added a requirement for reporting full-time employees. These data are easy for sources to provide and will enhance the Agency's ability to assess the impact of its rule on businesses of various sizes. The EPA identifier will be the unique number EPA will assign to each source and will allow EPA to cross reference other reporting to the Agency. Use of the identifier also means that EPA may not need to collect certain data on this form because they will be available from the identifier database; EPA may revise the requirements when the identifier rule is promulgated.

EPA has deleted the certification statement proposed for the registration because the RMP as a whole will have a certification statement that will cover all elements, including registration. Corrections to the registration will be treated as corrections to the RMP and must be filed within six months of the change, rather than the 60 days proposed for registration changes.

The registration now requires the owners or operators to check off the agency that last conducted a safety inspection at the source and provide the date. The inspection does not need to have been related to prevention practices as defined in this rule, but may instead cover fire safety, workplace safety, etc.

New § 68.165 covers the requirements for reporting on the offsite consequence analysis. As discussed in Section III.B, the RMP shall include data on one worst case release scenario for each Program 1 process; and, for Program 2 and 3 processes, one worst case release scenario for toxics and one for flammables (for sources with substances in both hazard classes). If additional worst-case release scenarios are required under § 68.25 for either class, data on that scenario must also be reported. Sources with Program 2 and 3 processes will also provide data on one alternative release scenario to cover all flammables in covered processes and an alternative release scenario for each toxic substance held in covered processes.

For each reported scenario, the owners or operators shall provide the following data: chemical name; physical state (toxics only); basis of results and model (if used); scenario; quantity released in pounds; release rate; duration; wind speed and stability (toxics only); topography (toxics only); distance to endpoint; public and environmental receptors within the distance; passive mitigation considered; and active mitigation (alternative releases only) considered. A number of the data elements are not relevant to all

flammable releases; for example, in the worst-case release flammables are assumed to be released and explode almost instantly so that release rate, duration, wind speed and stability, and topography are not factors in determining distances.

The purpose of requiring these data elements, rather than the proposed summary of the assessment, is to provide the public with the essential estimates of distance to the endpoints and provide enough data on the release scenario to allow agencies or the public to confirm the distance estimate. With the data provided, a public agency will be able to use EPA's guidance to determine the distance for a particular chemical release and compare that distance with the one reported by the source. This ability will be particularly important when a source has chosen to use an air dispersion model rather than the reference table. The proposed rule approach, which required a summary of the assessment, would have resulted in considerable variation in the information submitted, as happened in the Kanawha Valley exercise. In that case, each source decided on the level of information to provide; although each provided maps, it was not possible, in many cases, to determine how the distances were estimated because much of the underlying data was not reported. EPA believes that these requirements will impose a minimal burden on sources, because they will already have the data from completing the analyses, will ensure that the same data are reported by all sources, and will provide enough data to evaluate the results using publicly available documents and models.

New § 68.168 on the five-year accident history simply references the data elements listed in § 68.42(a). The data elements will be reported for each accidental release covered by the accident history requirement.

New § 68.170, Prevention Program/ Program 2, requires owners or operators with Program 2 processes to list the name of chemical(s) in, and SIC code for, the Program 2 process; to provide the dates of the most recent revisions or reviews of the prevention program elements; to provide, based on the hazard review, information on the major hazards, process controls, mitigation systems, monitoring or detection systems, and changes since the last hazard review; to list any state or federal regulations of industry-specific design codes or standards being used to demonstrate compliance with prevention program elements; to list the type of training and competency testing used; to provide the date of the most recent change that triggered a review or revision of prevention elements; and to provide the date of the completion of any changes resulting from hazard reviews, audits, or incident investigations. EPA recognizes that not all recommendations resulting from hazard reviews, audits, or incident investigations result in changes; some or all may be resolved without changes. However, if any changes are made, the owners or operators shall report in the RMP the date when such changes are complete or expected to be complete.

New § 68.175, Prevention Program/ Program 3, requires owners or operators with Program 3 processes to list the name of chemical(s) in, and SIC code for, the Program 3 process; to provide the dates of the most recent revisions or reviews of the prevention program elements; to provide, based on the PHA, information on the major hazards, process controls, mitigation systems, monitoring or detection systems, and changes since the last PHA; to list the type of training and competency testing used; to provide the date of the most recent change that triggered a review or revision of prevention elements; and to provide the date of the completion of any changes resulting from PHAs, audits, or incident investigations. As above, EPA recognizes that not all recommendations resulting from PHAs, audits, or incident investigations result in changes; some or all may be resolved without changes. However, if any changes are made, the owners or operators shall report in the RMP the date when such changes are complete or expected to be complete.

New § 68.180, Emergency Response Program, requires owners or operators to answer questions about the required content of the emergency response plan, providing the date of the most recent training of employees update of the plan, indicate whether the source emergency response plan has been coordinated with the LEPC plan, provide the name and telephone number of the local agency with which the plan has been coordinated, and list other Federal or state emergency planning requirements to which the source is subject.

New § 68.185, Certification, specifies the certification requirements that owners or operators must complete when the RMP is submitted.

New § 68.190 details the requirements for updating the RMP. The plan must be updated at least once every five years. If a new substance is added to an already covered process or a new covered process is added, the RMP must be updated on the date on which the regulated substance is first present above a threshold quantity. If EPA lists a new substance that the source has above a threshold quantity, the RMP must be updated within three years of the date of listing. If a change at the source leads to a revised offsite consequence analysis, process hazard analysis or review, or a process changes Program level, the RMP must be revised and resubmitted within six months of the change. Subsequent updates will be required within five years of the update.

A new Subpart H, Other Requirements, has been added.

New § 68.200, Recordkeeping, simply states that records will be maintained for five years unless otherwise specified in the Program 3 prevention program.

New § 68.210, Availability of information to the public, has been added and a paragraph included to provide that classified information is protected under applicable laws, regulations, and executive orders.

New § 68.215, Permit content and air permitting authority or designated agency requirements, has been added to define the requirements for including part 68 and in Part 70 and 71 permits, as discussed above.

Section 68.220, Audits, has been revised to change references in paragraph (a). A new paragraph (c) has been added to specify the sources that have achieved a star or merit rating under OSHA's VPP program will be exempt from audits if the audit program is based on industry accident history or on neutral random oversight and if the source has not had an accidental release that requires investigation under the rule. Paragraph (h) has been revised to clarify that the source must revise the RMP 30 days after completion of the actions detailed in the implementation plan, not 30 days after the issuance of the final determination.

Appendix A has been added to provide the toxic endpoints.

V. Required Analyses

A. E.O. 12866

Under Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993), EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities.

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

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

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

Under terms of E.O. 12866, EPA has determined that today's final rulemaking is a ''significant regulatory action.'' EPA, therefore, has developed an economic impact analysis for the final rule, (Economic Analysis in Support of Final Rule on Risk Management Program Regulations for Chemical Accidental Release Prevention), which is available in the docket.

In developing the final rule, EPA notes that it has taken actions to streamline requirements whenever possible and has tailored the requirements through the use of Programs. This approach differed from the proposed rule, which imposed what are now Program 3 requirements on all sources and processes. EPA has also changed substantially the requirements for two elements of the rule, the offsite consequence analysis and the RMP. For the offsite consequence analysis, EPA decided to develop methodologies and look-up tables so sources would not need to spend resources obtaining air dispersion models; EPA also reduced the requirements to define offsite populations by allowing sources to use Census data and to identify only those institutions and developments that appear on local maps (as opposed to identifying day care centers and nursing homes). For the RMP, EPA has limited the requirements for information to that which can be reported as data elements. In contrast, the rule as proposed would have required sources to document for each process all major hazards, the consequences of each of these hazards, the risk reduction steps taken to address each hazard, and the consequences of each risk reduction step. The result would have been, for large, complex sources, documents of a 1,000 pages or more.

To analyze the cost impacts of the various approaches, EPA considered three possible options in the final EIA: the final rule, an option that imposed final rule Program 3 requirements on all sources, and an option that imposed proposed rule requirements on all sources. The last of these options was considered to evaluate the impact of changing the requirements for the offsite consequence analysis and RMP.

Based on the final list and thresholds, EPA estimates that approximately 66,100 sources will be affected by the rule. EPA expects that about 360 sources and approximately 410 processes will be eligible for Program 1. These sources are primarily gas processors that, because they are remote and unstaffed, are not covered by OSHA PSM. EPA also estimated that approximately 50 processes using toluene di-isocyanate (TDI) may qualify for Program 1 based on the relatively low volatility of TDI. Program 2 is expected to include 40,200 sources and 47,700 processes; these sources include all retailers, propane users, public drinking water and wastewater systems and public electric utilities not subject to OSHA PSM, wholesalers, processes at Federal facility processes, and non-chemical manufacturers. Program 3 is expected to cover 25,500 sources and 43,800 processes. These sources include manufacturers, electric utilities, POTWs and drinking water sites covered by OSHA PSM, wholesalers, ammonia refrigeration systems, gas utilities, gas processors, and Federal facilities. All of these sources are already covered by OSHA PSM for at least one regulated substance; EPA estimates that about 370 non-OSHA Program 3 processes in the specified SIC codes will be covered.

Sources that already have a high quality PSM program would not need to take any additional actions to satisfy EPA's Program 3 prevention program, but the analysis assumed that many sources may still be in the process of improving their PSM programs after achieving initial compliance. The public scrutiny expected to follow submission of the RMP is likely to encourage sources to ensure that their prevention efforts are fully implemented and effective. To account for these efforts, the analysis assumed that sources covered by OSHA would improve training, maintenance, and management oversight and, in some cases, institute additional capital improvements.

The rule provides sources three years to come into compliance with the rule. The rule, however, will impose continuing costs as sources implement their risk management programs. Initial compliance, therefore, covers the cost of meeting the requirements of the rule by the three-year compliance date. These costs are presented as a single figure, but are assumed to be incurred over a three-year period. Total costs to industry were estimated by multiplying the estimated unit costs of compliance with the risk management program elements by the estimated number of affected sources. Because many sources already implement some of the risk management requirements (e.g., training), cost estimates were adjusted to account for the expected likelihood that a source is already human health (death or injury), responses to these threats (evacuations, sheltering in place) threats to the environment, and economic damages (lost production, property damages, and litigation). Additional benefits may be provided by making information available to the public in the RMP. These benefits, however, cannot be quantified.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the impacts of rules on small entities and consider less burdensome regulatory alternatives. As originally proposed in 1993, EPA believes that the rule would have created a severe, adverse impact on small manufacturers. In February 1995, EPA published a supplemenatal proposal which introduced a tiering approach for this regulation. By using the tiering approach and streamlining the Program 2 requirements, this final rule significantly reduces the impact on small businesses. The tiering approach also significantly reduces the impact on small communities.

EPA has developed a Regulatory Flexibility Analysis for this final rule evaluating the effects on small entities, which is presented in Chapter 7 of the EIA. The number of small manufacturers was estimated to be 960 sources with fewer than 20 FTEs, and 2,000 sources with between 20 and 99 FTEs. The number of small non-manufacturers is more difficult to determine. Virtually all retailer and wholesalers have fewer than 100 FTEs. Industry estimates, however, indicate that about 80 percent of the affected retailers may be owned by larger companies; the analysis assumed that 3,700 retailers were small businesses. No information was available to estimate the percentage of wholesalers that might be owned by large corporations. The analysis assumed that all wholesalers were small. The total number of small businesses, therefore, was estimated to be 8,160.

Public drinking water and waste water systems affected by the rule generally serve a minimum of 10,000 people. Approximately 980 water systems are estimated to serve between 10,000 and 25,000 people. Approximately 500 water systems are estimated to serve between 25,000 and 50,000 people. Consequently, 1,480 drinking water systems would be considered small governmental entities. The number of small POTWs was

estimated to include all systems treating less than 10 mgd and 59 percent of those treating between 10 and 25 mgd (based on the ratio of drinking water systems in this category that serve populations below 50,000). Approximately 2,600 POTWs were estimated to serve between 10,000 and 25,000 people and 180 to serve between 25,000 and 50,000, for a total of 2,800 POTWs. A total of approximately 4,300 small governmental entities would be affected by this rule.

The total number of small entities affected by this rule was estimated to be 12,500 or 19 percent of the affected universe. No detailed analysis of the impact on small entities was performed because of the relatively low cost of the rule for small entities. Initial costs are considerably less than one percent of sales for all small manufacturers. Subsequent year costs will be even lower. Costs for non-manufacturers are very low (less than $1,000 per year for initial compliance). These sums do not impose a serious adverse burden on these sources. Only chemical manufacturers with complex processes and 20 to 99 FTEs have initial costs that exceed $6,000 per year. The costs for these sources, $28,000 to $30,000 per year for the first three years, represent less than 0.5 percent of sales. It should be noted that all of the costs for small manufacturers assume that the sources will take additional efforts, above their actions to comply with the OSHA rule, to improve the quality of the risk management programs. If they do not take additional actions, their costs would be substantially lower.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA must generally prepare a written statement, including a cost-benefit analysis for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternatives that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why the alternative was not adopted. Before EPA establishes any regulatory requirements that significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input into the development of the regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or to the private sector, in any one year. Accordingly, EPA has prepared, under section 202 of the UMRA, a written statement which is summarized below.

EPA is required to promulgate this rule under CAA section 112(r). In the first and third year of initial compliance, the cost of the rule to the regulated community will exceed $100 million; in all subsequent years the costs will be below $100 million. EPA has developed an economic impact analysis, discussed above, that evaluates several regulatory alternatives. EPA has adopted the least costly of these alternatives. EPA estimates that annualized costs for state and local governments will be $13 million; annualized costs for the private sector are estimated to be $72 million.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875 ''Enhancing the Intergovernmental Partnership,'' EPA has involved state, local and business representatives in focus groups to develop the rule. EPA included representatives of state government in the rulemaking workgroup process, available to the public under CAA section 114(c) and 40 CFR part 2; EPA does not believe that any of the requested information will be considered confidential.

The public reporting burden will depend on the regulatory program into which the 66,100 sources are placed. The public reporting burden for rule familiarization is estimated to range from 4 to 68 hours per source for all three program tiers. The public reporting burden to prepare and submit the registration and other RMP elements is estimated to be 0.5 hours for sources with only Program 1 processes, between 6.0 and 11.25 hours for Program 2 sources, and between 6.25 and 30.5 hours for Program 3 sources. The RMP is submitted once, at the end of the three year compliance period. The public recordkeeping burden to maintain on-site documentation is estimated to range from 10 to 180 hours for Program 2 sources and from 52 to 1,200 hours for Program 3 sources. On-site documentation must be developed and maintained on an ongoing basis, which varies by rule element; based on the statute of limitation for this rule, documentation must generally be maintained for five years. The total annual public reporting burden for rule familiarization, to complete the RMP, and to maintain on-site documentation is estimated to be about 3.36 million hours over three years, or an annual burden of 1.119 million hours. No capital costs are expected to be incurred to maintain or submit this documentation.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Hazardous substances, Intergovernmental relations.

Dated: May 24, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 68 is amended as follows:

PART 68—[AMENDED]

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

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

2. Part 68 is amended by redesignating Subpart C (§§ 68.100—68.130) as Subpart F.

Subpart A—[Amended]

4. Section 68.3 is amended to add the following definitions:

§ 68.3 Definitions.

Act means the Clean Air Act as amended (42 U.S.C. 7401 et seq.)

* * * * *

Administrative controls mean written procedural mechanisms used for hazard control.

AIChE/CCPS means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

* * * * *

API means the American Petroleum Institute.

ASME means the American Society of Mechanical Engineers.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Classified information means ''classified information'' as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, section 1(a) as ''any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.''

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

Designated agency means the state, local, or Federal agency designated by the state under the provisions of § 68.215(d) .

* * * * *

Environmental receptor means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in § 68.22(a) , as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under subpart E, 40 CFR part 63. The implementing agency may, but is not required to, be the state or local air permitting agency. If no state or local agency is granted delegation, EPA will be the implementing agency for that state.

Injury means any effect on a human that results either from direct exposure to toxic concentrations; radiant heat; or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

Major change means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or other alteration that introduces a new hazard.

Mechanical integrity means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

Medical treatment means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

Mitigation or mitigation system means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

NFPA means the National Fire Protection Association.

Offsite means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

OSHA means the U.S. Occupational Safety and Health Administration.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Population means the public.

* * * * *

Public means any person except employees or contractors at the stationary source.

Public receptor means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.

* * * * *

Replacement in kind means a replacement that satisfies the design specifications.

RMP means the risk management plan required under subpart G of this part.

SIC means Standard Industrial Classification.

* * * * *

Typical meteorological conditions means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

* * * * *

Worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

5. Section 68.10 is added to subpart A to read as follows:

§ 68.10 Applicability.

(a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(b) Program 1 eligibility requirements. A covered process is eligible for

Program 1 requirements as provided in § 68.12(b) if it meets all of the following requirements:

(1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following offsite:

(i) Death;

(ii) Injury; or

(iii) Response or restoration activities for an exposure of an environmental receptor;

(2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and § 68.25 is less than the distance to any public receptor, as defined in § 68.30; and

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(c) Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not meet the eligibility requirements of either paragraph (b) or paragraph (d) of this section.

(d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the following conditions is met:

(1) The process is in SIC code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911; or

(2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

(e) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in § 68.190.

6. Section 68.12 is added to subpart A to read as follows:

§ 68.12 General requirements.

(a) General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in §§ 68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

(b) Program 1 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in § 68.10(b), shall:

(1) Analyze the worst-case release scenario for the process(es), as provided in § 68.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in § 68.22(a); and submit in the RMP the worst-case release scenario as provided in § 68.165;

(2) Complete the five-year accident history for the process as provided in § 68.42 of this part and submit it in the RMP as provided in § 68.168;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies; and

(4) Certify in the RMP the following: ''Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused offsite impacts provided in the risk management program rule (40 CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed].''

(c) Program 2 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in § 68.10(c), shall:

(1) Develop and implement a management system as provided in § 68.15;

(2) Conduct a hazard assessment as provided in §§ 68.20 through 68.42;

(3) Implement the Program 2 prevention steps provided in §§ 68.48 through 68.60 or implement the Program 3 prevention steps provided in §§ 68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and

(5) Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in § 68.170.

(d) Program 3 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in § 68.10(d) shall:

(1) Develop and implement a management system as provided in § 68.15;

(2) Conduct a hazard assessment as provided in §§ 68.20 through 68.42;

(3) Implement the prevention requirements of §§ 68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§ 68.90 to 68.95 of this part; and

(5) Submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

7. Section 68.15 is added to subpart A to read as follows:

§ 68.15 Management.

(a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

8. Subpart B—is added to read as follows:

Subpart B—Hazard Assessment

Sec.

68.20 Applicability.
68.22 Offsite consequence analysis parameters.
68.25 Worst-case release scenario analysis.
68.28 Alternative release scenario analysis.
68.30 Defining offsite impacts — population.
68.33 Defining offsite impacts — environment.
68.36 Review and update.
68.39 Documentation.
68.42 Five-year accident history.

Subpart B—Hazard Assessment

§ 68.20 Applicability.

The owner or operator of a stationary source subject to this part shall prepare a worst-case release scenario analysis as provided in § 68.25 of this part and complete the five-year accident history as provided in § 68.42. The owner or

operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

§ 68.22 Offsite consequence analysis parameters.

(a) Endpoints. For analyses of offsite consequences, the following endpoints shall be used:

(1) Toxics. The toxic endpoints provided in Appendix A of this part.

(2) Flammables. The endpoints for flammables vary according to the scenarios studied:

(i) Explosion. An overpressure of 1 psi.

(ii) Radiant heat/exposure time. A radiant heat of 5 kw/m^2 for 40 seconds.

(iii) Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

(b) Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and F atmospheric stability class. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

(c) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Offsite Consequence Analysis Guidance may use 25°C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical temperature/humidity data gathered at the stationary source or at a local meteorological station.

(d) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

(e) Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(f) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(g) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

§ 68.25 Worst-case release scenario analysis.

(a) The owner or operator shall analyze and report in the RMP:

(1) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(2) For Program 2 and 3 processes:

(i) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in Appendix A of this part resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in § 68.22;

(ii) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in § 68.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in § 68.22; and

(iii) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (a)(2)(i) or (a)(2)(ii) of this section.

(b) Determination of worst-case release quantity. The worst-case release quantity shall be the greater of the following:

(1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

(2) For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

(c) Worst-case release scenario—toxic gases.

(1) For regulated toxic substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

(2) For gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

(d) Worst-case release scenario—toxic liquids.

(1) For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool.

(i) The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

(ii) If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into account the actual surface characteristics.

(2) The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

(3) The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Offsite Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of

current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(e) Worst-case release scenario—flammables. The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT-equivalent methods.

(f) Parameters to be applied. The owner or operator shall use the parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(g) Consideration of passive mitigation. Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

(h) Factors in selecting a worst-case scenario. Notwithstanding the provisions of paragraph (b) of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in § 68.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:

(1) Smaller quantities handled at higher process temperature or pressure; and

(2) Proximity to the boundary of the stationary source.

§ 68.28 Alternative release scenario analysis.

(a) The number of scenarios. The owner or operator shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes.

(b) Scenarios to consider. (1) For each scenario required under paragraph (a) of this section, the owner or operator shall select a scenario:

(i) That is more likely to occur than the worst-case release scenario under § 68.25; and

(ii) That will reach an endpoint offsite, unless no such scenario exists.

(2) Release scenarios considered should include, but are not limited to, the following, where applicable:

(i) Transfer hose releases due to splits or sudden hose uncoupling;

(ii) Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

(iii) Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

(iv) Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and

(v) Shipping container mishandling and breakage or puncturing leading to a spill.

(c) Parameters to be applied. The owner or operator shall use the appropriate parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(d) Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

(e) Factors in selecting scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:

(1) The five-year accident history provided in § 68.42; and

(2) Failure scenarios identified under §§ 68.50 or 68.67.

§ 68.30 Defining offsite impacts—population.

(a) The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a).

(b) Population to be defined. Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(c) Data sources acceptable. The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

(d) Level of accuracy. Population shall be estimated to two significant digits.

§ 68.33 Defining offsite impacts—environment.

(a) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a) of this part.

(b) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

68.36 Review and update.

(a) The owner or operator shall review and update the offsite consequence analyses at least once every five years.

(b) If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change and submit a revised risk management plan as provided in § 68.190.

§ 68.39 Documentation

The owner or operator shall maintain the following records on the offsite consequence analyses:

(a) For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative

controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

(b) For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

(c) Documentation of estimated quantity released, release rate, and duration of release.

(d) Methodology used to determine distance to endpoints.

(e) Data used to estimate population and environmental receptors potentially affected.

§ 68.42 Five-year accident history.

(a) The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

(b) Data required. For each accidental release included, the owner or operator shall report the following information:

(1) Date, time, and approximate duration of the release;

(2) Chemical(s) released;

(3) Estimated quantity released in pounds;

(4) The type of release event and its source;

(5) Weather conditions, if known;

(6) On-site impacts;

(7) Known offsite impacts;

(8) Initiating event and contributing factors if known;

(9) Whether offsite responders were notified if known; and

(10) Operational or process changes that resulted from investigation of the release.

(c) Level of accuracy. Numerical estimates may be provided to two significant digits.

9. Subpart C is added to read as follows:

Subpart C—Program 2 Prevention Program

Secs.
68.48 Safety information.
68.50 Hazard review.
68.52 Operating procedures.
68.54 Training.
68.56 Maintenance.
68.58 Compliance audits.
68.60 Incident investigation.

Subpart C—Program 2 Prevention Program

§ 68.48 Safety information.

(a) The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

(1) Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g);

(2) Maximum intended inventory of equipment in which the regulated substances are stored or processed;

(3) Safe upper and lower temperatures, pressures, flows, and compositions;

(4) Equipment specifications; and

(5) Codes and standards used to design, build, and operate the process.

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

(c) The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

§ 68.50 Hazard review.

(a) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

(1) The hazards associated with the process and regulated substances;

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and

(4) Any steps used or needed to detect or monitor releases.

(b) The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

(c) The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

(d) The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

§ 68.52 Operating procedures.

(a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(b) The procedures shall address the following:

(1) Initial startup;

(2) Normal operations;

(3) Temporary operations;

(4) Emergency shutdown and operations;

(5) Normal shutdown;

(6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;

(7) Consequences of deviations and steps required to correct or avoid deviations; and

(8) Equipment inspections.

(c) The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

§ 68.54 Training.

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

(c) The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

§ 68.56 Maintenance.

(a) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

(b) The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

(c) Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under paragraph (a) of this section.

(d) The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) The owner or operator shall develop a report of the audit findings.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

§ 68.60 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(d) The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective actions shall be documented.

(e) The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

(f) Investigation summaries shall be retained for five years.

10. Subpart D is added to read as follows:

Subpart D—Program 3 Prevention Program

Sec.

68.65 Process safety information.
68.67 Process hazard analysis.
68.69 Operating procedures.
68.71 Training.
68.73 Mechanical integrity.
68.75 Management of change.
68.77 Pre-startup review.
68.79 Compliance audits.
68.81 Incident investigation.
68.83 Employee participation.
68.85 Hot work permit.
68.87 Contractors.

Subpart D—Program 3 Prevention Program

§ 68.65 Process safety information.

(a) In accordance with the schedule set forth in § 68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

(1) Toxicity information;

(2) Permissible exposure limits;

(3) Physical data;

(4) Reactivity data:

(5) Corrosivity data;

(6) Thermal and chemical stability data; and

(7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

Note to paragraph (b): Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(c) Information pertaining to the technology of the process.

(1) Information concerning the technology of the process shall include at least the following:

(i) A block flow diagram or simplified process flow diagram;

(ii) Process chemistry;

(iii) Maximum intended inventory;

(iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and,

(v) An evaluation of the consequences of deviations.

(2) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

(i) Materials of construction;

(ii) Piping and instrument diagrams (P&ID's);

(iii) Electrical classification;

(iv) Relief system design and design basis;

(v) Ventilation system design;

(vi) Design codes and standards employed;

(vii) Material and energy balances for processes built after June 21, 1999; and

(viii) Safety systems (e.g. interlocks, detection or suppression systems).

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§ 68.67 Process hazard analysis.

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

(b) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

(1) What-If;

(2) Checklist;

(3) What-If/Checklist;

(4) Hazard and Operability Study (HAZOP);

(5) Failure Mode and Effects Analysis (FMEA);

(6) Fault Tree Analysis; or

(7) An appropriate equivalent methodology.

(c) The process hazard analysis shall address:

(1) The hazards of the process;

(2) The identification of any previous incident which had a likely potential for catastrophic consequences.

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

(4) Consequences of failure of engineering and administrative controls;

(5) Stationary source siting;

(6) Human factors; and

(7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

(d) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.

(g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

§ 68.69 Operating procedures.

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(1) Steps for each operating phase:

(i) Initial startup;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(v) Emergency operations;

(vi) Normal shutdown; and,

(vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

(i) Consequences of deviation; and

(ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

(i) Properties of, and hazards presented by, the chemicals used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of hazardous chemical inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(b) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(d) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

§ 68.71 Training.

(a) Initial training. (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) Training documentation. The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

§ 68.73 Mechanical integrity.

(a) Application. Paragraphs (b) through (f) of this section apply to the following process equipment:

(1) Pressure vessels and storage tanks;

(2) Piping systems (including piping components such as valves);

(3) Relief and vent systems and devices;

(4) Emergency shutdown systems;

(5) Controls (including monitoring devices and sensors, alarms, and interlocks) and,

(6) Pumps.

(b) Written procedures. The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(c) Training for process maintenance activities. The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(d) Inspection and testing. (1) Inspections and tests shall be performed on process equipment.

(2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(e) Equipment deficiencies. The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(f) Quality assurance. (1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

§ 68.75 Management of change.

(a) The owner or operator shall establish and implement written procedures to manage changes (except for ''replacements in kind'') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

(1) The technical basis for the proposed change;

(2) Impact of change on safety and health;

(3) Modifications to operating procedures;

(4) Necessary time period for the change; and,

(5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(d) If a change covered by this paragraph results in a change in the process safety information required by § 68.65 of this part, such information shall be updated accordingly.

(e) If a change covered by this paragraph results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

§ 68.77 Pre-startup review.

(a) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

(1) Construction and equipment is in accordance with design specifications;

(2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, § 68.75.

(4) Training of each employee involved in operating a process has been completed.

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

§ 68.81 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) An incident investigation team shall be established and consist of at least one person knowledgeable in the

process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(f) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(g) Incident investigation reports shall be retained for five years.

§ 68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

§ 68.85 Hot work permit.

(a) The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

§ 68.87 Contractors.

(a) Application. This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(b) Owner or operator responsibilities. (1) The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

(2) The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(3) The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this part.

(4) The owner or operator shall develop and implement safe work practices consistent with § 68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

(5) The owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

(c) Contract owner or operator responsibilities. (1) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(2) The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(3) The contract owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(4) The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by § 68.69(d).

(5) The contract owner or operator shall advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

11. Subpart E is added to read as follows:

Subpart E—Emergency Response

Sec.
68.90 Applicability.
68.95 Emergency Response Program.

Subpart E—Emergency Response

§ 68.90 Applicability.

(a) Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of § 68.95.

(b) The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of this part provided that they meet the following:

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003;

(2) For stationary sources with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

§ 68.95 Emergency response program.

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

(b) A written plan that complies with other Federal contingency plan

regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') and that, among other matters, includes the elements provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph (c) of this section.

(c) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

12. Subpart G is added to read as follows:

Subpart G—Risk Management Plan

Sec.
68.150 Submission.
68.155 Executive summary.
68.160 Registration.
68.165 Offsite consequence analysis.
68.168 Five-year accident history.
68.170 Prevention program/Program 2.
68.175 Prevention program/Program 3.
68.180 Emergency response program.
68.185 Certification.
68.190 Updates.

Subpart G—Risk Management Plan

§ 68.150 Submission.

(a) The owner or operator shall submit a single RMP that includes the information required by §§ 68.155 through 68.185 for all covered processes. The RMP shall be submitted in a method and format to a central point as specified by EPA prior to June 21, 1999.

(b) The owner or operator shall submit the first RMP no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(c) Subsequent submissions of RMPs shall be in accordance with § 68.190.

(d) Notwithstanding the provisions of §§ 68.155 to 68.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

§ 68.155 Executive summary.

The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

(a) The accidental release prevention and emergency response policies at the stationary source;

(b) The stationary source and regulated substances handled;

(c) The worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;

(d) The general accidental release prevention program and chemical-specific prevention steps;

(e) The five-year accident history;

(f) The emergency response program; and

(g) Planned changes to improve safety.

§ 68.160 Registration.

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude;

(2) The stationary source Dun and Bradstreet number;

(3) Name and Dun and Bradstreet number of the corporate parent company;

(4) The name, telephone number, and mailing address of the owner or operator;

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation;

(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact;

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the SIC code, and the Program level of the process;

(8) The stationary source EPA identifier;

(9) The number of full-time employees at the stationary source;

(10) Whether the stationary source is subject to 29 CFR 1910.119;

(11) Whether the stationary source is subject to 40 CFR part 355;

(12) Whether the stationary source has a CAA Title V operating permit; and

(13) The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

§ 68.165 Offsite consequence analysis.

(a) The owner or operator shall submit in the RMP information:

(1) One worst-case release scenario for each Program 1 process; and

(2) For Program 2 and 3 processes, one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. If additional worst-case scenarios for toxics or flammables are required by § 68.25(a)(2)(iii), the owner or operator shall submit the same information on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Physical state (toxics only);

(3) Basis of results (give model name if used);

(4) Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);

(5) Quantity released in pounds;

(6) Release rate;

(7) Release duration;

(8) Wind speed and atmospheric stability class (toxics only);

(9) Topography (toxics only);

(10) Distance to endpoint;

(11) Public and environmental receptors within the distance;

(12) Passive mitigation considered; and

(13) Active mitigation considered (alternative releases only);

§ 68.168 Five-year accident history.

The owner or operator shall submit in the RMP the information provided in § 68.42(b) on each accident covered by § 68.42(a).

§ 68.170 Prevention program/Program 2.

(a) For each Program 2 process, the owner or operator shall provide in the RMP the information indicated in paragraphs (b) through (k) of this section. If the same information applies

to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the chemical(s) covered.

(d) The date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.

(e) The date of completion of the most recent hazard review or update.

(1) The expected date of completion of any changes resulting from the hazard review;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

(j) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

(k) The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

§ 68.175 Prevention program/Program 3.

(a) For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the substance(s) covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

(j) The date of the most recent pre-startup review.

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

(l) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

(m) The date of the most recent review or revision of employee participation plans;

(n) The date of the most recent review or revision of hot work permit procedures;

(o) The date of the most recent review or revision of contractor safety procedures; and

(p) The date of the most recent evaluation of contractor safety performance.

§ 68.180 Emergency response program.

(a) The owner or operator shall provide in the RMP the following information:

(1) Do you have a written emergency response plan?

(2) Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

(3) Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

(4) Does the plan include information on emergency health care?

(5) The date of the most recent review or update of the emergency response plan;

(6) The date of the most recent emergency response training for employees.

(b) The owner or operator shall provide the name and telephone number of the local agency with which the plan is coordinated.

(c) The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

§ 68.185 Certification.

(a) For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in § 68.12(b)(4).

(b) For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

§ 68.190 Updates.

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in a method and format to a central point specified by EPA prior to June 21, 1999.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under § 68.150 as follows:

(1) Within five years of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later.

(2) No later than three years after a newly regulated substance is first listed by EPA;

(3) No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

(4) No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

(5) Within six months of a change that requires a revised PHA or hazard review;

(6) Within six months of a change that requires a revised offsite consequence analysis as provided in § 68.36; and

(7) Within six months of a change that alters the Program level that applied to any covered process.

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a revised

registration to EPA within six months indicating that the stationary source is no longer covered.

13. Subpart H is added to read as follows:

Subpart H—Other Requirements

Sec.
§ 68.200 Recordkeeping.
§ 68.210 Availability of information to the public.
68.215 Permit content and air permitting authority or designated agency requirements.
68.220 Audits.

Subpart H—Other Requirements

§ 68.200 Recordkeeping.

The owner or operator shall maintain records supporting the implementation of this part for five years unless otherwise provided in Subpart D of this part.

§ 68.210 Availability of information to the public.

(a) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c).

(b) The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

§ 68.215 Permit content and air permitting authority or designated agency requirements.

(a) These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this Chapter. The 40 CFR part 70 or part 71 permit for the stationary source shall contain:

(1) A statement listing this part as an applicable requirement;

(2) Conditions that require the source owner or operator to submit:

(i) A compliance schedule for meeting the requirements of this part by the date provided in § 68.10(a) or;

(ii) As part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the air permitting authority or designated agency.

(c) For 40 CFR part 70 or part 71 permits issued prior to the deadline for registering and submitting the RMP and which do not contain permit conditions described in paragraph (a) of this section, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures of 40 CFR 70.7 or 71.7 to incorporate the terms and conditions consistent with paragraph (a) of this section.

(d) The state may delegate the authority to implement and enforce the requirements of paragraph (e) of this section to a state or local agency or agencies other than the air permitting authority. An up-to-date copy of any delegation instrument shall be maintained by the air permitting authority. The state may enter a written agreement with the Administrator under which EPA will implement and enforce the requirements of paragraph (e) of this section.

(e) The air permitting authority or the agency designated by delegation or agreement under paragraph (d) of this section shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For some or all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate.

§ 68.220 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs submitted under subpart G of this part to review the adequacy of such RMPs and require revisions of RMPs when necessary to ensure compliance with subpart G of this part.

(b) The implementing agency shall select stationary sources for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and environmental receptors;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; and

(7) A plan providing for neutral, random oversight.

(c) Exemption from audits. A stationary source with a Star or Merit ranking under OSHA's voluntary protection program shall be exempt from audits under paragraph (b)(2) and (b)(7) of this section.

(d) The implementing agency shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(e) Based on the audit, the implementing agency may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of subpart G of this part. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(f) Written response to a preliminary determination.

(1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (e) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (f)(1) of this section shall be received by the implementing agency within 90 days of the issue of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(g) After providing the owner or operator an opportunity to respond under paragraph (f) of this section, the implementing agency may issue the owner or operator a written final determination of necessary revisions to

the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (e) of this section or may adopt or modify the substitute revisions provided in the response under paragraph (f) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (f) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(h) Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph (g) of this section, the owner or operator shall be in violation of subpart G of this part and this section unless the owner or operator revises the RMP prepared under subpart G of this part as required by the final determination, and submits the revised RMP as required under § 68.150.

(i) The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with § 68.210.

(j) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Act.

14. Part 68 Appendix A is added to read as follows:

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS

[As defined in § 68.22 of this part]

CAS No.	Chemical name	Toxic endpoint (mg/L)
107–02–8	Acrolein [2-Propenal]	0.0011
107–13–1	Acrylonitrile [2-Propenenitrile]	0.076
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107–18–6	Allyl alcohol [2-Propen-1-ol]	0.036
107–11–9	Allylamine [2-Propen-1-amine]	0.0032
7664–41–7	Ammonia (anhydrous)	0.14
7664–41–7	Ammonia (conc 20% or greater)	0.14
7784–34–1	Arsenous trichloride	0.010
7784–42–1	Arsine	0.0019
10294–34–5	Boron trichloride [Borane, trichloro-]	0.010
7637–07–2	Boron trifluoride [Borane, trifluoro-]	0.028
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4	0.023
7726–95–6	Bromine	0.0065
75–15–0	Carbon disulfide	0.16
7782–50–5	Chlorine	0.0087
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO2)]	0.0028
67–66–3	Chloroform [Methane, trichloro-]	0.49
542–88–1	Chloromethyl ether [Methane, oxybis[chloro-]	0.00025
107–30–2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170–30–3	Crotonaldehyde [2-Butenal]	0.029
123–73–9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506–77–4	Cyanogen chloride	0.030
108–91–8	Cyclohexylamine [Cyclohexanamine]	0.16
19287–45–7	Diborane	0.0011
75–78–5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	0.026
57–14–7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106–89–8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107–15–3	Ethylenediamine [1,2-Ethanediamine]	0.49
151–56–4	Ethyleneimine [Aziridine]	0.018
75–21–8	Ethylene oxide [Oxirane]	0.090
7782–41–4	Fluorine	0.0039
50–00–0	Formaldehyde (solution)	0.012
110–00–9	Furan	0.0012
302–01–2	Hydrazine	0.011
7647–01–0	Hydrochloric acid (conc 30% or greater)	0.030
74–90–8	Hydrocyanic acid	0.011
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	0.016
7783–07–5	Hydrogen selenide	0.00066
7783–06–4	Hydrogen sulfide	0.042
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)5), (TB–5–11)-]	0.00044
78–82–0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108–23–6	Isopropyl chloroformate [Carbonochloride acid, 1-methylethyl ester]	0.10
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027
74–87–3	Methyl chloride [Methane, chloro-]	0.82
79–22–1	Methyl chloroformate [Carbonochloridic acid, methylester]	0.0019
60–34–4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624–83–9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74–93–1	Methyl mercaptan [Methanethiol]	0.049
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75–79–6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463–39–3	Nickel carbonyl	0.00067
7697–37–2	Nitric acid (conc 80% or greater)	0.026

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS—Continued

[As defined in § 68.22 of this part]

CAS No.	Chemical name	Toxic endpoint (mg/L)
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79–21–0	Peracetic acid [Ethaneperoxoic acid]	0.0045
594–42–3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	0.0076
75–44–5	Phosgene [Carbonic dichloride]	0.00081
7803–51–2	Phosphine	0.0035
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110–89–4	Piperidine	0.022
107–12–0	Propionitrile [Propanenitrile]	0.0037
109–61–5	Propyl chloroformate [Carbonochloridic acid, propylester]	0.010
75–55–8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75–56–9	Propylene oxide [Oxirane, methyl-]	0.59
7446–09–5	Sulfur dioxide (anhydrous)	0.0078
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]	0.0092
7446–11–9	Sulfur trioxide	0.010
75–74–1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509–14–8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750–45–0	Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]	0.020
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91–08–7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]	0.0070
75–77–4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108–05–4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

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40 CFR Part 68

[FRL–5516–6]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule—Stay of Effectiveness

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 15, 1996, the Environmental Protection Agency (EPA) proposed several modifications to provisions of the rule listing regulated substances and establishing threshold quantities under section 112(r) of the Clean Air Act as amended (List Rule Amendments). The proposed List Rule Amendments, if promulgated in a final rule, would clarify or establish that part 68 does not apply to several types of processes and sources. In addition, EPA proposed, pursuant to Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1), to stay the effectiveness of provisions that would be affected by the proposed List Rule Amendments, for so long as necessary to take final action on the proposed List Rule Amendments. EPA received no adverse public comment on the short-term stay. Today EPA is amending part 68 to promulgate the stay, under which owners and operators of processes and sources that EPA has proposed not be subject to part 68 would not become subject to part 68 until EPA has determined whether to proceed with the List Rule Amendments. The effect of today's action will be to give owners and operators of sources affected by the proposed List Rule Amendments the same amount of time to achieve compliance with the requirements of part 68 as owners and operators of other sources in the event that EPA does not proceed with the List Rule Amendments as proposed.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5101), 401 M St. SW., Washington, DC 20460, (202) 260–7913.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

On April 15, 1996, EPA proposed amendments to regulations in 40 CFR part 68 that, inter alia, list regulated substances and establish threshold quantities for the accident prevention provisions under Clean Air Act section 112(r). 61 FR 16598. Readers should refer to that document for a complete discussion of the background of the rule affected. The amendments proposed in that document (''List Rule Amendments'') would, if promulgated, delete explosives from the list of regulated substances, modify threshold provisions to exclude flammable substances in gasoline and in naturally occurring hydrocarbon mixtures prior to entry into a processing unit or plant, modify the threshold provisions for other flammable mixtures, and clarify the definition of stationary source with respect to transportation, storage incident to transportation, and naturally occurring hydrocarbon reservoirs.

On the same date, EPA proposed to stay provisions of part 68 that were affected by the proposed List Rule Amendments until such time as EPA takes final action on the proposed List Rule Amendments. 61 FR 16606. EPA proposed a stay of 18 months because it believed such a period would be sufficient to take final action on the List Rule Amendments and believed that owners and operators affected by the List Rule Amendments should have the same certainty about whether they are subject to part 68 as owners and operators of other sources have when they begin their regulatory compliance planning. In general, owners and operators of sources subject to the ''Risk Management Program'' final rule promulgated elsewhere in today's Federal Register, have three years from today to achieve compliance with part 68.

EPA received seven comment letters on the proposed stay; all generally supported EPA's action. The Agency's response to comments is contained below. Three commenters suggested that EPA should promulgate a stay for so long as it takes the Agency to take final action on the List Rule Amendments rather than for a certain (18 month) time period. The 18 month time period was selected to be consistent with the time period provided for final action on amendments discussed in the settlement of litigation concerning the List Rule. EPA believes this time will be sufficient to take any necessary action. Another commenter expressed concern that the stay would not affect statutory deadlines for seeking judicial review of the final Risk Management Program rule. EPA has not taken final action on the Risk Management Program rule's applicability to stationary sources, mixtures containing regulated flammable substances, and regulated explosive substances that are subject to today's stay. In the event that the Agency does not promulgate the List Rule Amendments, the Agency intends to take final action on applying the Risk Management Program to the sources, mixtures, and substances to be regulated. In the absence of final action on the Risk Management Program rule as it applies to these sources, mixtures, and substances, a petition seeking review of that rule would be premature.

Under the provisions of section 307(b)(1) of the Clean Air Act, a petition for judicial review of this stay may only be filed in the United States Court of Appeals for District of Columbia Circuit within 60 days of today's publication of this action.

II. Required Analyses

A. E.O. 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is ''significant,'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

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

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

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

It has been determined this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and therefore is not subject to OMB review.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of this final rule on small entities and examine alternatives that may reduce these effects. EPA has examined this final rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined that this rule will have no adverse effect on small entities because it defers the need for stationary sources to comply with current rule provisions that EPA has proposed to amend; the amendments, if adopted, likely would reduce the number of stationary sources subject to the accidental release prevention requirements. Therefore, I certify that today's final stay of effectiveness rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This final rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has estimated that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Clean Air Act, Extremely hazardous substances, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 24, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Subchapter C, Part 68 of the Code of Federal Regulations is amended to read as follows:

PART 68—ACCIDENTAL RELEASE PREVENTION PROVISIONS

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

Authority: 42 U.S.C. 7412(r), 7601.

2. In Subpart A, Sec. 68.2 is added to read as follows:

§ 68.2 Stayed Provisions.

(a) Notwithstanding any other provision of this part, the effectiveness of the following provisions is stayed from March 2, 1994 to December 22, 1997.

(1) In Sec. 68.3, the definition of ''stationary source,'' to the extent that such definition includes naturally occurring hydrocarbon reservoirs or transportation subject to oversight or regulation under a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105;

(2) Section 68.115(b)(2) of this part, to the extent that such provision requires an owner or operator to treat as a regulated flammable substance:

(i) Gasoline, when in distribution or related storage for use as fuel for internal combustion engines;

(ii) Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures include any of

the following: condensate, crude oil, field gas, and produced water, each as defined in paragraph (b) of this section;

(iii) Other mixtures that contain a regulated flammable substance and that do not have a National Fire Protection Association flammability hazard rating of 4, the definition of which is in the NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990, available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101; and

(3) Section 68.130(a).

(b) From March 2, 1994 to December 22, 1997, the following definitions shall apply to the stayed provisions described in paragraph (a) of this section:

Condensate means hydrocarbon liquid separated from natural gas that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall not be considered a ''processing site'' unless such equipment is physically located within a natural gas processing plant (gas plant) site.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; separating petroleum; or separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

[FR Doc. 96–14636 Filed 6–19–96; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5517–1]

Accidental Release Prevention Requirements: Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended; Guidances

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: Section 112(r)(7) of the Clean Air Act (CAA), as amended, requires the Environmental Protection Agency (EPA) to develop guidance documents, including model risk management plans, to assist stationary sources in the development of risk management programs. EPA is issuing three guidance documents that are available for review in Docket No. A–91–73 Category VIII–A: ''RMP Offsite Consequence Analysis Guidance''; ''Model Risk Management Program and Plan for Ammonia Refrigeration'' and ''Risk Management Plan Data Elements.'' The Agency views the Guidances issued today as ''evergreen'' documents and is interested in continued dialogue on the Guidances with interested members of the public. The Agency anticipates it will revise and update these Guidances from time to time as stakeholders and the Agency proceed in implementing the Risk Management Program regulations.

ADDRESSES:

Docket. These documents are in Docket A–91–73 Category VIII–A and available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, including all non-Governmental holidays, at EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency (6102), 401 M Street S.W., Washington, D.C. 20460.

Electronic Access. These documents can be accessed in electronic format through the Internet system and through EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards operated by the Office of Air Quality Planning and Standards. The Internet address of EPA's gopher server is GOPHER.EPA.GOV. This information is also available using File Transfer Protocol (FTP) on FTP.EPA.GOV or using World Wide Web (WWW) (http:/ /www.epa.gov/swercepp/). The TTN service is free, except for the cost of a phone call. To access the TTN, dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed, contact the systems operator at (919) 541–5382.

FOR FURTHER INFORMATION CONTACT: For technical information on the ''Model Risk Management Program and Plan for Ammonia Refrigeration'' and ''Risk Management Plan Data Elements,'' contact Dr. Lyse Helsing, at (202) 260–6128. For technical information on the —''MP Offsite Consequence Analysis Guidance,'' contact Craig Matthiessen, at (202) 260–9781. To obtain copies of these documents, please FAX requests to the Emergency Planning and Community Right-to-Know Information Hotline (Hotline) at (703) 412–3333. The Hotline is also available to answer questions at (800) 535–0202 or (703) 412–9877 when calling from local Washington, D.C. area.

SUPPLEMENTARY INFORMATION: EPA announces the availability of Guidances that will assist stationary sources in complying with the provisions of the regulations implementing CAA section 112(r)(7)(B), part 68, including the requirement to prepare risk management plans. The documents made available today are guidances and do not create any obligations on the part of entities subject to part 68. These Guidances do not substitute for EPA's regulations, nor are they regulations themselves. The Guidances do not impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change these Guidances in the future, as appropriate.

Elsewhere in today's Federal Register, EPA has promulgated Risk Management Program regulations under part 68 in order to implement CAA section 112(r)(7). For information on these regulations, please see the above-referenced notice. Furthermore, for information on chemicals, sources, and processes subject to part 68, please see 40 CFR part 68 and the notice establishing these provisions (59 FR 4478, January 31, 1994). Finally, readers should note that, elsewhere in today's Federal Register, EPA has promulgated a stay of certain provisions of part 68 promulgated in the January 1994 rulemaking.

The ''RMP Offsite Consequence Analysis Guidance'' contains all the methodologies and reference tables that will be necessary to develop and analyze the consequences of worst case and alternative case scenarios for part 68. This Guidance is designed to help those sources subject to part 68 comply with the offsite consequence requirements without specific expertise or access to computer-based and more sophisticated modeling tools. Sources will be able to use the modeling results contained in this Guidance or other appropriate modeling results in complying with part 68.

The ''Model Risk Management Program and Plan for Ammonia Refrigeration'' is a model program and plan that will help owners and operators of ammonia refrigeration facilities comply with part 68. The Guidance includes a section on hazard assessment and on emergency response, and four appendices: (A) selection of scenarios; (B) background information on ammonia modeling; (C) effect of ammonia releases on structures; and (D) information about accidental ammonia releases.

EPA views both of the above-mentioned Guidances to be ''evergreen.'' That is, while EPA is issuing these Guidances today, EPA will continue to seek public input and revise these documents as appropriate.

Part 68 requires the submission of risk management plans in a form and manner to be specified by EPA. The Risk Management Data Elements maps out the kinds of information that would be submitted by each source as its risk management plan. The draft includes an executive summary, registration, data on worst case and alternative releases for toxics and for flammables, five-year accident history, prevention program, and emergency response program. Like the other Guidances today, EPA intends to continue to seek public input on the format of submittal of the data required by part 68. In particular, EPA will study new methods for information submittal and public access to such information when it develops the information collection.

Dated: May 31, 1996.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 96–14627 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
June 20, 1996

Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators; Proposed Rule

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL–5523–1]

RIN 2060–AC62

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of supplemental information and reopening of public comment period.

SUMMARY: On February 27, 1995, EPA proposed new source performance standards (NSPS or standards) and emission guidelines (EG or guidelines) for new and existing medical waste incinerator(s) (MWI) that will reduce air pollution from MWI. Once implemented, these standards and guidelines will protect public health by reducing exposure to air pollution. In the proposal preamble, EPA made a commitment to reconsider the proposed NSPS and EG based on new information submitted. Today's action presents an assessment of the supplemental information submitted following the proposal and solicits public comment on this assessment. Today's action also serves to address comments received on the proposal and reopens the comment period for development of the MWI standards and guidelines.

DATES: *Public Meeting.* A public meeting will be held on July 10, 1996 beginning at 9:00 a.m. At the public meeting, EPA will review the contents of this notice and answer questions so that commenters can better prepare their written comments. See **ADDRESSES** below for the location of the meeting.

Comments. Comments are requested on all information associated with the development of MWI standards and guidelines. Written comments must be received on or before August 8, 1996. See **ADDRESSES** below.

ADDRESSES: *Public Meeting.* The public meeting will take place at the Holiday Inn, Hotel and Suites, 625 First Street, Alexandria, Virginia, 22314, (703) 548–6300. Persons interested in attending the meeting should notify Ms. Donna Collins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

Comments. Comments should be submitted (in duplicate, if possible) to the following: The Air and Radiation Docket and Information Center, ATTN: Docket No. A–91–61, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Submissions containing proprietary information (Confidential Business Information) should be sent directly to the following address, not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Rick Copland, c/o Ms. Melva Toomer, U.S. Environmental Protection Agency Confidential Business Manager, 411 W. Chapel Hill Street, Room 944, Durham, North Carolina 27701. See **SUPPLEMENTARY INFORMATION** for further discussion of confidential business information.

Docket. Docket No. A–91–61, containing supporting information used in developing the standards and guidelines, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. , Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying. See **SUPPLEMENTARY INFORMATION** for a list of documents most directly related to today's notice.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland at (919) 541–5265 or Mr. Fred Porter at (919) 541–5251, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by the standards and guidelines are those which operate medical waste incinerators. Regulated categories and entities include those listed in Table 1.

TABLE 1.—REGULATED ENTITIES [a]

Category	Examples of regulated entities
Industry	Hospitals, nursing homes, research laboratories, other healthcare facilities, commercial waste disposal companies.
Federal Government	Armed services, public health service, Federal hospitals, other Federal healthcare facilities.
State/local/Tribal Government	State/county/city hospitals and other healthcare facilities.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards or guidelines for MWI. This table lists the types of entities that EPA is now aware could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the standards or guidelines for medical waste incinerators, you should carefully examine the applicability criteria in sections 60.50(c) and 60.51(c) of the February 1995 proposal and sections II(B), II(H), and II(I) of today's notice. If you have questions regarding the applicability of the MWI standards and guidelines to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Confidential Business Information. Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received, the submission may be made available to the public without further notice to the commenter.

Documents Available Electronically. An electronic version of this action as well as the February 1995 Federal Register proposal notice are available for download from EPA's Technology Transfer Network (TTN), which is a network of electronic bulletin boards developed and operated by EPA's Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. The TTN is also available on the Internet (access: TELNET ttnbbs.rtpnc.epa.gov). For more information on the TTN, contact the systems operator at (919) 541–5384.

Documents in the Docket. The documents listed below are not available through the TTN, but are available through Air Docket No. A–91–61 located at the Air and Radiation Docket and Information Center (see the **ADDRESSES** section earlier in this

notice). These documents provide the analyses that are summarized in this notice.

Item No.	Title
IV–A–7	National Dioxin Emission Estimates from Medical Waste Incinerators.
IV–A–8	Revised Economic Impacts: Existing Medical Waste Incinerators.
IV–A–9	Revised Economic Impacts: New Medical Waste Incinerators.
IV–B–23	PM MACT Floor Emission Levels for Potential Subcategories of the MWI Source Category.
IV–B–24	Determination of the Maximum Achievable Control Technology (MACT) Floor for Existing Medical Waste Incinerators that Incinerate General Medical Waste.
IV–B–25	Definition of Medical Waste.
IV–B–26	Operator Training and Qualification and Incinerator Inspection Requirements.
IV–B–30	Approach Used to Estimate the Capital and Annual Costs for MWI Wet Scrubbers.
IV–B–32	Revised Costs for Dry Injection/Fabric Filter Controls for MWI.
IV–B–33	Revised Costs for Secondary Chamber Retrofits for MWI.
IV–B–37	Projections for New MWI Population.
IV–B–38	Determination of the Maximum Achievable Control Technology (MACT) Floor for New Medical Waste Incinerators.
IV–B–39	Annual Costs for the Operator Training and Qualification Requirements for MWI Operators.
IV–B–43	Alternative Methods of Medical Waste Treatment: Availability, Efficacy, Cost, State Acceptance, Owner Satisfaction, Operator Safety, and Environmental Impacts.
IV–B–44	Determination of Medical Waste Incinerator (MWI) Size.
IV–B–45	Updated Medical Waste Incinerator Data Base.
IV–B–46	PM, CO, and CDD/CDF Average Emission Rates and Achievable Emission Levels for MWI with Combustion Controls.
IV–B–47	Acid Gases and Metals Typical Performance and Achievable Emission Levels for Medical Waste Incinerators with Good Combustion Control.
IV–B–48	Wet Scrubber Performance Memorandum.
IV–B–49	Dry Scrubber Performance Memorandum.
IV–B–50	Cost Impacts of the Regulatory Options for New and Existing Medical Waste Incinerator (MWI).
IV–B–51	Air Emission Impacts of the Regulatory Options for New and Existing Medical Waste Incinerators (MWI).
IV–B–52	Potential Solid Waste, Wastewater, and Energy Impacts of the New Source Performance Standards and Emission Guidelines for New and Existing Medical Waste Incinerators.
IV–B–54	Testing and Monitoring Options and Costs for MWI—Methodology and Assumptions.
IV–B–56	Standards of Performance for Medical Waste Pyrolysis Units.

Acronyms, Abbreviations, and Measurement Units. The following list of acronyms, abbreviations, and measurement units is provided to aid the reader.

AHA	American Hospital Association
Btu	British thermal unit
Cd	cadmium
CEMS	continuous emission monitoring system(s)
CFR	Code of Federal Regulations
CO	carbon monoxide
dioxin	dioxins and dibenzofurans
DI/FF	dry injection/fabric filter
dscf	dry standard cubic foot
dscm	dry standard cubic meter
EG	emission guidelines
EPA	Environmental Protection Agency
ft^3	cubic feet
FTE	full time equivalent
g	grams
gr	grains
HCl	hydrogen chloride
Hg	mercury
hr	hour
IV	intravenous
lb	pound
MACT	maximum achievable control technology
m^3	cubic meter
MW	megawatt
MSA	Metropolitan Statistical Area
Mg	megagram
mg	milligram
MM	million
MWI	medical waste incinerator(s)
MWTA	Medical Waste Tracking Act
MWC	municipal waste combustor
ng	nanogram
NO_X	Oxides of nitrogen
NRDC	Natural Resources Defense Council
NSPS	new source performance standards
NYSDOH	New York State Department of Health
O_2	oxygen
Pb	lead
PM	particulate matter
ppmdv	parts per million by volume (dry basis)
SO_2	sulfur dioxide
STAATT	State and Territorial Association of Alternate Treatment Technologies
SWDA	Solid Waste Disposal Act
TEQ	Toxic Equivalency Quality (dioxin emissions)
TTN	Technology Transfer Network
TCLP	Toxicity Characteristics Leachate Procedure
yr	year

Outline of this Notice. The information in this section is organized as follows:

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A. Regulatory Options
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2. Industry-wide economic impacts
3. Facility-specific economic impacts
V. Inclinations for Final Rule

I. Introduction

A. The Clean Air Act

The Clean Air Act amendments of 1990 added section 129, which includes specific requirements for solid waste combustion units. Section 129 requires the EPA, under section 111(b), to establish NSPS for new MWI and under section 111(d), to establish EG for existing MWI based on maximum achievable control technology (MACT). Section 129 establishes specific criteria that must be analyzed in developing these standards and guidelines. In general, this involves (1) determining appropriate subcategories within a source category; (2) determining the ''MACT floor'' for each subcategory; (3) assessing available air pollution control technology with regard to achievable emission limitations and costs; and (4) examining the cost, nonair-quality health and environmental impacts, and energy requirements associated with standards and guidelines more stringent than the MACT floor. Section 129 also directs EPA to establish operator training requirements for new and existing MWI as well as siting requirements for new MWI.

Section 129 requires the EPA to include numerical emission limitations in the standards and guidelines for the following air pollutants: particulate matter (PM), opacity, sulfur dioxide (SO_2), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins and dibenzofurans (referred to in this notice as ''dioxin''). Section 129 requires that these emission limitations reflect the maximum degree of reduction in air emissions that the Administrator determines is achievable, taking into consideration the cost of achieving such emission reduction and any nonair-quality health and environmental impacts and energy requirements. This requirement is referred to as MACT.

The MACT for new MWI may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. The guidelines for existing MWI may be less stringent than the standards for new MWI; however, the guidelines may be no less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category. These requirements that the standards and guidelines must be no less stringent than certain levels are referred to as the ''MACT floor.''

The Clean Air Act requires EPA to consider standards and guidelines more stringent than the MACT floor, considering costs and other impacts described above. If EPA concludes that more stringent standards and/or guidelines are achievable considering costs and other impacts, then the standards and/or guidelines would be established at these more stringent levels (i.e., MACT would be more stringent than the MACT floor). The EPA may establish NSPS or EG at the MACT floor only if it concludes that NSPS or EG more stringent than the MACT floor are not achievable, considering costs and other impacts. In no case may EPA establish emission limitations less stringent than the MACT floor.

Because standards and guidelines developed under Section 129 are to reflect the performance capabilities of air pollution control technology, EPA must assess air pollution control technologies and draw conclusions regarding their performance. This is often misunderstood and some assume that the regulations require the use of specific technology. However, the control technology used to achieve the standards or guidelines is not specified in the regulations. The regulations only include specific air pollution emission limits that a source (i.e., an MWI) must achieve. Any control technology that can comply with the final emission limits may be used.

B. February 1995 Proposal

On February 27, 1995 (60 FR 10654), EPA published proposed NSPS and EG for MWI. The proposal was the result of several years of effort reviewing available information in light of the Clean Air Act requirements described above.

During the data-gathering phase of the project, it was difficult to get an accurate count of MWI nationwide. In addition, it was difficult to find MWI with add-on air pollution control systems in place. Information from a few State surveys led to an estimated population of 3,700 existing MWI.

Subcategories were determined based on design differences among different types of incinerators: continuous, intermittent, and batch. These three design types roughly correlate to MWI size.

A few MWI with various levels of combustion control (no add-on air pollution control) were tested to determine the performance of combustion control in reducing MWI emissions. One MWI equipped with a wet scrubber (add-on control) was tested to determine the performance capabilities of wet scrubbing systems. A few other MWI equipped with dry scrubbing systems (add-on control) were tested to determine the performance capabilities of dry scrubbing systems. These systems were considered typical of air pollution control systems available at the time, and the data indicated that dry scrubbing systems could achieve much lower emissions than wet scrubbing systems.

As mentioned above, the MACT floor for new MWI is to reflect the emissions control achieved by the best controlled similar unit. Dry scrubbing systems were identified on at least one MWI in each of the three subcategories (continuous, intermittent, and batch). Consequently, the MACT floor emission levels for the proposed NSPS reflected the performance capabilities of dry scrubbing systems.

For existing MWI under the emission guidelines, State regulations and permits were used to calculate the average emission limitation achieved by the best performing 12 percent of units. These results were then compared with the results of the emission tests on wet and dry scrubbing systems. This comparison led to the conclusion that the MACT floor for existing MWI would require the use of a dry scrubbing system, even for small existing batch MWI.

Following determination of the MWI population, subcategories, performance of technology, and MACT floors, the Clean Air Act requires EPA to consider standards and guidelines that are more stringent than the floors. However, because the MACT floors calculated for the proposal were so stringent, EPA was left with few options to consider. Emission limits reflecting the capability of dry scrubbing systems were proposed for all sizes and types of new and existing MWI.

As mentioned earlier, the proposed standards and guidelines included numerical emission limits reflecting the performance capabilities of dry scrubbing systems; however, the proposed regulations would not require the use of a dry scrubbing system. Emission limits are included in these regulations rather than control equipment requirements to encourage competition and further the development of new technologies. Any technology capable of achieving the emission limitations in the regulations may be used.

C. New Information Since Proposal

A proposal is essentially a request for public comment on the information used, assumptions made, and conclusions drawn from the evaluation of available information. Following proposal, more than 700 comment letters were received, some including new information and some indicating that commenters were in the process of gathering information for EPA to consider. The large amount of new information that was ultimately submitted addressed every aspect of the proposed standards and guidelines, including: the existing population of MWI, the performance capabilities of air pollution control systems, monitoring and testing, operator training, alternative medical waste treatment technologies, and the definition of medical waste. In almost every case, the new information has led to different conclusions, as outlined below.

D. Purpose of This Supplemental Notice

This notice announces the availability of new information, reviews EPA's assessment of the new information, provides EPA's inclination as to how the new information might change the final standards and guidelines, and solicits comments on EPA's assessments and inclinations. This new information and these assessments are documented in more detail in a series of memoranda included in Air Docket No. A–91–61. A listing of these documents can be found at the beginning of this notice. This action also reopens the public comment period for the development of standards and guidelines for MWI. Today's action serves not only as a review of new information and request for comment, but also as a response to comments on the proposed rule.

This notice is not a reproposal. The proposal date for the MWI standards and guidelines remains February 27, 1995. Any MWI that has commenced construction after February 27, 1995, is considered a new MWI and will be subject to the NSPS, while any MWI that commenced construction on or before February 27, 1995, is considered an existing MWI.

E. New Timeline for Promulgation

In 1993, the EPA, the Sierra Club, and the Natural Resources Defense Council (NRDC) filed a consent decree with the U.S. District Court for the Eastern District of New York (Nos. CV–92–2093 and CV–93–0284) that required the EPA Administrator to sign a notice of proposed rulemaking no later than February 1, 1995 and a notice of final rulemaking no later than April 15, 1996.

Because of the large amount of new information and conclusions drawn from the new information, the EPA deemed it necessary to issue this supplemental Federal Register notice to provide the public sufficient opportunity to comment on all information used by the Agency in developing the NSPS and EG. The Agency requested an extension of the April 15, 1996 court-ordered deadline, and the court order has been revised to require the EPA Administrator to sign a notice of final rulemaking no later than July 25, 1997.

II. Review of New Information

As mentioned earlier, more than 700 comment letters were received following the February 27, 1995 proposal. An assessment of this information and some of EPA's inclinations in light of this new information are presented below.

In general, the following process was used to assess the new information. The public comment letters were reviewed and categorized by area of comment. Information related to specific issues (e.g., wet scrubber performance) was reviewed; meetings were then held to discuss specific areas of comment with relatively small groups who were believed to have expertise in specific areas. For example, meetings with wet scrubber vendors were held to discuss the new information related to the performance capabilities of wet scrubbers. During the smaller meetings, additional information was received and comment was taken. Following the smaller meetings, EPA conducted larger public meetings on June 15, 1995, September 26, 1995, and February 14, 1996, to review the assessment of new information and take further public comment. This Federal Register notice provides EPA's review of all information received since proposal.

A. MWI Inventory

One of the essential starting points in developing EG and NSPS is compiling an inventory of existing sources and projecting the number of new sources expected to be built in the future. The MWI inventory is the basis for the development of MACT floors, environmental impacts, cost impacts, and economic impacts. The results of these analyses are then used to determine MACT.

The inventory of existing sources used in this analysis is a ''snapshot'' of the current population of existing MWI. The inventory of new MWI potentially subject to the NSPS is a prediction of the number of MWI that will be built over the next 5 years in the absence of Federal regulations. The MWI inventories are not exact, but are representative of current and future MWI populations. Consequently, they are adequate to allow EPA to make informed decisions in developing standards and guidelines for new and existing MWI.

1. Existing Population

To estimate the nationwide population of existing MWI at proposal, available State MWI inventory information was gathered. Where MWI information was not available for a particular State, the State's human population was used to estimate the MWI population. Human population was selected as the basis for extrapolation because it is logical that the amount of medical waste generated (and, therefore, the MWI population) would correlate with human population. This extrapolation was a straightforward computation with readily available data; however, detailed State inventory data were only available from 11 States. This method resulted in an estimated 3,700 MWI burning general medical waste.

Following proposal, a number of comments were received regarding the inventory of existing MWI. Several commenters suggested that the population of MWI was overestimated. The American Hospital Association (AHA) submitted comments that included a compilation of approximately 2,200 existing MWI.

To compile a new EPA inventory, the AHA inventory was used as a starting point. Other sources of information, including State surveys and a data base of MWI operating permits, were also used to refine the inventory. Following this initial compilation, the inventory contained approximately 2,600 MWI. During the September 26, 1995 public meeting, several stakeholders voiced concern that many of the incinerators listed in EPA's MWI inventory had ceased operation. To address this concern, the Agency requested additional information to update the inventory. Additional information was received from State agencies, commercial medical waste disposal companies, and MWI vendors. Medical waste incinerator units were deleted or added based on the new information provided. Following these revisions, the final EPA inventory contains approximately 2,400 MWI; this inventory is located in the docket as item No. IV–B–45.

The inventory also contains information such as MWI type (continuous/intermittent or batch fed), capacity, and location, as well as State

regulatory or permit emission limits. Every MWI in the inventory is assigned an MWI capacity in pounds per hour (lb/hr) or pounds per batch (lb/batch). Location information includes rural or urban designations based on Metropolitan Statistical Area (MSA) boundaries for the U.S. Facilities within MSA boundaries were considered urban MWI; facilities outside MSA boundaries were considered rural MWI. Emission limitations were determined by examining air quality permits, where available, or examining the emission limitations included in State regulations.

2. Future Installations

Projections of new MWI were made to estimate the costs and other impacts associated with NSPS. To estimate the number of new MWI that would be subject to the NSPS, historical sales data were obtained from MWI vendors. For the proposal, it was estimated that, in the absence of Federal regulations, 700 MWI would be installed during the 5 years following proposal (140 MWI per year). This projection was based on historical sales data gathered from 1985 through 1989.

To update the projection of new MWI that would be subject to the NSPS, additional data were gathered from MWI vendors following the proposal. Historical sales data were gathered covering years 1990 to 1995. Based on this new data, 235 MWI are expected to be installed in the next 5 years in the absence of the NSPS (47 per year). This projection covers the years 1996 to 2000. The memorandum documenting the procedures used to estimate the population of new MWI is located in the docket as item IV–B–37.

B. Subcategorization

Section 129 of the Clean Air Act states that the Administrator may distinguish among classes, types, and sizes of units within a category in establishing the standards and guidelines. At proposal, the Agency concluded the MWI population should be divided into three subcategories: (1) Continuous MWI, (2) intermittent MWI, and (3) batch MWI. While these three subcategories were based on design differences of the MWI, they also correlate roughly with size or MWI capacity.

During the public comment period, a number of comments were received regarding subcategorization. Several commenters suggested that EPA subcategorize directly by MWI size. Others suggested that EPA subcategorize MWI based on heat input capacity. Other commenters suggested that the Agency set standards based on the location of MWI; these commenters expressed concern about the lack of medical waste disposal options in remote rural locations.

Three criteria were subsequently considered in reexamining potential subcategories: size (capacity to burn medical waste); type (continuous/intermittent versus batch); and location (urban versus rural). The first two are clearly identified in Section 129 and have been used in other Federal regulations as criteria for subcategorization. Location, by itself, is not a valid criterion for subcategorization. However, in this case, it is used as a surrogate measure of the availability of alternative waste disposal options. Medical waste incinerators located in remote areas might be considered as a separate ''class'' of incinerator because of the limited availability of alternative waste disposal options in rural areas.

As mentioned earlier, the MACT floor is the least stringent regulatory option allowed under the Clean Air Act. Consequently, the MACT floors were examined using the EPA MWI inventory for various potential MWI subcategories. Because PM is, by far, the most common type of emission limitation in State regulations and permits, the PM MACT floor was the focus in this analysis. Subcategories were established when significant differences in PM MACT floors were identified.

The most common size breaks used by States in regulating MWI occur at 100, 200, 500, 1,000, and 2,000 lb/hr. The MACT floor emission levels for these size breaks were evaluated to determine appropriate size breaks for regulation. Significant differences in MACT floors were identified at 200 lb/hr and 500 lb/hr. Consequently, the three size ranges determined to be appropriate for the purpose of regulating MWI are presented in Table 2.

TABLE 2.—NUMBER OF MWI AND SIZE RANGES FOR SUBCATEGORIES

MWI subcategory	Size range, lb/hr	Number of MWI
Small	≤200	1,139
Medium	>200 and ≤500	692
Large	>500	542

The three basic design types of MWI are continuous, intermittent, and batch. A distinction between continuous and intermittent MWI based on design type may not be appropriate because these two types of units are essentially identical with the exception of the ash handling system. Also, the information used to develop the population of existing MWI does not distinguish between continuous and intermittent MWI. Batch MWI, however, are very different from intermittent and continuous units. As a result, batch MWI were further examined to determine if the MACT floor emission levels are different than those for continuous and intermittent MWI within the same size range; no significant difference in MACT floor emission levels was found.

The final criterion considered was location (urban vs. rural). This analysis focused on the small MWI because commenters were particularly concerned about small, rural MWI. The MACT floor emission levels for small urban MWI and small rural MWI, however, were found to be essentially the same.

Based on the new information, the Agency is inclined to subcategorize the existing and new population of MWI into three subcategories as shown in Table 2: small (≤200 lb/hr), medium (>200 and ≤500), and large (>500). The memorandum that details the procedures used to assess the subcategories is found in the docket as item IV–B–23. Further subcategorization may be considered in examining standards and guidelines more stringent than the MACT floors (see Sections III and IV).

Directly related to the question of using size or burning capacity to subcategorize MWI, the proposal requested comment on a ''standard'' method of determining MWI size for the purpose of consistent, uniform, and equitable application of whatever standards and guidelines are adopted. Comments responding to this request focused on the design heat release rate of the MWI expressed in British thermal units per hour per cubic foot (Btu/hr-ft_3) in the primary combustion chamber and the heat content of medical waste expressed in British thermal units per pound (Btu/lb). Most MWI manufacturers base their design capacities on these two factors.

In considering and/or adopting a ''standard'' means of determining MWI size, EPA is not attempting to establish design requirements for MWI manufacturers. Instead, the only purpose of adopting a standard method for determining the size of MWI is to ensure that all MWI of the same ''size'' are subject to the same requirements.

The design heat release rate used by most vendors of continuous and intermittent MWI is typically 15,000 Btu/hr-ft_3. The heat content of medical waste can vary substantially from 1,000 Btu/lb for pathological waste to over 10,000 Btu/lb for waste with a high

plastics content. The heat content generally associated with medical waste for the purpose of determining nameplate capacity has been 8,500 Btu/lb. The combination of 15,000 Btu/hr-ft_3 and 8,500 Btu/lb results in a volumetric waste burning capacity of 1.76 lb/hr-ft_3. The volume of the primary chamber is multiplied by 1.76 to determine the size of the MWI. A continuous or intermittent MWI with a primary chamber volume of 500 ft_3 would be sized at 880 lb/hr for the purpose of determining regulatory requirements.

For batch MWI, the calculation is slightly different. Batch MWI charge all waste to be burned when the unit is cold. No additional waste is added during the combustion cycle. The unit is then allowed to cool before ash is removed and more waste is charged. These units are given a designation of pounds per batch (lb/batch) rather than lb/hr and usually take about 12 hours to completely burn the waste. The density of medical waste is about 4.5 lb/ft_3. Consequently, the combination of 4.5 lb/ft_3 and 12 hours per batch yields a volumetric waste burning capacity of 0.375 lb/hr-ft_3. The volume of the primary chamber would be multiplied by 0.375 to determine the size of the MWI. A batch MWI with a primary chamber volume of 500 ft_3 would be sized at 188 lb/hr for the purpose of determining regulatory requirements. A more detailed description of the MWI size methods described above for continuous, intermittent, and batch MWI can be found in the docket as item IV–B–44.

During a meeting with MWI vendors, it was suggested that MWI size should be determined by the unit's operating permit rather than its design capacity. Many States allow MWI to meet less stringent requirements associated with smaller MWI as long as the MWI is subject to a permit condition limiting the amount of waste burned. Consequently, while EPA is inclined to determine MWI size by the criteria described above, EPA is also considering inclusion of an option to allow an MWI to change its size designation by operating under a Federally enforceable requirement limiting the amount of waste burned (i.e., waste feed rate—lb/hr). For example, a continuous or intermittent MWI with a 340 ft_3 primary chamber, with a design capacity of about 600 lb/hr (i.e., ''large''), using the procedure outlined above, could be considered a ''medium'' MWI by operating under a Federally enforceable requirement limiting its charge rate to no more than 500 lb/hr. A batch MWI with a 1,000 ft_3 primary chamber, with a design capacity of about 4,500 lb/batch or 375 lb/hr (i.e., ''medium''), using the procedure outlined above, could be considered a ''small'' MWI by operating under a Federally enforceable requirement limiting its charge rate to no more than 2,400 lb/batch (200 lb/hr).

Finally, some commenters expressed concern about facilities installing multiple small MWI at one location in an effort to be subject to less stringent requirements. Commenters believed this should not be allowed. Consequently, EPA is inclined to combine the waste burning capacity of multiple units at one location to determine size. As stated above, such facilities could still operate under a Federally enforceable permit limiting their operating capacity to change their size designation.

C. Performance and Cost of Technology

Section 129 of the Clean Air Act directs the EPA to develop regulations for MWI that are based on the use of MACT, which is defined as the maximum reduction in emissions of air pollution the EPA considers achievable, considering costs, environmental, and energy impacts. However, Section 129 also states that, for existing MWI, these regulations can be no less stringent than the average of the best 12 percent of existing MWI, and for new MWI, they can be no less stringent than the best similar MWI. These minimum stringency requirements for the regulations are referred to as the ''MACT floors.'' The emission limits in the final regulations can be no less stringent than the ''MACT floor'' emission levels.

The ''MACT floors'' for the regulations are discussed in detail in another section of this notice. However, these ''MACT floors'' are only the starting point for determining MACT. Since MACT is the maximum reduction in air pollution emissions that is achievable, considering costs, environmental and energy impacts, if more stringent emission levels than the MACT floor emission levels are achievable, the EPA must identify these more stringent emission levels and consider them in selecting the MACT emission limits for MWI.

The EPA determines whether more stringent emission levels than the MACT floor emission levels are achievable by identifying various air pollution control technologies used to reduce emissions from MWI. Next, the EPA gathers and analyzes data on these technologies and draws conclusions regarding their performance—in terms of their ability to reduce air pollution emissions. The EPA then is able to determine MACT as follows.

After the MACT floors have been determined, the EPA can identify what air pollution control technologies would need to be used by MWI to achieve or comply with regulations based on these MACT floors. Then the EPA can identify those air pollution control technologies that are capable of achieving more stringent emission levels than the MACT floors. The EPA is then able to analyze and consider these more stringent emission levels in terms of the cost, environmental, and energy impacts associated with their use compared to the use of the air pollution control technologies that can achieve the MACT floor emission levels. This analysis and consideration serves as the basis for the EPA to determine MACT.

All of this analysis, with its focus and discussion of air pollution control technology, is often misunderstood and leads some to assume that the regulations require the use of a specific air pollution control technology, which is not the case. The air pollution control technology used to achieve or comply with the regulations is not specified in the regulations. The regulations only include emission limits (i.e., concentration levels in the gases released to the atmosphere) for specific air pollutants (e.g., hydrogen chloride, lead, etc.) that an MWI must achieve. The decision on how to meet these emission limits is left to the MWI owner or operator; an MWI owner or operator may select any equipment or any means available to comply with these emission limits.

At the time of proposal, relatively few emission test reports were available to the EPA from which to draw conclusions regarding the performance capabilities of various air pollution control systems. The data indicated that dry scrubbing systems could achieve much lower emission levels than wet scrubbing systems and that either type of scrubbing system could achieve much lower emission levels than combustion controls (i.e., good combustion) alone.

Following proposal, a number of emission test reports were submitted to EPA. Many commenters believe that EPA misjudged the performance capabilities of various air pollution control technologies, especially the capabilities of wet scrubbing systems. The EPA has reviewed the data contained in these emission test reports and, as summarized below, EPA's conclusions regarding the performance capabilities of various air pollution control technologies have been revised.

Relatively few comments were received regarding EPA's estimates of the costs of air pollution control technology. The majority of the

comments regarding cost pertained to wet scrubbing systems. The reassessment of costs is discussed briefly below for each control technology.

1. Good Combustion

Combustion controls (i.e., good combustion) are effective in reducing emissions of combustion-related pollutants, such as PM, CO, and dioxin, but are not effective in reducing emissions of waste-related pollutants, such as acid gases or metals. For the combustion-related pollutants, combustion controls can be divided into two levels (i.e., 1-second and 2-second residence time) and the achievable emission levels associated with the use of each of these levels have been reassessed. In addition, achievable emission levels for waste-related pollutants were also reassessed. For waste-related pollutants, performance between the two levels of combustion control is not distinguishable. The results of the reassessment of combustion control are shown in Table 3 and are available as item Nos. IV–B–46 and IV–B–47 in the docket.

TABLE 3.—ACHIEVABLE EMISSION LEVELS FOR COMBUSTION CONTROL

Pollutant/combustion level	Achievable emission levels
PM, gr/dscf:	
1-sec	0.35
2-sec	0.25
Dioxin, ng/dscm:	
1-sec	9,000
2-sec	800
TEQ dioxin, ng/discm:	
1-sec	275
2-sec	15
CO, ppmdv:	
1-sec	700
2-sec	40
HCl, ppmdv	3,100
SO_2, ppmdv	55
NO_x, ppmdv	250
Pb, mg/dscm	10
Cd, mg/dscm	4
Hg, mg/dscm	7.5

Most of the achievable emission levels associated with combustion control have changed little from the proposal; the exceptions are the achievable emission levels for dioxin and Hg. The conclusion drawn at proposal regarding the achievable emission level for dioxin was driven by two relatively high data points from two different MWI. A thorough review of these two MWI and the tests conducted at these two MWI raise numerous questions and doubts about whether good combustion was actually employed at these MWI during the emission tests. Consequently, EPA no longer considers these emission tests representative of good combustion.

The situation is similar with regard to achievable Hg emission levels; at proposal, the conclusion regarding achievable emission level for Hg was driven by one very high data point. Following proposal, the hospital operating this MWI instituted several common waste management practices employed by other hospitals, and the MWI was retested by the EPA. The new data point is very similar to all the other data points. Consequently, the earlier data point is no longer considered representative of achievable Hg emission levels.

While no specific comments were received regarding the cost of good combustion, the costs were reassessed and updated for consistent comparison with other costs. This information is described in more detail in item IV–B–33 in the docket.

2. Wet Scrubbers

Following proposal, a number of comments were submitted to the EPA concerning the performance capabilities of wet scrubbing systems. Some commenters claimed that the wet scrubbing system tested by EPA was not representative of current wet scrubber technology and that the scrubber was not designed for high efficiency PM removal. The commenters submitted a number of emission test reports from wet scrubbing systems and urged EPA to reconsider the performance capabilities of these systems.

The EPA has reviewed these emission test reports and revised its previous conclusions on the performance capabilities of wet scrubbing systems. Wet scrubbing systems are capable of achieving three different levels of performance, depending on their design and operation. For convenience, these three levels of performance have been termed low efficiency, moderate efficiency, and high efficiency. A summary of EPA's revised conclusions regarding achievable emission levels associated with the use of wet scrubbing systems is shown in Table 4. A full discussion of these revised conclusions is available as item No. IV–B–48 in the docket.

TABLE 4.—ACHIEVABLE EMISSION LEVELS FOR WET SCRUBBERS

Pollutant, units	Achievable emission levels		
	Low	Moderate	High
PM, gr/dscf	0.05	0.03	0.015.
dioxin, ng/dscm	125	125	125.
TEQ dioxin, ng/dscm	2.3	2.3	2.3.
HCl, ppmdv	15 or 99%	15 or 99%	15 or 99%.
Pb, mg/dscm	1.2 or 70%	1.2 or 70%	1.2 or 70%.
Cd, mg/dscm	0.16 or 65%	0.16 or 65%	0.16 or 65%.
Hg, mg/dscm	0.55 or 85%	0.55 or 85%	0.55 or 85%.

Percent reflects achievable percentage reduction in emissions. No levels are shown for CO, SO_2, or NO_x because wet scrubbers on MWI achieved no further reductions beyond good combustion for these pollutants.

Note that for the waste-related pollutants, the achievable emission levels in the table are expressed as a numerical concentration level or a percent reduction. The composition of the waste burned in an MWI is not uniform; as a result, the concentration levels of waste-related pollutants from an MWI varies. On occasion, however, a momentary rise or ''spike'' in the concentration level of a waste-related pollutant may occur; while a wet scrubbing or dry scrubbing system can reduce this concentration level considerably, the system can not necessarily reduce it to the concentration levels shown in the table. For this reason, conclusions regarding

achievable emission levels associated with the use of wet or dry scrubbing systems for waste-related pollutants must include a percent reduction component to accurately reflect the performance capabilities of wet and dry scrubbing systems.

Also note that the EPA has no emission data upon which to assess the performance capabilities of wet scrubbing systems that might utilize activated carbon. The EPA knows of no wet scrubbing system currently operating on an MWI using activated carbon, although vendors have mentioned this technique could be done. Activated carbon used with a dry scrubber (discussed below) provides enhanced removal of Hg and dioxin. Thus, the use of activated carbon with a wet scrubbing system, in an appropriate manner such as a fixed bed, should achieve the same enhanced performance levels.

Along with new information regarding the performance of wet scrubbers, EPA received new information regarding the cost of wet scrubbing systems. Figure 1 shows the relationship between cost and size of MWI for each level of wet scrubber performance. These costs are not substantially different from those used at proposal. The key difference is the distinction in costs between wet scrubbers of different efficiency. This information is described in more detail in item IV–B–30 in the docket.

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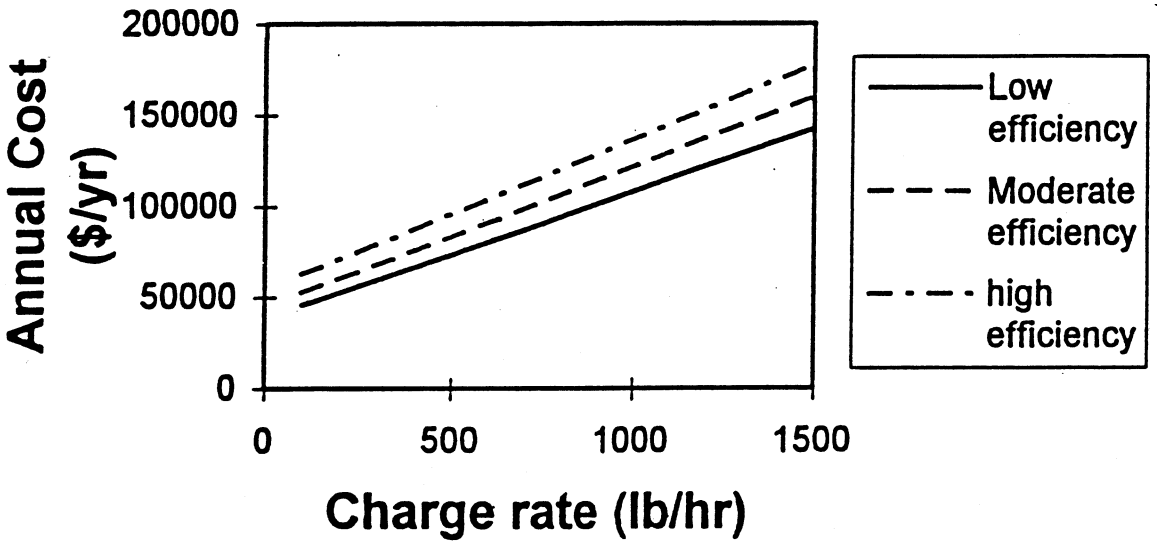


Figure 1. Annual costs for wet scrubbers without boiler.

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3. Dry Scrubbers

Very few comments were submitted to EPA following proposal that questioned EPA's conclusions on the performance capabilities of dry scrubbing systems. These capabilities were reassessed, however, to consider data contained in several emission test reports submitted to EPA from dry scrubbing systems using activated carbon.

The results of this reassessment of dry scrubbing system performance is shown in Table 5. The conclusions summarized in this table are similar to those at proposal. Note, however, that as discussed above under wet scrubbing systems, the achievable emission levels associated with the use of dry scrubbing systems for waste-related pollutants are now expressed as a numerical concentration level or a percent reduction. A discussion of this reassessment is available as item No. IV–B–49 in the docket.

TABLE 5.—ACHIEVABLE EMISSION LEVELS FOR DRY SCRUBBERS WITH ACTIVATED CARBON INJECTION

Pollutant, units	Achievable emission levels
PM, gr/dscf	0.015.
dioxin, ng/dscm	25.
TEQ dioxin, ng/dscm	0.6.
HCl, ppmdv	100 or 93%.
Pb, mg/dscm	0.07 or 98%.
Cd, mg/dscm	0.04 or 90%.
Hg, mg/dscm	0.55 or 85%.

Percent reflects achievable percentage reduction in emissions. No levels are shown for CO, SO_2, or NO_x because dry scrubbers on MWI's achieved no further reductions beyond good combustion for these pollutants.

While no specific comments were received regarding the cost of dry scrubbers, the costs were reassessed and updated for consistent comparison with other costs. Figure 2 shows the relationship between cost and size of MWI for dry scrubbing systems. This information is described in more detail in item IV–B–32 in the docket.

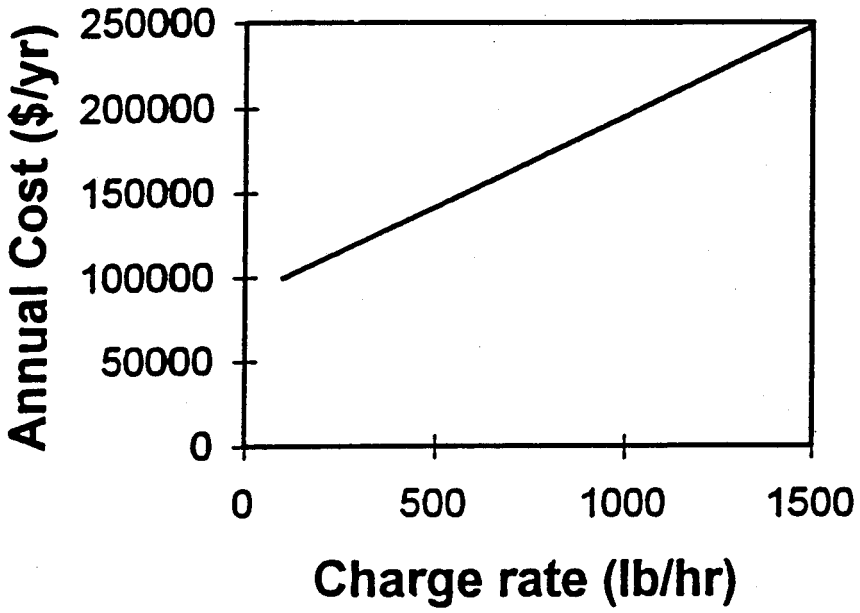


Figure 2. Annual cost for dry scrubbers with carbon.

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D. MACT Floor

1. Existing MWI

The Clean Air Act specifies in Section 129 that the degree of reduction in emissions that is deemed achievable for existing MWI shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in a category; this requirement is referred to as the ''MACT floor'' for existing MWI. Section 302(k) of the Clean Air Act defines the term ''emission limitation'' as ''a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.''

Air quality permits and State regulations were examined to determine the average emission limitations achieved by the best performing 12 percent of MWI in each of the three subcategories considered at proposal (continuous, intermittent, and batch MWI). Table 6 presents the MACT floor emission levels identified at proposal.

TABLE 6.—PROPOSED MACT FLOOR EMISSION LEVELS FOR EXISTING MWI

[February 1995]

Pollutant, units	MWI subcategory		
	Batch	Intermittent	Continuous
PM, gr/dscf	0.03	0.03	0.02
CO, ppmdv	91	90	76
Dioxin, ng/dscm	NF	NF	NF
HCl, ppmdv	911	115	43
	(35%)	(92%)	(97%)
SO_2, ppmdv	NF	NF	NF
NO_X, ppmdv	NF	NF	NF
Pb, mg/dscm	NF	NF	NF
Cd, mg/dscm	NF	NF	NF
Hg, mg/dscm	NF	NF	NF

NF=No Floor—the MACT floor emission levels for these pollutants reflect uncontrolled emissions. Numbers in parentheses indicate percent reduction.

Note that the table indicates no floor for most pollutants. While a numerical value was calculated for each pollutant, most pollutant MACT floors reflected uncontrolled emissions. Nevertheless, based on conclusions drawn at proposal regarding performance of technology, the MACT floor values included in Table 6 for CO, PM, and HCl indicated, at proposal, that all existing MWI would need good combustion and dry scrubbers to meet the MACT floors for CO, PM, and HCl.

As discussed in earlier sections, the new information submitted following proposal led to changes to the MWI inventory and subcategories. Because these factors can influence the MACT floors, a review of the MACT floors was conducted. Recall that the inventory includes emission limitations for each pollutant based on State permits and regulations. For each pollutant, the MWI inventory was sorted by subcategory

and then by stringency of emission limit (most stringent to least stringent) within each subcategory. For each pollutant, the emission limitations for the top 12 percent of units in each subcategory were averaged to determine the MACT floor emission levels. The results of these calculations to determine the MACT floor emission levels for existing MWI in each subcategory based on the new MWI inventory are presented in Table 7.

TABLE 7.—REVISED MACT FLOOR EMISSION LEVELS FOR EXISTING MWI

Pollutant, units	MWI subcategory		
	Small	Medium	Large
PM, gr/dscf	0.086	0.043	0.021
CO, ppmdv	156	98	87
Dioxin, ng/dscm	NF	NF	NF
HCl, ppmdv	NF	589 (57%)	101 (93%)
SO_2, ppmdv	NF	NF	NF
NO_X, ppmdv	NF	NF	NF
Pb, mg/dscm	NF	NF	NF
Cd, mg/dscm	NF	NF	NF
Hg, mg/dscm	NF	NF	NF

NF=No Floor—the MACT floor emission levels for these pollutants reflect uncontrolled emissions. Numbers in parentheses indicate percent reduction.

Based on the recalculated MACT floors and the new conclusions drawn regarding the performance capabilities of air pollution control technologies (Section II.C.), it appears that large MWI would have to use good combustion and a high efficiency wet scrubber to achieve the MACT floor emission levels, while a medium-sized MWI would have to install at least good combustion and a moderate efficiency wet scrubber. Dry scrubbers could also be used in conjunction with good combustion to meet the MACT floor emission levels for medium and large MWI. Available data showing the performance capabilities of good combustion appears to indicate that the 0.086 gr/dscf PM MACT floor for small MWI is not achievable with good combustion alone. However, MWI manufacturers have indicated they routinely guarantee achieving 0.08 gr/dscf with good combustion. Consequently, the MACT floor for small MWI would require the use of good combustion practices; based on the claims of MWI manufacturers, add-on scrubbing systems would not be needed in all cases to meet the MACT floor. Regulatory options reflecting more stringent guidelines for existing MWI are examined in Section III of this notice. A memorandum that documents the procedures used to determine the MACT floors for existing MWI is located in the docket as item IV–B–24.

2. New MWI

The Clean Air Act specifies in Section 129 that the degree of reduction in emissions that is deemed achievable for new MWI shall not be less stringent that the emissions control achieved by the best-controlled similar unit; this requirement is referred to as the ''MACT floor'' for new MWI. The MACT floor emission levels identified at proposal for new MWI are presented in Table 8. These MACT floor values reflect conclusions at proposal about the performance capabilities of dry scrubbing systems because such systems were identified on at least one MWI in each subcategory and because dry scrubbing systems were considered capable of achieving lower emissions than wet scrubbing systems.

TABLE 8.—PROPOSED MACT FLOOR EMISSION LEVELS FOR NEW MWI

[February 1995]

Pollutant, units	MWI subcategory		
	Batch	Intermittent	Continuous
PM, gr/dscf	0.013	0.013	0.013
CO, ppmdv	50	50	50
Dioxin, ng/dscm	1,500	450	80
HCl, ppmdv	42 (97%)	42 (97%)	42 (97%)
SO_2, ppmdv	NF	NF	NF
NO_X, ppmdv	NF	NF	NF
Pb, mg/dscm	0.1	0.1	0.1
Cd, mg/dscm	0.05	0.05	0.05
Hg, mg/dscm	NF	NF	0.47 (85%)

NF=No Floor—the MACT floor emission levels for these pollutants reflect uncontrolled emissions. Numbers in parentheses indicate percent reduction.

Again, the new information submitted following proposal led to changes to the MWI inventory, subcategories, and conclusions about performance of technology. Because these factors can influence the MACT floors, a review of the MACT floors was conducted. The revised inventory of existing MWI was examined to identify the best-controlled

MWI in each subcategory. The revised MACT floor emission levels for new MWI are shown in Table 9.

TABLE 9.—REVISED MACT FLOOR EMISSION LEVELS FOR NEW MWI

Pollutant, units	MWI subcategory		
	Small	Medium	Large
PM, gr/dscf	0.03	0.015	0.015
CO, ppmdv	40	40	40
Dioxin, ng/dscm	125	125	25
HCl, ppmdv	15	15	15
	(99%)	(99%)	(99%)
SO_2, ppmdv	NF	NF	NF
NO_x, ppmdv	NF	NF	NF
Pb, mg/dscm	1.2	0.07	0.07
	(70%)	(98%)	(98%)
Cd, mg/dscm	0.16	0.04	0.04
	(65%)	(90%)	(90%)
Hg, mg/dscm	0.55	0.55	0.55
	(85%)	(85%)	(85%)

NF=No Floor—the MACT floor emission levels for these pollutants reflect uncontrolled emissions. Numbers in parentheses indicate percent reduction.

The small MWI subcategory consists of MWI operating at a throughput of 200 pounds per hour (lb/hr) or less of medical waste. The MACT floor for new small MWI consists of the emission levels that are achievable with good combustion and a moderate efficiency wet scrubber. The MACT floor is based on these emissions levels because small existing MWI equipped with this air pollution control have been identified. No small existing MWI have been identified with high-efficiency wet scrubbers or dry scrubbers.

The medium MWI category consists of MWI operating at a throughput of greater than 200 lb/hr and less than or equal to 500 lb/hr of medical waste. The MACT floor for new medium-sized MWI is based on emission levels that are achievable with good combustion and a combination of two control technologies, the high efficiency wet scrubber and the dry injection/fabric filter (DI/FF) dry scrubber system without carbon. At least one existing MWI in the medium subcategory is controlled with a high efficiency wet scrubber and another is equipped with a DI/FF system without carbon. The MACT floor is based on both of these technologies (i.e., a combined dry/wet scrubber system) because the wet scrubber achieves the lowest dioxin, HCl, and Hg emissions, but the DI/FF without carbon injection achieves the lowest Pb and Cd emissions. While no combined dry/wet scrubber systems were identified on medium MWI, several such systems are currently in operation on large MWI, as mentioned below. In addition, as also mentioned below, spray dryer/fabric filter systems could also meet the MACT floor emission levels for medium-sized MWI.

The large MWI subcategory consists of all MWI operating at a throughput of greater than 500 lb/hr of medical waste. As with the MACT floor for new medium MWI, the MACT floor for new large MWI is based on the emission levels that are achievable with good combustion and a combination of two control technologies, the high efficiency wet scrubber and the DI/FF dry scrubber system with carbon. Several existing facilities in the large category currently control emissions with a combined dry/wet system. In addition, one existing MWI equipped with a spray dryer/fabric filter system with carbon was tested during the EPA testing program and this test demonstrated that this scrubbing technology could also meet the MACT floor emission levels presented in Table 9.

Regulatory options reflecting more stringent standards for new MWI are examined in Section IV of this notice. A memorandum that documents the procedures used to determine the MACT floors for new MWI is located in the docket as item IV–B–38.

E. Baseline Emissions

To estimate the environmental impacts of the standards and guidelines for MWI, an estimate of baseline emissions must be made (i.e., emissions in the absence of Federal regulations). In the February 1995 proposal, baseline emissions were estimated for PM, CO, dioxin, HCl, SO_2, NO_x, Pb, Cd, and Hg. When this estimate was developed, very little information was available regarding the actual number of MWI and the level of air pollution control associated with each. The emission estimate was derived from an estimated 3,700 MWI assumed to be operating with little, if any, air pollution control.

As discussed in previous sections, new information has led to new conclusions about the MWI inventory, performance of technology, and control levels associated with each existing MWI. As a result, revised estimates of baseline emissions from existing MWI have been calculated and are presented in Table 10.

TABLE 10.—ANNUAL BASELINE EMISSIONS FOR EXISTING MWI

Pollutant, units	Baseline emissions
PM, Mg/yr	940
CO, Mg/yr	460
Dioxin g/yr	7,200
Dioxin g TEQ/yr	150
HCl, Mg/yr	5,700
SO_2, Mg/yr	250
NO_x, Mg/yr	1,200
Pb, Mg/yr	11
Cd, Mg/yr	1.2
Hg, Mg/yr	15

To convert Mg/yr to ton/yr, multiply by 1.1. To convert g/yr to lb/yr, divided by 453.6.

The results of these emission estimates are significantly lower than estimates developed at proposal. For example, the estimate of baseline emissions of dioxin toxic equivalency (TEQ) was 5,100 grams per year (g/yr) at proposal; the current estimate is 150 g/yr. At proposal, the estimate of Hg emissions from existing MWI was 64.6 tons per year (tons/yr); the current estimate is 16.0 tons/yr.

The primary reason for the lower baseline emission estimate is the much greater level of emission control found

at existing MWI than was assumed at proposal. Comment is requested on the methodology and assumptions used to estimate baseline emissions from existing MWI. Where information on specific air pollution control equipment was not available, EPA used State regulatory emission limits to predict the type of air pollution control equipment installed on each existing MWI. Information is requested which would more accurately reflect the actual air pollution control equipment installed on each existing MWI. In addition, emission factors for each type of air pollution control equipment were developed based on compliance test reports. Comment is requested on whether these emission factors reflect actual air emissions from these control devices over the life of the equipment.

At proposal, baseline emissions were also estimated for new MWI in the fifth year after adoption of the NSPS. These estimates were based on a projected number of new MWI and their associated emission controls that would be installed in the five years following promulgation of the standards. As with the estimation of baseline emissions for existing MWI, the estimate of baseline emissions for new MWI has also changed significantly. This change is due primarily to the lower projected number of new MWI and the emission control level associated with each MWI. The revised baseline emissions estimates for new MWI are presented in Table 11.

TABLE 11.—ANNUAL BASELINE EMISSIONS FOR NEW MWI

Pollutant, units	Baseline emissions
PM, Mg/yr	28
CO, Mg/yr	14
Dioxin g/yr	47
Dioxin g TEQ/yr	1.1
HCl, Mg/yr	64
SO_2, Mg/yr	28
NO_x, Mg/yr	130
Pb, Mg/yr	0.39
Cd, Mg/yr	0.051
Hg, Mg/yr	0.21

To convert Mg/yr to ton/yr, multiply by 1.1.
To convert g/y to 1b/yr, divided by 453.6.

The memoranda documenting these revised estimates of baseline emissions from new and existing MWI can be found in the docket as items IV-B–51 and IV-A–6.

F. Operator Training and Qualification

The proposed standards and guidelines included operator training and qualification requirements for each MWI operator. These operator training and qualification requirements included completion of (1) 24 hours of classroom instruction, (2) 4 hours of hands-on training, (3) an examination developed and administered by the course instructor, and (4) a handbook or other documentation covering the subjects presented during the course. The instructor of the operator training course was not to be employed by the owner or operator of the facility. To obtain qualification, an operator was to complete the training course and have either a minimum level of experience or satisfy comparable or more stringent criteria established by a national professional organization. The proposed standards and guidelines also required the owner or operator of the facility to develop and annually update a site-specific operating manual. This manual would summarize regulations, operating procedures, and reporting and recordkeeping requirements in accordance with the proposed standards and guidelines. The proposal required that each MWI be operated by a trained and qualified operator or by an individual under the direct supervision of a trained and qualified operator. The trained and qualified operator would have to be on duty and at the facility at all times while the incinerator is in operation.

Many comments were received on the proposed operator training and qualification requirements. The majority of the public comments on operator training and qualification were related to the third party training requirement and to the duration that operators must be present while the MWI is burning waste. Many commenters stated that the EPA should allow facilities the option of providing training by in-house personnel because the facility's own personnel would be most familiar with the operation and maintenance of the incinerator. The commenters indicated that smaller facilities that do not have the personnel could use the services of trainers and inspectors that are not affiliated with the facility.

Many commenters stated that the amount of time that the operator was required to be present was excessive. Under the proposal, the operator would have to be on-duty and at the facility during the time that the combustion air blowers are operating. Several commenters suggested that this would require operators to be at the incinerator even when waste was not being burned. Several commenters also suggested that the trained and qualified operator should be easily accessible (either at the facility or on-call) while the incinerator is operating.

The EPA is inclined to adopt the operator training and qualification requirements briefly summarized below and discussed in greater length in document number IV–B–26, which is available in the Docket. Cost estimates for operator training and qualification are documented in item IV–B–39.

The owner or operator of an MWI would be responsible for ensuring that one or more operators at the facility are qualified. Operator training may be obtained through a State-approved program or by completing a training course with (1) 24 hours of classroom instruction, (2) an examination designed and administered by the course instructor, and (3) reference material distributed to the attendees covering course topics.

Operators may obtain qualification by completing a training course and having one of the following levels of experience: (1) at least 6-months' experience as an MWI operator, (2) at least 6-months' experience as the direct supervisor of a qualified MWI operator, or (3) completion of at least two burn cycles under the observation of two qualified operators. To maintain qualification, the operator would be required to complete and pass an annual review or refresher course of at least 4 hours.

A fully trained and qualified operator would have to be easily accessible, either at the facility or on-call at all times while the incinerator is in operation. The trained and qualified operator may operate the MWI directly or be the direct supervisor of one or more individuals that charge waste, remove ash, etc. As proposed, the emission guidelines for existing MWI would require that, 1 year after approval of the State plan, MWI must be operated by a trained and qualified operator.

G. Testing, Monitoring, and Inspection

Section 129(c) of the Clean Air Act requires the EPA to develop regulations that include monitoring and testing requirements. The purpose of these requirements is to allow the EPA to determine whether a source is operating in compliance with the regulations.

As mentioned earlier, at proposal relatively few emission test reports were available to EPA to judge the performance of air pollution control technologies. These test reports were the result of EPA emission testing at several MWI. For a variety of reasons, EPA gathered data during these emission tests using three, 4-hour test runs. The results of the three test runs were then averaged at each MWI to calculate a measured emission level. This calculated emission level represented an

average emission value over the 12-hour period (i.e., three, 4-hour runs).

As a result, EPA's assessments of the performance capabilities of air pollution control technologies and conclusions regarding the appropriate emission limits to include in the proposed regulations were based on the measured performance of technology averaged over a 12-hour period. Emission levels, however, tend to fluctuate somewhat as part of normal operation. Consequently, during short periods of time, emission levels may occasionally be greater or lower than the average emission level over a 12 hour period.

In developing a regulation based on the performance of a particular technology, the level of performance demanded by the regulation must be consistent with the level of performance that technology can achieve. The period of time over which emissions are measured and then averaged to determine compliance with the regulation, therefore, must correspond to the period of time over which emission levels were measured and averaged in determining the emission limits included in the regulation. If this is not the case, a regulation could include emission limits that a technology can achieve if emissions are averaged over a relatively long period of time, but not if emissions are averaged over a much shorter period of time. For this reason, the proposed regulation required emission testing to determine compliance by averaging the results of three, 4-hour test runs, consistent with the procedures followed in gathering the emission data used to establish the emission limits included in the regulation.

Many comments were received regarding this proposed requirement to determine compliance using three, 4-hour test runs. These commenters noted that a 4-hour test run was much longer than the more conventional test run of about 1-hour; additionally, many hospitals and healthcare facilities would normally not have sufficient waste on hand to accommodate three, 4-hour test runs. Finally, several commenters stated that the proposed emission testing requirements would substantially increase the costs associated with emission testing. Consequently, these commenters urged EPA to revise the emission testing requirements and adopt the more conventional approach of relying on test runs of about an hour in length.

As mentioned earlier, more than two dozen test reports were submitted to EPA following the proposal, and these test reports now form the basis for revised conclusions regarding the performance capabilities of technology and the emission limits these technologies can achieve. The EPA test methods were used to perform the emission testing summarized in these reports. These methods include procedures that require the collection of a sufficient sample to accurately measure emission levels. For most air pollutants, this sample generally corresponds to a test run of about an hour. The revised conclusions discussed earlier, therefore, regarding the performance capabilities of emission control technologies and the emission limits these technologies can achieve, are based (for the most part) on emission test data generated by averaging the results of three test runs of about an hour each (i.e., a 3-hour test).

For this reason, the EPA is inclined to state in the final regulations adopted for MWI that EPA test methods be followed when performing any emission testing required to determine compliance with the regulations. This requirement will ensure that compliance testing follows the same procedures used to generate the emission data upon which the emission limits in the final regulation were based. In most cases, three test runs of about an hour each would be necessary to determine compliance with the final regulations.

An exception to this requirement is emission testing to measure dioxin emissions. The procedures in the EPA test method to ensure sufficient sample is gathered to accurately measure dioxin emissions frequently leads to test runs longer than 1 hour. Whatever the length of the emission test, however, the emission testing procedures included in the EPA test method for measuring dioxin emissions were followed in the emission test reports submitted to EPA following proposal. As discussed earlier, these emission test reports serve as the basis for the dioxin emission limits included in the final regulations and, as a result, the length of testing necessary to determine compliance will automatically be consistent with the length of testing used to determine the emission limits included in the regulations.

The proposed regulations also would have required annual emission testing to determine compliance. While some commenters supported emission testing annually or even more frequently (such as every 6 months), a number of commenters believed that annual testing would be unnecessary or that testing should be required no more than every 5 years. Commenters felt that the requirements for inspections, monitoring, and operator training are sufficient and much less expensive than annual emission testing.

Other commenters suggested that the annual emission testing requirement be replaced with a requirement for annual equipment inspection/maintenance to ensure that burner settings, air flow rates, and other operation parameters are properly adjusted. While the proposal includes a requirement for annual equipment inspection and maintenance, this requirement would have applied only to existing MWI until air pollution control equipment had been installed and the MWI was in compliance with all the emission limits in the regulations. The purpose of the proposed annual equipment inspection and maintenance requirements was to ensure that the MWI was in good working order and physically capable of operating as well as it could operate until compliance with the emission limits was demonstrated. A MWI in poor operating condition will likely have higher emissions than a MWI in good operating condition.

While some commenters stated inspections are not necessary and others suggested that EPA should let the States decide whether inspections are necessary, most commenters were generally supportive of annual inspection and maintenance requirements. Several commenters also stated that biannual inspections would not be unreasonable. Many of the commenters supportive of inspection requirements, however, suggested that the requirement for a ''third party'' inspection be deleted. These commenters stated in-house personnel are more familiar with the details and operating intricacies of the equipment installed at their sites. In addition, serious liability concerns could arise from injury or damage caused by ''third party'' inspection or maintenance. At this point, EPA is inclined to include inspection and maintenance requirements wherever annual stack testing is not required (see document IV-B–26 in the docket for a description of injection/maintenance requirements). The inspection would not have to be conducted by a third party.

The proposal also included various monitoring requirements, requiring the use of continuous emission monitoring systems (CEMS) for some pollutants and the monitoring of operating parameters for other pollutants. Some commenters supported the proposed requirements for CO, opacity, and oxygen (O_2) CEMS. Another commenter suggested that the requirements should be extended to require CEMS for Hg, HCl, and PM; the commenter suggested that such instruments are available. On the other

hand, several other commenters objected to the CEMS requirements in the proposed rule. These commenters stated that CEMS are not justified, especially for small MWI, because they are too expensive. These commenters believe that monitoring operating parameters is a sufficient substitute for CEMS once compliance has been demonstrated by an initial emission test.

The monitoring requirements in the proposal for monitoring operating parameters were structured around the use of dry scrubber systems. Those who commented on these specific requirements generally agreed that monitoring of these operating parameters was appropriate for dry scrubbing systems.

No monitoring requirements were included for monitoring operating parameters for wet scrubbing systems. The EPA solicited information regarding an appropriate set of operating parameters for wet scrubbing systems. The EPA was inclined and is still inclined to include specific operating parameter monitoring requirements in the final regulations for wet scrubbing systems as well as for dry scrubbing systems. To accommodate MWI using an air pollution control system other than a dry or wet scrubbing system, EPA is inclined to include provisions in the final regulations for petitioning the Administrator to monitor specific operating parameters associated with the other air pollution control system.

A number of commenters responded to EPA's request for suggestions of monitoring requirements for operating parameters suitable for wet scrubbing systems. Suggested parameters included pressure drop across the system, liquor flow rate, flue gas temperature, liquor pH, and horsepower or amperage. While EPA is inclined to include the same requirements in the final regulations for monitoring operating parameters for dry scrubbing systems as proposed, EPA is inclined to include requirements in the final regulations for monitoring the following operating parameters for wet scrubbing systems: scrubber exit temperature, scrubber liquor pH, scrubber liquor flow rate, and energy input to the scrubber (e.g., pressure drop or horsepower).

To consider the comments outlined above regarding the frequency of emission testing and the proposed inspection and monitoring requirements, a matrix of options was developed. This matrix of options and their annual costs are summarized in Table 12. Each cell or box in this table represents a combination of emission testing and monitoring requirements (some combinations also include inspection requirements). The range in the costs shown in each cell is a reflection of how the cost of emission testing and monitoring is likely to vary depending on the emission limits included in the final regulation (i.e., whether the emission limits are based on the use of good combustion alone or good combustion *and* wet or dry scrubbing). These costs vary somewhat because the operating parameters monitored in each case would be somewhat different.

TABLE 12.—MONITORING/TESTING OPTIONS AND ANNUAL COSTS

[Thousand $/yr]

Monitoring options	Testing options		
	A Initial and repeat stack testing	B Initial stack testing; inspection	C Substitute stack testing; inspection
1—CO CEMS (App F); Opacity CEM (no App F); Operating Parameters	110–119	100–104	99–102
2—Opacity and CO CEMS (no App F); Operating Parameters	96–104	85–89	83–86
3—Opacity CEMS (no App. F); Operating Parameters	37–46	27–31	26–29
4—Operating Parameters; Quarterly Method 9	10–15	7.5–11	5.8–8.8

Table 12 presents the 12 possible combinations of three emission testing options and four monitoring options that the EPA is considering including in the final regulations. A more detailed explanation of these emission testing and monitoring options, as well as their costs, is available in the docket as item IV–B–54. The following discussion, however, briefly outlines the essential requirements of each of the monitoring and emission testing options.

Monitoring Option 1 requires a CO CEMS with Appendix F requirements (Appendix F requirements ensure the data generated is reliable), an opacity CEMS without Appendix F requirements, and operating parameter monitoring requirements for the MWI and, if applicable, for the air pollution control device. Because the use of Appendix F is required under this option, the CO CEMS would be used for direct enforcement of the CO emission limit. The opacity CEMS without Appendix F requirements would simply provide an indication of opacity and would not be used for direct enforcement of the opacity limit. Routine opacity testing with Reference Method 9 is included in Monitoring Option 1 to compensate for not including Appendix F requirements on the opacity CEMS.

Monitoring Option 2 is the same as Monitoring Option 1, except that it would not include Appendix F requirements for the CO CEMS, which would reduce costs. Without Appendix F requirements, the CO CEMS would provide an indication of CO emissions and would not be used for direct enforcement of the CO emission limit. Emission testing for CO is included in Monitoring Option 2 to compensate for excluding Appendix F requirements on the CO CEMS. An opacity CEMS and operating parameter monitoring would be required as in Monitoring Option 1.

Monitoring Option 3 is the same as Monitoring Option 2, except that, instead of the more expensive CO CEMS, stack emission testing for CO would be required. An opacity CEMS and operating parameter monitoring would be required as in Monitoring Options 1 and 2.

Monitoring Option 4 would require no CEMS. Instead, it would rely on manual emission test methods (including more frequent Method 9 opacity tests) and operating parameter monitoring.

For each of these monitoring options, three emission testing options have been developed. Emission testing Option A would require initial and annual/skip tests. With the annual/skip test requirement, emission tests would be required for the first 3 years. If these tests show that the facility was in compliance each of these 3 years, then subsequent testing would be done every third year. Emission testing Option A,

under all four monitoring options, would require an initial stack test for all pollutants. Annual or skip emission testing under Monitoring Options 1, 2, and 3 would also require emission testing of all pollutants. However, annual or skip emission testing under Monitoring Option 4 would only require emission testing of a few key or critical pollutants (i.e., only those necessary to gain a good indication that the air pollution control system is operating properly).

Emission testing Option B would require an initial emission test for all pollutants, but would not require annual emission tests. In lieu of annual or skip emission testing, MWI inspection/maintenance would be required. This inspection/maintenance would be required annually under Monitoring Options 1 and 2; however, it would be required quarterly under Monitoring Options 3 and 4, where no CO CEMS is required. The inspection/maintenance could be done by in-house personnel. With regard to any necessary repairs arising from the inspection/maintenance, the owner or operator of the MWI would be required to contact the State (or local, if delegated by the State) air pollution control agency and negotiate a date, within 10 operating days following the date of the inspection/maintenance, by which the repairs must be completed.

Emission testing Option C would permit substitute emission testing. A substitute emission test is an emission test conducted on another, but identical MWI. An MWI would be required to petition the State (or local, if delegated by the State) air pollution control agency for approval, however, and the ''burden of proof'' would be on the MWI to demonstrate to the satisfaction of the agency that the substitute emission test is on an identical MWI. In addition, an initial emission test for Hg would be required; this test would ensure that appropriate measures for managing the mercury content of the waste are utilized (e.g., material separation, material purchasing, etc.). Inspection/maintenance requirements would be the same as under Emission Testing Option B.

The most direct means of ensuring compliance with emission limits included in regulations is the use of CEMS. As a matter of policy, the first and foremost option considered by EPA is to require the use of CEMS in regulations to demonstrate and ensure compliance on a continuous basis with the regulations. Only when the impacts of including such requirements are considered unreasonable, does the EPA consider other options.

For MWI, it appears that almost all of the emission testing and monitoring options under consideration cost more than the emission control system that would be installed to meet the emission limits in the regulations; in some cases, the emission testing and monitoring requirements could cost twice as much as the emission control system. Consequently, the Agency is inclined to include the emission testing and monitoring requirements under Monitoring Option 4 in the final regulations to minimize costs. Where the regulations are based on good combustion *and* wet and/or dry scrubbing systems, the EPA is inclined to require Monitoring Option 4 with Emission Testing Option A; where the regulations are based, in part, on the use of good combustion alone, the EPA is inclined to require Monitoring Option 4 with Emission Testing Option B.

The appropriate choice of emission testing and monitoring requirements (as well as inspection/maintenance requirements) is an area in which the EPA specifically solicits comments. Many of the MWI visited or inspected by the EPA in the course of gathering data and information often appeared poorly maintained and operated. Inadequate maintenance and/or operation can cause even the best equipment to perform poorly and result in excess emissions. The inspection/maintenance and operator training requirements included in the final regulations are expected to address this problem in a satisfactory manner; however, the EPA is interested in whether others feel the inspection/maintenance requirements and operator training requirements should be supplemented with more extensive emission testing and/or monitoring requirements.

In addition, CEMS vendors have expressed concern with the costs developed by EPA for the various CEMS and operating parameter monitoring requirements. In particular, they believe the costs of CEMS are much lower than those estimated by EPA. As mentioned, a detailed breakdown of the EPA estimates of the costs of these requirements is available in the docket as item IV–B–54. The EPA solicits comments on these costs and if costs are indeed much lower than estimated, EPA may consider more comprehensive monitoring requirements in the final rule. Finally, even if the costs remain similar to those previously estimated, the EPA is considering more comprehensive emission testing and monitoring requirements (including CEMS) for large MWI that burn medical waste generated offsite (i.e., generated at another location than that of the MWI).

Definition of Medical Waste

Section 129 of the Clean Air Act directs the EPA to adopt regulations for solid waste incineration units that combust (1) municipal waste; (2) hospital, medical, and infectious waste; (3) commercial or industrial waste; and (4) all other solid waste. The regulations limiting air emissions from solid waste incineration units combusting municipal waste (otherwise known as municipal waste combustor(s) or MWC) were promulgated on December 19, 1995 (60 FR 65387). In developing regulations to limit air emissions from solid waste incineration units combusting hospital, medical, and infectious waste (otherwise known as medical waste incinerator(s) or MWI), medical waste was defined as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals.

Section 129(g)(6) states that the term ''medical waste'' shall have the meaning ''established by the Administrator pursuant to the Solid Waste Disposal Act'' (SWDA). For the proposed air emission standards and guidelines for MWI, EPA adopted the definition of ''medical waste'' from solid waste regulations codified in 40 CFR part 259, subpart B because this definition was ''established by the Administrator pursuant to the [SWDA],'' as amended by the Medical Waste Tracking Act (MWTA). However, 40 CFR part 259 has since been withdrawn. Consequently, there is no definition of medical waste which has been ''established by the Administrator pursuant to the [SWDA],'' and EPA now has the flexibility to examine and consider other definitions of medical waste. While EPA is inclined to adopt a specific definition described below, EPA is considering all of the definitions discussed in this section as well as the proposed definition and solicits comment on the merits of each definition discussed as well as other definitions EPA should consider.

During the public comment period, the majority of the comments on the definition of medical waste stated that the proposed definition was too broad and that it should be narrowed. Several commenters stated that this definition would aggravate an already confusing situation, where the public distinction between the terms medical waste and infectious waste has become blurred and in most cases lost; these terms are often used synonymously in public discourse.

These commenters believed that a broad definition of medical waste in the regulations for MWI would have the undesirable impact of fostering and encouraging the use and adoption of this definition in other areas and by other regulatory authorities. They suggested that as this definition becomes more widespread and adopted by others, healthcare facilities would eventually be forced to handle most, if not all, medical waste as infectious waste—whether it was burned in an incinerator or not.

These commenters stated the proposed definition of medical waste, because of the loss of public distinction between this term and the term infectious waste, and the resulting impact of eventually forcing healthcare facilities to treat most waste as infectious waste, would lead to a massive increase in the volume of infectious waste. This increase would, in turn, lead to a major increase in the costs of disposal of waste from hospitals, since most waste would have to be handled as infectious waste.

These commenters stated that, as in implementing the MWTA, healthcare facilities should be viewed as generating two waste streams: a medical waste stream, which is usually defined by the potential for disease transmission and requires special handling; and a noninfectious waste or ''healthcare trash'' waste stream, which has no potential for infection and is treated and handled as municipal waste. These commenters urged EPA to narrow the definition of medical waste used in the MWI regulations to one of infectious waste, analogous to the term ''regulated medical waste'' adopted in regulations resulting from the MWTA.

In most—if not all—cases, these commenters indicated that, where healthcare facilities operate medical waste incinerators, they burn infectious medical waste or a mixture of infectious medical waste and noninfectious waste (i.e., healthcare trash). These commenters stated that there were very few, if any, medical waste incinerators operated by healthcare facilities that burned only noninfectious waste or healthcare trash.

Consequently, by defining medical waste narrowly, in a manner consistent with infectious or regulated medical waste, and by applying the regulations to incinerators that burn this waste or any mixture of this waste and other waste, the EPA could achieve the objective, which is regulating air pollution from medical waste incinerators at healthcare facilities; this objective would be achieved without adding to the confusion or leading to the serious impacts outlined above.

These commenters further stated the proposed definition of medical waste would subject MWC, which burn general nonregulated and noninfectious waste from hospitals, to the same requirements as those proposed for MWI. Consequently, even if healthcare facilities were not eventually forced to handle most waste as infectious waste (because MWC that burn general nonregulated and noninfectious waste from hospitals would be subject to the MWI regulations) this broad definition would result in higher disposal costs for healthcare facilities which send their general nonregulated and noninfectious waste to MWC for disposal.

Some commenters, on the other hand, support the proposed broad definition of medical waste. These commenters pointed out that there is little difference in the air emissions created by burning infectious medical waste (e.g., regulated medical waste or ''red bag'' waste) and by burning noninfectious waste (e.g., nonregulated medical waste or healthcare trash). As a result, the regulations should apply to the burning of all medical waste, as EPA proposed. These commenters believe that EPA's use of the broad definition of medical waste, solely for the purpose of defining what type of incinerator the regulations apply to, does not imply that more waste or that all medical waste will be considered infectious waste. Merely requiring that incinerators that burn medical waste must limit air pollution will not require all healthcare facilities to handle all their medical waste as infectious waste.

In fact, these commenters indicated that many healthcare facilities today routinely separate their waste into two types: infectious waste (''red bag'') and noninfectious waste (''black bag''). Numerous items of waste from healthcare facilities are not, nor need not be considered infectious waste. On the other hand, many healthcare facilities today do little to separate their waste streams; most waste is handled and treated as infectious waste. If waste disposal costs were of paramount concern to healthcare facilities, those that do little separation today could reduce their present waste disposal costs by more carefully segregating their waste into infectious and noninfectious waste streams and properly disposing of these two waste streams.

Finally, several commenters questioned whether animal carcasses and pathological waste should be included in the definition of medical waste. These commenters were uncertain as to whether pathological waste incinerators were to be regulated as MWI or separately. These commenters requested clarification of this situation and urged EPA to regulate pathological wastes separately from medical waste.

Similarly, several commenters questioned whether ''out-of-date'' or ''off-spec'' drugs, or radio-active type medical wastes, should be included in the definition of medical waste. These commenters requested special treatment for these types of wastes, similar to that proposed for pathological wastes.

The EPA did not intend to add or contribute to the confusion that presently exists in the public discourse regarding the distinction or lack of distinction between the terms medical waste, regulated medical waste, and infectious medical waste. In fact, the EPA would like to state very clearly that numerous items within the medical waste stream are noninfectious and need not be treated as infectious. In fact, the majority of items in the medical waste stream are noninfectious, and in terms of percentages, most authorities conclude that only 10 to 15 percent of the items in the medical waste stream are infectious, or potentially infectious, and warrant special treatment or handling.

In considering the public comments, an interesting and unanimous agreement emerges, even if it is not stated as such. All of the commenters seem to agree that healthcare facilities can be viewed as generating two waste streams: an infectious medical waste stream and a noninfectious healthcare trash, or ''municipal waste'' type, waste stream. The challenge for EPA, therefore, is to reconcile the agreement in this area with the requirement of the Clean Air Act to develop regulations for incinerators burning hospital, medical, and infectious waste.

The Clean Air Act requires EPA to develop regulations for the burning of medical waste; but it also requires EPA to develop regulations for the burning of municipal waste. In fact, EPA adopted regulations limiting air pollution from the burning of municipal waste on December 19, 1995 (60 FR 65387). As a result, if healthcare facilities are viewed as generating two types of waste streams, an infectious waste stream and a municipal waste stream, then the burning of the municipal waste stream is already covered by regulations.

The definition of municipal waste included in the regulations covering the burning of municipal waste states:

> Municipal solid waste * * * means household, commercial/retail, and/or institutional waste * * * Commercial/retail waste includes material discarded by stores,

offices, restaurants * * * Institutional waste includes materials discarded by schools, nonmedical waste discarded by hospitals, * * * and material discarded by other similar establishments or facilities.

The regulations cover the burning of municipal waste discarded from offices and institutions. Hospitals are cited as an example of an institution and clinics and nursing homes are considered ''similar establishment(s)''. Offices include doctors' offices, dentists' offices, etc. Consequently, noninfectious, municipal-type waste discarded from healthcare facilities is considered part of the municipal waste stream and is covered by the regulations adopted for the burning of municipal waste.

The remaining need, therefore, is to regulate the burning of the infectious waste stream discarded from healthcare facilities, which can be achieved by redefining medical waste in terms of infectious or potentially infectious materials. Thus, the EPA is inclined to narrow the applicability of the proposed regulations by adopting a definition of medical waste that focuses on that portion of the overall medical waste stream that is generally considered infectious or potentially infectious.

Given the confusion and number of varying definitions of medical waste, regulated medical waste, infectious waste, etc., at the Federal and State level, and within the healthcare community, transportation sector, etc., EPA does not intend to add to this confusion by creating another definition. As a result, EPA is inclined to adopt a definition of medical waste, for the MWI regulations, from among those already in use.

As mentioned, numerous definitions are currently in use, such as the definition of infectious waste created by the U.S. Department of Transportation, the definition of regulated medical waste created by EPA, as well as other definitions created by other regulatory agencies and national associations, such as the Occupational Safety and Health Administration, the New York State Department of Health, the American Hospital Association, etc. While these are just a few of the agencies or associations that have developed definitions of medical waste that are currently in use, they are the ones most often cited or suggested in the public comments. Each of these definitions are slightly different, but all focus on infectious or potentially infectious medical waste. These definitions are discussed in more detail in document number IV–B–25, available in the Docket.

For the most part, infectious or potentially infectious wastes are defined through the use of categories or classes of wastes. The classes of wastes most commonly used include:

1. Cultures and stocks of infectious agents;
2. Human pathological wastes;
3. Human blood and blood products;
4. Used sharps;
5. Animal wastes;
6. Isolation wastes; and
7. Unused sharps.

These seven waste classes are commonly used by various agencies and associations as the basis for defining medical wastes. However, while the classes of wastes included in two different definitions may be identical, the specific items included under each class and the definitions for these items may be very different. Each agency or association has developed different language to define each of these waste classes in a way that best serves their purposes. For example, some definitions include intravenous (IV) bags under class 3 wastes, while others do not.

It appears that adoption of any one of these definitions or any definition at all will be controversial. No uniform or widespread agreement on a definition exists, and for each commenter who argued strongly for adoption of one particular definition, another commenter argued equally strongly for adoption of a different one.

Of all these definitions, EPA is inclined to adopt the New York State Department of Health (NYSDOH) definition, which is one of the more recently developed definitions for use in the MWI air pollution emission regulations. This definition was subjected to intense discussion, consideration, and review within the medical and healthcare community. Because it was adopted fairly recently, this definition also benefits from the various controversies and discussions generated by adoption of earlier definitions by other agencies and associations. Further, this definition seems to be among the more comprehensive ones in terms of identifying and defining the various classes of infectious or potentially infectious medical waste mentioned above.

The NYSDOH definition includes six of the seven waste classes; isolation wastes (class 6) are not listed as a separate category. The definitions used for waste classes 1, 2, 4, and 7 are similar to those used by the MWTA definition. As with the AHA definition, the NYSDOH definition differs from the MWTA definition in the specifics of class 3 wastes. Class 3 waste under the NYSDOH definition does not include items caked with dried blood or IV bags. These wastes are included in the MWTA definition of class 3 waste. The definitions for class 5 waste only includes wastes from animals exposed to infectious agents during research, the production of biologicals, or the testing of pharmaceuticals. Pathological waste from veterinary facilities is excluded from the MWTA definition. The NYSDOH defines class 5 wastes as wastes from animals known to be contaminated with infectious agents or from animals inoculated during research, the production of biologicals, or pharmaceutical testing. Unlike the MWTA definition, the NYSDOH definition seems to include some wastes (from animals contaminated with infectious agents) generated by general veterinary practices. The specifics of this definition are included in item IV–J–078 in the docket).

Also, as stated at proposal, the EPA is inclined to exclude crematories and incinerators used solely for burning pathological waste (human or animal remains and tissues) from the medical waste incinerator regulation. However, MWI that burn animal and pathological waste co-mingled with other classes of medical waste would be subject to the regulation. Because MWI that burn mixtures of medical and pathological (or animal) waste would be covered by the regulation, it is necessary to include a description of pathological and animal waste in the definition of medical waste. Human pathological waste and animal waste are included in the NYSDOH definition of medical waste.

In addition, the EPA is inclined to exclude from the regulation incinerators used solely for burning ''off-spec'' or ''out of date'' drugs or pharmaceuticals, as well as incinerators used solely for burning radio-active type medical wastes. In other words, as several comments suggested, the EPA is inclined to treat these wastes in a manner similar to pathological waste.

While EPA is inclined to exclude these types of wastes from the regulation for MWI, this exclusion does not mean that EPA will not develop regulations which will cover these wastes. The Clean Air Act clearly directs the EPA to develop regulations to cover burning of these wastes. Thus, this inclination to exclude them is only to temporarily defer regulation.

The Clean Air Act directs the EPA to develop regulations for all solid waste incinerators, and burning these wastes will be covered by regulations developed within the next few years. The Clean Air Act also directs the EPA to announce a schedule for development

of these other regulations, and the EPA has announced these regulations will be developed by the year 2000.

I. Pyrolysis Units

Incineration is only one of several medical waste treatment technologies. Other treatment technologies, such as autoclaves, microwaves, and chemical treatment, where there is clearly no combustion occurring, are referred to in this notice as ''alternative technologies'' and are discussed further in Section II.J. These ''alternative technologies'' clearly are not subject to MWI regulations. On the other hand, some medical waste treatment technologies employ plasma or gasification processes (i.e., pyrolysis). Because it appears that at least some combustion is taking place in these devices, EPA considered these pyrolysis technologies covered by the proposed MWI regulations.

Comments from the vendors of pyrolysis technologies indicated they believed they could easily meet the emission limitations included in the proposed MWI standards and guidelines. However, they believed that their processes are unique enough to warrant a separate category for regulation. The vendors were particularly concerned that the proposed compliance and monitoring requirements for MWI do not apply to pyrolysis technologies. The proposal, therefore, requested comment on whether pyrolysis units should be regulated as MWI or as a separate source category.

Numerous comments and suggestions were received following proposal from vendors of pyrolysis treatment technologies. Based on these comments and suggestions, a draft regulation for pyrolysis treatment technologies has been developed and is available in the docket as item IV–B–56. This draft regulatory text is incomplete at this time. It includes placeholders and requests for information where such information is lacking. Comments are requested to help EPA fill in this missing information.

A separate regulation for pyrolysis treatment technologies would look very similar to the MWI regulation in that it would contain definitions, emissions limitations, monitoring and testing requirements to demonstrate compliance, and reporting and recordkeeping requirements. It would differ from the MWI regulations in that some definitions would be different, the emission limitations would, in many cases, be more stringent than the MWI regulations, and the monitoring and testing requirements would reflect the operating parameters that are unique to pyrolysis systems.

The EPA is inclined to adopt separate regulations for pyrolysis treatment technologies. The EPA specifically requests comment on the merits of continued development of separate regulations for pyrolysis systems. These systems appear to be very different than incinerators. Because they are emerging technologies, however, the normal process of determining a MACT floor and MACT for these systems is not possible at this time. In fact, because they appear to be inherently clean technologies, regulation of these systems may not be warranted at this time.

J. Alternative Medical Waste Treatment Technologies

In the proposal, it was estimated that many owners of existing onsite MWI would discontinue use of their existing MWI in favor of less expensive medical waste disposal options to avoid the high cost of add-on air pollution control equipment. In addition, many facilities that would have chosen to purchase a new onsite MWI were estimated to be likely to choose some other method of waste disposal. This phenomenon was labeled as ''switching'' in the proposal, and it has already occurred in a few States that have adopted stringent MWI regulations in the past few years.

Next to onsite incineration, the two most common methods of medical waste disposal are (1) offsite contract disposal, which usually involves larger, commercial incinerators dedicated to medical waste and (2) onsite alternative medical waste treatment technologies, which include steam autoclaving, chemical treatment, and microwave irradiation. Because the MWI regulation may encourage switching and the use of onsite alternatives, the possible impacts of other waste disposal methods were assessed. Although autoclaves, chemical treatment systems, and microwave systems are not covered by the MWI standards and guidelines, commercial medical waste incinerators would be subject to the MWI standards and guidelines.

Following proposal, new data on commercial disposal facilities throughout the U.S. were obtained. Information on the costs of commercial disposal for medical waste generators in both urban and rural locations was obtained. Also, information on the environmental impacts of increased transportation of medical waste was developed. This new information pertaining to commercial disposal was factored into the economic and environmental impacts analyses presented in Sections III and IV of this notice. The remainder of this section will focus on information relating to nonincineration alternative technologies (i.e., autoclaves, chemical treatment, microwave irradiation, etc.).

During the public comment period following proposal, several concerns were raised regarding the availability, effectiveness, costs, and environmental impacts of onsite alternative treatment technologies. Concerns were also raised regarding alternative technology operator safety and State acceptance of alternative technologies. Because of the concerns raised during the public comment period, the Agency has examined the available information on the effects that switching from onsite incineration to alternative technologies could have on medical waste generators and the environment.

Following proposal, a great deal of information on alternative technologies was received. This information was compiled and is presented in document No. IV–B–43. The material presented in document IV–B–43 should not be considered an in-depth study of alternative technologies. Instead, it is a review of the available information. Based on this information, there appears to be no significant or substantial adverse economic, environmental, or health and safety issues associated with the increased use of these nonincineration alternative medical waste treatment technologies.

The most widely used nonincineration alternative technologies are autoclaves, chemical treatment systems, and microwave systems. In autoclaves, the effects of heat from saturated steam and increased pressure are used to decontaminate the medical waste. In chemical treatment systems, an antimicrobial chemical, such as sodium hypochlorite, chlorine dioxide, or peracetic acid, is used to decontaminate the waste. In microwave technologies, medical waste is wetted and heated to decontaminating temperatures with microwave irradiation.

Most alternative technologies are equipped with a shredder or grinder that is used to reduce the volume of the waste by up to 80 percent and render the waste unrecognizable. In some alternative technologies, the waste is compacted, and the waste volume is reduced by 50 percent. With most alternative technologies, the mass of the waste is not reduced due to the entrainment of liquids that are added during treatment.

Because shredding or grinding pathological and animal waste may present aesthetically unacceptable

results, most alternative technologies are not suitable treatment methods for these types of waste. Also, alternative technologies are usually unable to effectively treat chemotherapy, hazardous, or low-level radioactive wastes. The total waste stream at a typical hospital contains less than 3 percent by weight of pathological, animal, chemotherapy, hazardous, and low level radioactive wastes. Facilities using alternative technologies usually package this portion of the waste and send it to a commercial disposal facility.

The efficacy of autoclave, microwave, and other thermal treatment technologies depends primarily on the treatment time and temperature. The efficacy of chemical treatment systems depends on the treatment time and the chemical concentration. The most widely used criteria for determining the efficacy of an alternative technology in decontaminating the waste was developed by the State and Territorial Association of Alternate Treatment Technologies (STAATT). The STAATT criteria recommends, as a safe and satisfactory level of medical waste treatment, the inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, and mycobacteria at a 6 Log_{10} reduction or greater and the inactivation of Bacillus subtilis or Bacillus stearothermophilus at a 4 Log_{10} or greater. Efficacy test reports indicate that autoclave systems, chemical treatment systems, and microwave systems can meet and exceed the STAATT efficacy criteria. Therefore, the most widely used alternative treatment technologies seem to be effective methods of decontaminating medical waste.

In most States, alternative technologies must undergo an approval or permitting process before they can be installed in the State. As long as the technology can demonstrate that it meets the State's efficacy requirements, which are usually similar to, if not the same as, the STAATT criteria, the technology can be installed, unless the State determines that the technology is unacceptable for some other reason. The State approval or permitting process usually takes less than a year. Many alternative technology vendors have gained approval of their systems in a number of States so that less time will be required for review of the technology by State regulatory agencies before the system is installed.

There are some 20 vendors of alternative technologies (i.e. autoclaves, chemical treatment systems, and microwave systems) that have a considerable number of installations. These vendors, when combined, have about 150 years of experience in the medical waste business. Some of these vendors have more than 15 years of experience alone. These vendors are responsible for approximately 975 alternative technology installations, which range in capacity from 12 to 8,000 pounds of medical waste treated per hour. An additional 17 alternative technology vendors were identified with systems that are under development and are expected to appear on the market in the near future.

Alternative technologies seem to be available, and many vendors have been in the medical waste business for many years. With the number of vendors that have alternative technologies under development, the alternatives industry appears to be growing. Alternative technology vendors claim they will be able to meet any increased demand for onsite alternative systems due to switching.

The results from reports on the air emissions from autoclaves show that there are some emissions of volatile organics from autoclaves. However, the test reports also show that the emissions of Pb, Cd, Hg, HCl, and PM from autoclaves are insignificant when compared to emissions of the same pollutants from MWI. No information on dioxin emissions from autoclaves was available. The available data on the air emissions from autoclaves shows that these emissions are more organic than the acid gas and metal emissions from MWI. Furthermore, it appears that on a pound of pollutant per pound of waste basis, far less total emissions are produced from treating medical waste in an autoclave than from burning waste in an MWI.

No data is available on the air emissions from chemical treatment systems and microwave systems. However, some States require chemical treatment systems to obtain air permits. The emissions from microwave systems are likely to be similar to those from an autoclave since lower temperatures are used during microwaving and the only component added is water.

Based on the information received, there does not appear to be any water pollution from the liquid effluents of autoclaves and chemical treatment systems and no liquid effluent from microwave treatment systems. The results of Toxicity Characteristics Leachate Procedure (TCLP) tests conducted on waste treated in an autoclave and a chemical treatment system were far below the regulatory threshold for metals and organics. Since the only component added to waste that is treated in a microwave system is water, the TCLP tests conducted on microwaved waste should produce similar results to those of autoclaved waste.

The annualized price per pound of medical waste treatment with an alternative technology is comparable to the price per pound associated with other methods of medical waste treatment and disposal. For facilities that wish to treat their medical waste onsite with an alternative technology, but do not have the capital to purchase an alternative system, options for leasing or renting an alternative technology are available. According to alternative technology vendors, leasing onsite medical waste treatment technologies is a common practice. Most lease agreements are available either through the alternative vendor directly or through a third party leasing company.

The results from a survey of hospitals that are currently using autoclaves, chemical treatment systems, and microwave systems indicate that these hospitals are pleased with the operation of their alternative medical waste treatment systems. The hospitals indicated that problems with shredder jams are rare and that odors are minimal with the alternative systems. The surveyed hospitals reported that the alternative technologies are cost effective and easy to operate. The hospitals also indicated that the waste treated in their alternative systems is readily accepted at local landfills. Further, the hospitals indicated that they would recommend their alternative technology as a method of medical waste treatment.

The potential hazards associated with medical waste treatment arise primarily from the presence and handling of infectious waste. Therefore, the potential hazards of medical waste treatment are similar for operators of all medical waste treatment technologies, including MWI. Few, if any, additional hazards are associated with alternative technologies that have not already been associated with medical waste incineration.

III. Regulatory Options and Impacts for Existing MWI

As discussed earlier, the MACT ''floor'' defines the least stringent emission guidelines the EPA may adopt for existing MWI. However, as also discussed earlier, the Clean Air Act requires the EPA to examine alternative emission guidelines (i.e., regulatory options) more stringent than the MACT floor. The EPA must consider the cost, environmental, and energy impacts of these regulatory options and select one that reflects the maximum reduction in

emissions that EPA determines is achievable (i.e., MACT).

At proposal, the EPA concluded all existing MWI would need good combustion and dry scrubbers to meet the MACT floors for CO, PM, and HCl. Consequently, EPA was left to consider only two regulatory options for MACT. The first regulatory option reflected the floor (i.e., emission limitations achievable with good combustion and dry scrubbers). The second reflected emission limitations achievable with good combustion and dry scrubbers with activated carbon injection. Based on the cost, environmental, and energy impacts of the second regulatory option relative to the first option, EPA selected the second option as MACT. Consequently, EPA proposed emission guidelines for existing MWI based on the use of good combustion and dry scrubbers with activated carbon injection.

As discussed earlier in this notice, EPA received numerous comments containing substantial new information following proposal. Based on this information, new conclusions concerning the MWI inventory, MWI subcategories, performance of emission control technologies, MACT floors, and monitoring and testing options have been reached. As a result, EPA now believes there are several new regulatory options that merit consideration in selecting MACT for existing MWI. The following sections summarize these new regulatory options and the EPA's initial assessment of their merits.

A. Regulatory Options

As discussed earlier, new MACT floor emission levels were developed for small, medium, and large MWI. To assess the impacts of regulatory options, EPA must first consider what emission control technology(s) existing MWI may need to meet regulations based on these floor emission limits. The floor for small existing MWI appears to require good combustion; add-on wet scrubbing systems would not be necessary to meet the MACT floor. For medium existing MWI, the MACT floor appears to require good combustion and a moderate efficiency wet scrubber. The MACT floor for large existing MWI appears to require good combustion and a high efficiency wet scrubber.

Having identified these control technologies, the EPA is now able to review the performance capabilities of other emission control technologies and identify those that are capable of achieving even greater emission reductions. This review enables EPA to identify regulatory options more stringent than the floor that could be selected as MACT.

For small existing MWI, as mentioned above, good combustion is the emission control technology most MWI would probably need to meet the MACT floor emission levels. Therefore, this technology serves as the basis for the first regulatory option for the MACT emission guidelines for small existing MWI. Based on the performance capabilities of various emission control technologies, however, using low efficiency wet scrubbing systems in addition to good combustion could achieve greater emission reductions. This combination would achieve further emission reductions in PM and dioxins, as well as HCl, Pb, Hg, and Cd. Therefore, these controls used together are a possible option beyond the MACT floor emission levels for small existing MWI.

As discussed earlier in Section II.B., the availability of alternatives for the treatment and disposal of medical waste is generally more limited in rural areas than in urban areas. Therefore, the potential impact of MACT regulations on small existing MWI may be greater in rural than in urban areas. This concern was expressed in many comments EPA received following proposal. As also discussed earlier in Section II.B., section 129 of the Clean Air Act permits EPA to subcategorize the MACT emission guidelines by class, consequently, subcategorizing small existing MWI into rural and urban classes was examined. In terms of the MACT floor emission limits, however, subcategorizing small existing MWI into rural and urban classes made no difference—the MACT floor emission limits are the same. As a result, for purposes of the MACT floor, there is no merit to subcategorizing small existing MWI into rural and urban classes.

Although subcategorizing based on location was rejected for purposes of the MACT floor, it was considered again in identifying regulatory options more stringent than the MACT floor. Thus, the regulatory option of MACT emission guidelines for small existing MWI based on the use of good combustion and low efficiency wet scrubbing systems was subdivided to create two options. The first regulatory option beyond the MACT floor is to base the MACT guidelines for small existing MWI located in rural areas on good combustion only, as required by the MACT floor, but to base MACT guidelines for small existing MWI located in urban areas on good combustion and low efficiency wet scrubbing systems. If this option were selected as the basis for the final MACT emission guidelines, the emission limits for small existing MWI located in rural areas would be different than the emission limits for small existing MWI located in urban areas.

As discussed in Section II.B., location, by itself, is not a valid criterion for subcategorization under the Clean Air Act. In addition, use of location as surrogate measure of the availability of technology may not be a valid criterion for subcategorization either. There may be statutory limitations to this approach. As a result, the previous discussion regarding differences in regulatory requirements based on the location of an MWI may not be allowed under the Clean Air Act, and EPA specifically requests comment on the validity of this approach. As discussed later in Section V., one of the options EPA is considering would reflect good combustion and wet scrubbers on all small existing MWI except where an individual MWI could meet certain ''criteria,'' in which case the individual MWI would be subject to emission limits based on good combustion alone. Consequently, in addition to seeking comment on the validity of identifying urban and rural MWI as separate ''classes,'' EPA also requests comment on other criteria that could be used to make distinctions in regulatory requirements.

A third regulatory option is MACT emission guidelines for small existing MWI located in both rural and urban areas based on good combustion and low efficiency wet scrubbing systems. In other words, no difference in the MACT emission limits between small existing MWI located in rural or urban areas would exist. This third option would achieve greater emission reductions than the second option.

Beyond these three regulatory options (i.e., the MACT floor option and the two options more stringent than the floor), a review of the performance capabilities of various emission control technologies readily identifies a fourth regulatory option for small existing MWI. This regulatory option is to base the MACT emission guidelines for small existing MWI on the use of good combustion and moderate efficiency wet scrubbing systems. This regulatory option would further reduce PM emissions, however, it would not achieve further reductions in emissions of other pollutants. As summarized earlier, moderate and high efficiency wet scrubbing systems do not appear to achieve greater emission reductions of dioxins, acid gases (e.g., HCl), or the metals (i.e., Hg, Pb, or Cd) than low efficiency wet scrubbing systems.

Option 4 could also be subdivided into two options: (1) MACT emission guidelines for small existing MWI in rural areas based on good combustion and low efficiency wet scrubbing systems; and MACT guidelines for small existing MWI in urban areas based on good combustion and moderate efficiency wet scrubbing systems and (2) MACT emission guidelines for small existing MWI in both rural and urban areas based on good combustion and moderate efficiency wet scrubbing systems. However, the cost difference between using a low efficiency wet scrubbing system or a moderate efficiency wet scrubbing system is not as great as that between using a low efficiency wet scrubbing system or not using a wet scrubbing system at all. Consequently, at this point, to limit the number of regulatory options under consideration, the EPA has chosen not to further subdivide this regulatory option.

Reviewing the performance capabilities of emission control technologies identifies a fifth regulatory option for small existing MWI. This option is to base the MACT emission guidelines for small existing MWI on the use of good combustion and high efficiency wet scrubbing systems. This would further reduce PM emissions, but as outlined above, would not further reduce emissions of other air pollutants such as dioxins, acid gases (e.g., HCl), or the metals (i.e., Pb, Hg, Cd).

A sixth regulatory option for small existing MWI also is apparent. This option is to base the MACT emission guidelines for small existing MWI on the use of good combustion and dry scrubbing systems with activated carbon injection. This possibility would further reduce emissions of Pb, Cd, and dioxins, but would not further reduce emissions of other air pollutants. Dry scrubbing systems, however, generally cost about one and a half times what high-efficiency wet scrubbing systems cost to operate annually, and the overall difference in the emissions control performance between the two systems is relatively small. Therefore, at this point, to limit the total number of regulatory options under consideration, the EPA has chosen not to include this sixth regulatory option for small existing MWI.

For medium existing MWI, as discussed earlier, the use of good combustion and moderate efficiency wet scrubbing systems appears to be necessary to meet the MACT floor emission limits. This option, therefore, is the first regulatory option for medium existing MWI. The second regulatory option is to base the emission guidelines on good combustion and high efficiency wet scrubbing systems.

Finally, for large existing MWI, as discussed earlier, the use of good combustion and high efficiency wet scrubbing systems appears to be necessary to meet the MACT floor emission limits. Thus, the EPA is not inclined at this point to consider other regulatory options for large existing MWI.

As mentioned above, a review of the performance capabilities of emission control technologies indicates that dry scrubbing systems can reduce emissions of some pollutants (i.e., Pb, Cd, and dioxins) greater than high-efficiency wet scrubbing systems. Additional regulatory options for both medium and large existing MWI could be structured, therefore, around the use of dry scrubbing systems. However, as also mentioned above, the cost of these systems is much higher than that of high-efficiency wet scrubbing systems and the overall difference in emission control performance is relatively small. For existing MWI already equipped with wet scrubbers, replacing a wet scrubber with a dry scrubber would be exorbitantly expensive. As a result, at this point, the EPA has chosen not to develop additional regulatory options for medium and large existing MWI based on the use of dry scrubbing systems to keep the total number of regulatory options under consideration to a manageable number.

The regulatory options outlined above are compiled in Table 13. This table summarizes the technology basis for the regulatory options for the various MACT emission guidelines the EPA believes merit consideration as MACT for existing MWI. This table is constructed *only* to organize and structure an analysis of the cost, environmental, and energy impacts associated with the various MACT emission guidelines in order to consider these impacts in selecting MACT for existing MWI. In reviewing this table, therefore, there are several important points to keep in mind.

TABLE 13.—LEVEL OF AIR POLLUTION CONTROL ASSOCIATED WITH EACH REGULATORY OPTION FOR EXISTING MWI

MWI size	Regulatory options					
	1	2	3	4	5	6
Small ≤200 lb/hr ...	Good combustion	Good combustion on rural; Good combustion and low efficiency wet scrubber on urban.	Good combustion and low efficiency wet scrubber.	Good combustion and moderate efficiency wet scrubber.	Good combustion and moderate efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.
Medium 201–500 lb/hr.	Good combustion and moderate efficiency wet scrubber.	Good combustion and moderate efficiency wet scrubber.	Good combustion and moderate efficiency wet scubber.	Good combustion and moderate efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.
Large 500 lb/hr	Good combustion and high efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.	Good combustion and high efficiency wet scubber.	Good combustion and high efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.

First, the MACT emission guidelines for existing MWI will *not* include requirements to use a specific emission control system or technology; the MACT emission guidelines will only include emission limits, which may be met by any means or by using any control system or technology the owner or operator of the MWI decides to use to meet these emission limits. Second, to the extent possible (i.e., within the constraints imposed by Section 129 of the Clean Air Act), the EPA plans to adopt emission limits in the MACT emission guidelines that can be met through the use of several emission control systems or technologies. Consequently, where not constrained by

the Clean Air Act, the actual emission limits associated with some of the regulatory options shown in Table 13 have been selected at a level designed to encourage or permit the use of both wet and dry scrubbing control systems, as outlined below.

The emission limits associated with each of the regulatory options for small, medium, and large existing MWI are presented in Table 14.

TABLE 14.—EMISSION LIMITATIONS ASSOCIATED WITH EACH REGULATORY OPTION FOR SMALL, MEDIUM, AND LARGE EXISTING MWI

Pollutant, units	Regulatory options	Small MWI's	Medium MWI's	Large MWI's					
	1	2 (rural)	2 (urban)	3	4 and 5	6	1–4	5 and 6	1–6
PM, gr/dscf	0.086	0.086	0.05	0.05	0.03	0.015	0.03	0.015	0.015.
CO, ppmdv	40	40	40	40	40	40	40	40	40.
CDD/CDF, ng/dscm.	800	800	125	125	125	125	125	125	125.
TEQ CDD/CDF, ng/dscm.	15	15	2.3	2.3	2.3	2.3	2.3	2.3	2.3.
HCl, ppmdv	3,100	3,100	100 or 93%.	100 or 93%.	100 or 93%.	100 or 93%.	100 or 93%.	100 or 93%.	100 or 93%.
SO_2, ppmdv	55	55	55	55	55	55	55	55	55.
NO_x, ppmdv	250	250	250	250	250	250	250	250	250.
Pb, mg/dscm	10	10	1.2 or 70%	1.2 or 70%	1.2 or 70%	1.2 or 70%	1.2 or 70%	1.2 or 70%	1.2 or 70%.
Cd, mg/dscm	4	4	0.16 or 65%.	0.16 or 65%.	0.16 or 65%.	0.16 or 65%.	0.16 or 65%.	0.16 or 65%.	0.16 or 65%.
HG, mg/dscm	7.5	7.5	0.55 or 85%.	0.55 or 85%.	0.55 or 85%.	0.55 or 85%.	0.55 or 85%.	0.55 or 85%.	0.55 or 85%.

Regulatory Option 1 in Table 14 reflects the performance of the emission control system or technology needed to meet the MACT floor. For small existing MWI, Regulatory Option 1 reflects emission limits based on good combustion. For medium existing MWI, Regulatory Option 1 reflects emission limits based on good combustion and moderate efficiency wet scrubbers, except for HCl (discussed below). For large existing MWI, Regulatory Option 1 reflects emission limits based on good combustion and high efficiency wet scrubbers, except for HCl (discussed below).

Dry scrubbers with activated carbon injection can achieve the emission limits associated with moderate or high efficiency wet scrubbers, with the exception of HCl. While dry scrubbers cannot reduce HCl emissions to the same levels as wet scrubbers, dry scrubbers can achieve the MACT floor emission level for HCl. Consequently, Regulatory Option 1 reflects the HCl emission limit achievable with a dry scrubber for both medium and large existing MWI. Both technologies (wet or dry scrubber) are capable of achieving the emission limits shown for Regulatory Option 1.

Regulatory Option 2 is the same as Regulatory Option 1 for medium and large existing MWI. Small existing MWI located in urban areas would be required to meet emission limits associated with good combustion and low efficiency wet scrubbers. Small existing MWI located in rural areas would remain subject to the same emission limits as Regulatory Option 1 (based on good combustion). Regulatory Option 3 would establish emission limits for all small existing MWI (urban and rural) based on good combustion and low efficiency wet scrubbers. Regulatory Option 4 would establish emission limits for all small existing MWI based on good combustion and moderate efficiency wet scrubbers. Requirements for medium and large existing MWI would remain the same under Regulatory Options 1, 2, 3, and 4. As discussed above, HCl emission limits in all cases would allow the use of dry scrubbers.

Regulatory Option 5 would establish emission limits for small existing MWI based on good combustion and moderate efficiency wet scrubbers; medium existing MWI based on good combustion and high efficiency wet scrubbers; and large existing MWI based on good combustion and high efficiency wet scrubbers. The sixth and final regulatory option would require all existing MWI to meet emission limitations associated with good combustion and high efficiency wet scrubbers. As discussed above, the HCl emission limit under Regulatory Options 5 and 6 would allow the use of dry scrubbing systems.

B. National Environmental and Cost Impacts

This section presents a summary of the air, water, solid waste, energy, and cost impacts of the six regulatory options described above for existing MWI. Economic impacts are discussed in Section III.C. All impacts are nationwide impacts resulting from the implementation of the emission guidelines on existing MWI.

1. Analytical Approach

As discussed at proposal and within this notice, healthcare facilities may choose from among a number of alternatives for treatment and disposal of their medical wastes; however, these alternatives are generally more limited for healthcare facilities located in rural areas than for those in urban areas. In fact, as stated at proposal, most estimates are that less than half of hospitals today currently operate onsite medical waste incinerators. The clear trend over the past several years has been for more and more hospitals to turn to the use of alternative onsite medical waste treatment technologies or commercial offsite treatment and disposal services. Consequently, even fewer hospitals are now likely to operate onsite medical waste incinerators.

More than half of existing hospitals today, therefore, have chosen to use other means of treatment and disposal of their medical waste than operation of an onsite incinerator. This is a clear

indication that alternatives to the use of onsite incinerators exist and that they are readily available in many cases. (Although as mentioned above, these alternatives—particularly the availability and competitive cost of offsite commercial treatment and disposal services—tend to be more limited in rural areas than in urban areas). For other healthcare facilities, such as nursing homes, outpatient clinics, doctors and dentists offices, etc., only very few facilities currently operate onsite medical waste incinerators. Therefore, for these types of healthcare facilities, the percentage of such facilities using alternative means of treatment and disposal of medical waste—particularly commercial treatment and disposal services—is much higher, probably higher than 95 percent. This high percentage is further confirmation of the availability of alternatives to onsite incinerators for the treatment and disposal of medical waste.

A very likely reaction and outcome associated with the adoption of MACT emission guidelines for existing MWI, therefore, is an increase in the use of these alternatives by healthcare facilities for treatment and disposal of medical waste. The EPA's objective is not to encourage the use of alternatives or to discourage the continued use of onsite medical waste incinerators; the EPA's objective is to adopt MACT emission guidelines for existing MWI that fulfill the requirements of Section 129 of the Clean Air Act. In doing so, however, one outcome associated with adoption of these MACT emission guidelines is likely to be an increase in the use of alternatives and a decrease in the continued use of onsite medical waste incinerators. Consequently, EPA should acknowledge and incorporate this outcome into the analyses of the cost, environmental, and energy impacts associated with the MACT emission guidelines.

In these analyses of the cost, environmental, and energy impacts, the selection of an alternative form of medical waste treatment and disposal by a healthcare facility, rather than the operation of an onsite medical waste incinerator and purchase the emission control technology necessary to meet the MACT emission limits, is referred to as ''switching''. Switching was incorporated in the analyses at proposal and was the basis for the conclusion at proposal that adoption of the proposed MACT emission guidelines could lead to as many as 80 percent of healthcare facilities with MWI to choose an alternative means of medical waste treatment and disposal over continued operation of their MWI. Although switching was not EPA's objective, it was a potential outcome of the regulations that EPA believed should be acknowledged, considered, and discussed at proposal.

Switching has also been incorporated into the new analyses of the cost, environmental, and energy impacts associated with the six new regulatory options. The new analyses, however, incorporate three scenarios; one scenario that ignores switching and two scenarios that consider switching. Scenario A assumes that each existing MWI remains in operation and complies with the appropriate regulatory option (i.e., no switching). This scenario results in the highest costs because it assumes no existing MWI will switch to a less expensive waste disposal method. This scenario is clearly unrealistic and grossly overstates the national costs associated with MACT emission guidelines. It should *not* be viewed as representative or even close to representative of the impacts associated with the MACT emission guidelines. This scenario is so misleading that the EPA considered not including it in the analysis; some may take it out of context and use it as representative, when it is in no way representative of the impacts of the MACT emission guidelines. The EPA finally decided to include this scenario in the analysis only because some may ask ''what if * * *?'' and the EPA wanted to be in a position to answer such questions.

Switching Scenarios B and C are much more realistic and more representative of the cost, environmental, and energy impacts associated with the MACT emission guidelines for existing MWI. Only these scenarios merit serious review and consideration in gauging the potential impacts associated with the MACT emission guidelines. Both Scenarios B and C assume switching occurs when the cost associated with purchasing and installing the air pollution control technology or system necessary to comply with the MACT emission guideline (i.e., a regulatory option) is greater than the cost of choosing an alternative means of treatment and disposal.

The difference in Scenarios B and C is the assumption of how much separation of the medical waste stream into an infectious medical waste stream and a noninfectious medical waste stream currently occurs at healthcare facilities that today operate a medical waste incinerator. Some have stated that, for the most part, hospitals that are currently operating onsite medical waste incinerators practice little separation of medical waste into infectious and noninfectious waste; generally all the waste at the facility is incinerated.

Based on estimates in the literature that only 10 to 15 percent of medical waste is potentially infectious and the remaining 85 to 90 percent is noninfectious, Scenario B assumes that only 15 percent of the waste currently being burned at a healthcare facility operating an onsite medical waste incinerator is potentially infectious medical waste. The 85 percent noninfectious waste is municipal waste that needs no special handling, treatment, transportation, or disposal. It can be sent to a municipal landfill or municipal combustor for disposal. Thus, under Scenario B, when choosing an alternative to continued operation of an onsite medical waste incinerator, in response to adoption of MACT emission guidelines, a healthcare facility need only choose an alternative form of medical waste treatment and disposal for 15 percent of the waste stream currently burned onsite and may send the remaining 85 percent to a municipal landfill. In other words, if a hospital is burning 100 pounds of waste, Scenario B assumes 85 pounds are noninfectious and 15 pounds are potentially infectious. This scenario results in the lowest costs because 85 percent of the waste is disposed at the relatively inexpensive cost of municipal waste disposal.

On the other hand, it is unlikely that all healthcare facilities that currently operate an MWI will be able to or will decide to segregate the waste stream currently being burned in their incinerator. If a hospital is already separating medical waste into infectious and noninfectious waste streams, for example, this hospital would be unable to separate the waste stream any further. In other words, if a hospital is burning 100 pounds of waste, Scenario C assumes all 100 pounds are potentially infectious. Scenario C, therefore, assumes that all medical waste being burned at a healthcare facility currently operating a medical waste incinerator is potentially infectious medical waste and must be treated and disposed of accordingly. As a result, Scenario C leads to higher costs than Scenario B.

For the purposes of determining impacts of the emission guidelines under switching Scenarios B and C, the MWI inventory was separated into commercial (offsite) incinerators and onsite incinerators used to burn healthcare waste. The commercial incinerators were not subjected to the switching analyses under Scenarios B and C because switching to an

alternative method of waste disposal (e.g., commercial disposal) is not feasible for commercial facilities. An assumption was made that commercial facilities would add on the control associated with the emission guidelines. Only the onsite MWI in the inventory were subject to the switching analyses under Scenarios B and C.

Scenarios B and C represent the likely range of impacts associated with the MACT emission guidelines for existing MWI. The actual impacts of a MACT emission guideline (i.e., a regulatory option) is most likely to fall somewhere within the range represented by Scenarios B and C.

2. Air Impacts

As outlined above, the impacts associated with six MACT emission guidelines or regulatory options, under three scenarios reflecting switching, have been assessed. Baseline emissions (i.e., emissions today in the absence of adoption of the MACT emission guidelines) and emissions under each MACT emission guideline or regulatory option are summarized in Tables 15, 16, and 17. Emissions under Scenario A (no switching) are summarized in Table 15; emissions under Scenario B (switching with waste separation) are summarized in Table 16; and emissions under Scenario C (switching without waste separation) are summarized in Table 17.

TABLE 15.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES

[Scenario A]
[Metric Units]

Pollutant, units	Baseline	Regulatory options					
		1	2	3	4	5	6
PM, Mg/yr	940	190	160	140	120	110	100
CO, Mg/yr	460	120	120	120	120	120	120
CDD/CDF, g/yr	7,200	420	360	300	300	300	300
TEQ CDD/CDF, g/yr	150	9.4	8.2	7.1	7.1	7.1	7.1
HCl, Mg/yr	5,700	880	490	86	86	86	86
SO_2 Mg/yr	250	250	250	250	250	250	250
NO_X, Mg/yr	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Pb, Mg/yr	11	3.3	2.7	2.1	2.1	2.1	2.1
Cd, Mg/yr	1.2	0.42	0.36	0.29	0.29	0.29	0.29
Hg, Mg/yr	15	1.4	1.2	1.1	1.1	1.1	1.1

To convert Mg/yr to ton/yr, multiply by 1.1. To convert g/yr to lb/yr, divide by 453.6

TABLE 16.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES

[Scenario B]
[Metric Units]

Pollutant, units	Baseline	Regulatory options					
		1	2	3	4	5	6
PM, Mg/yr	940	91	78	67	67	65	65
CO, Mg/yr	460	83	83	82	82	81	81
CDD/CDF, g/yr	7,200	240	220	210	210	200	200
TEQ CDD/CDF, g/yr	150	5.5	5.1	4.8	4.8	4.7	4.7
HCl, Mg/yr	5,700	310	180	77	77	77	77
SO_2, Mg/yr	250	180	170	170	170	170	170
NO_X, Mg/yr	1,200	830	820	810	810	810	810
Pb, Mg/yr	11	1.7	1.5	1.3	1.3	1.3	1.3
Cd, Mg/yr	1.2	0.23	0.20	0.18	0.18	0.18	0.18
Hg, Mg/yr	15	0.87	0.81	0.76	0.76	0.75	0.75

To convert Mg/yr to ton/yr, multiply by 1.1. To convert g/yr to lb/yr, divide by 453.6

TABLE 17.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES

[Scenario C]
[Metric Units]

Pollutant, units	Baseline	Regulatory options					
		1	2	3	4	5	6
PM, Mg/yr	940	170	140	110	110	100	100
CO, Mg/yr	460	120	120	120	120	120	120
CDD/CDF, g/yr	7,200	400	350	300	300	300	300
TEQ CDD/CDF, g/yr	150	9.0	8.0	7.1	7.1	7.1	7.1
HCl, Mg/yr	5,700	740	410	86	86	86	86
SO_2, Mg/yr	250	250	250	250	250	250	250
NO_X, Mg/yr	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Pb, Mg/yr	11	3.1	2.6	2.1	2.1	2.1	2.1
Cd, Mg/yr	1.2	0.40	0.34	0.29	0.29	0.29	0.29
Hg, Mg/yr	15	1.3	1.2	1.1	1.1	1.1	1.1

To convert Mg/yr to ton/yr, multiply by 1.1. To convert g/yr to lb/yr, divide by 453.6.

As discussed in previous sections, new information has led to new conclusions about the MWI inventory, performance of technology, and control levels associated with each existing MWI. As a result, revised estimates of annual baseline emissions and emissions under each regulatory option are significantly lower than estimates developed at proposal. There are two primary reasons for the lower emission estimates. First, existing MWI are equipped with better emission control than was assumed at proposal. Second, many more MWI were assumed to exist at proposal than in the current inventory.

3. Water and Solid Waste Impacts

Estimates of wastewater impacts were developed for only Regulatory Option 6, Scenario A, which reflects all existing MWI equipped with wet scrubbers in the absence of switching. Assessing these impacts under Scenario A without any consideration of the effect of switching grossly overstates the magnitude of these impacts. Under Scenarios B and C more than half of the existing MWI are expected to switch, resulting in significantly lower impacts. This approach of estimating and summarizing impacts under Scenario A, at this point, was taken as a matter of expediency to share new information and provide an opportunity for public comment.

Under Scenario A and Regulatory Option 6, 198 million gallons of additional wastewater would be generated annually by existing MWI as a result of the MACT emission guideline. This amount is the equivalent of wastewater produced annually by four large hospitals. Therefore, when considering the wastewater produced annually at healthcare facilities nationwide, the increase in wastewater resulting from the implementation of the MACT emission guidelines for existing MWI is insignificant.

With regard to solid waste impacts, about 767 million Mg (846 million tons) of medical waste are burned annually in existing MWI producing about 76,700 Mg/yr (84,600 tons/yr) of solid waste (bottom ash) disposed of in landfills. To estimate the solid waste impacts for the MACT emission guidelines, impacts were developed only for Regulatory Option 6, Scenario B. This option is associated with the most switching and the most separation of waste for disposal in municipal landfills and, thus, produces the greatest estimated impact.

Under Regulatory Option 6, Scenario B, 210,000 Mg/yr (231,000 tons/yr) of additional solid waste would result from the adoption of the MACT emission guideline. Compared to municipal waste, which is disposed in landfills at an annual rate of over 91 million Mg/yr (100 million tons/yr), this increase from the implementation of the MACT emission guideline for existing MWI is insignificant.

4. Energy Impacts

The emission control technologies used by existing MWI to comply with the MACT emission limits consume energy. Estimates of energy impact were developed for Regulatory Option 6, Scenario A. Under Scenarios B and C, which include switching, it is not clear whether overall national energy consumption would increase, decrease, or remain the same. Alternatives to incineration require energy to operate, however, information is not available to estimate whether these alternatives use more or less energy than MWI.

The energy impacts associated with the MACT emission guidelines could include additional auxiliary fuel (natural gas) for combustion controls and additional electrical energy for operation of the add-on control devices, such as wet scrubbers and dry scrubbers. Regulatory Option 6, Scenario A, could increase total national usage of natural gas for combustion controls by about 16.6 million cubic meters per year (MMm^3/yr) (586 million cubic feet per year [10^6 ft^3/yr]). Total national usage of electrical energy for the operation of add-on control devices could increase by about 259,000 megawatt hours per year (MW-hr/yr) (883 billion British thermal units per year [10^9 Btu/yr]). Once again, compared to the amount of energy used by healthcare facilities such as hospitals (approximately 2,460 MMm^3/yr of natural gas and 23.2 million MW-hr/yr of electricity) the increase in energy usage that results from implementation of the MACT emission guideline for existing MWI is insignificant.

5. Cost Impacts

The cost impacts on individual healthcare facilities that currently operate an MWI vary depending on the MACT emission guideline or regulatory option; the actual cost to purchase and install any additional air pollution control equipment; the cost of alternative means of treatment and disposal where they are located; and other factors, such as liability issues related to disposal and State and local medical waste treatment and disposal requirements. In general, facilities with smaller MWI will have a greater incentive to use alternative means of treatment and disposal because their onsite incineration cost (per pound of waste burned) will be higher.

Large healthcare facilities with larger amounts of waste to be treated or healthcare facilities that serve as regional treatment centers for waste generated at other healthcare facilities in the area may have some cost advantages compared to smaller facilities. Due to economies of scale, their cost of burning waste may be lower (i.e., dollars per pound burned), and they may have already installed some air pollution control equipment. These facilities may only have to upgrade this equipment to comply with the MACT emission guideline rather than purchase and install a complete air pollution control system.

Table 18 contains the estimated increase in national annual costs associated with each of the MACT emission guidelines or regulatory options under Scenario A (no switching), Scenario B (switching with separation of waste), and Scenario C (switching with no separation of waste). As discussed earlier, Scenario A is unrealistic and grossly overstates the national cost impacts. The costs associated with the MACT emission guidelines under Scenarios B and C represent the likely range of national cost impacts, and only these costs merit serious consideration and review.

TABLE 18.—COSTS OF THE REGULATORY OPTIONS OF THE EMISSION GUIDELINES [SCENARIOS A, B, AND C]

[Million $year]

Scenario	Regulatory options					
	1	2	3	4	5	6
A	120	145	173	181	190	201
B	57.0	57.1	57.4	57.4	57.7	57.7
C	108	113	118	119	122	123

The nationwide annual costs presented in Table 18, excluding Scenario A, range from $57 million/yr for Regulatory Option 1 and Scenario B to $123 million/yr for Regulatory Option 6 and Scenario C. These nationwide annual costs are significantly lower than the $351 million/yr estimated for the proposed emission guidelines. The primary reason for the difference in the proposed and the current nationwide annual cost estimates is the greater level of emissions control found at existing MWI than was assumed at proposal. The costs of upgrading from the current level of control now known to be on existing MWI are far less than the costs of upgrading from the mere ¼ sec combustion controls assumed to be on most MWI at proposal. Also, the annual cost of the MACT emission levels discussed in this notice is significantly less than the proposed MACT emission level (DI/FF with activated carbon). Another reason for the difference is that the number of MWI assumed to exist at proposal was much greater than the number of MWI in the current inventory. For example, the cost estimates at proposal were based on an estimated 3,700 MWI; currently, there are approximately 2,400 MWI in the inventory.

C. Economic Impacts

Section III.B.1 described assumptions pertaining to three analysis scenarios: no switching, switching with waste segregation, and switching with no waste segregation. Section III.B.5 presented annual cost estimates that have been developed for each of the six regulatory options. This section incorporates these assumptions and cost data to estimate potential economic impacts that might result from implementation of these regulatory options.

The goal of the economic impact analysis is to estimate the market response of affected industries to the emission guidelines and to identify any adverse impacts that may occur as a result of the regulation. Industries that operate onsite waste incinerators (hospitals, nursing homes, research labs, and commercial waste incinerators) and those that utilize offsite medical waste incinerators (hospitals, nursing homes, medical/dental laboratories, funeral homes, physicians' offices, dentist offices, outpatient care, freestanding blood banks, fire and rescue operations, and correctional facilities) will potentially be affected by the regulation. Industrywide impacts, including changes in market price, output or production, revenues, and employment for the affected industries are estimated for each regulatory option assuming the three switching scenarios. Facility-specific impacts are estimated for hospitals of varying sizes, ownerships, and operating characteristics; nursing homes; commercial research labs; and commercial waste incineration based on engineering model plant cost estimates under each of the three switching scenarios.

1. Analytical Approach

The analytical approach to estimate industrywide and facility specific economic impacts and evaluate the economic feasibility of switching are briefly described. For a more detailed description refer to docket item IV–A–8. Prices are stated at 1993 levels.

The average price changes anticipated to occur in each industry sector for each of the regulatory options are estimated by comparing the annual control cost estimates to annual revenues for each affected industry. This calculation provides an indication of the magnitude of a price change that would occur for each industry sector to fully recover its annual control costs. The resulting cost-to-revenue ratio represents the price increase necessary on average for firms in the industry to recover the increased cost of environmental controls. Percent changes in output or production are estimated using the price impact estimate and a high and low estimate of the price elasticity of demand. Resulting changes in revenues are estimated based upon the estimated changes in price and output for an industry. Employment or labor market impacts result from decreases in the output for an industry and are assumed to be proportional to the estimated decrease in output for each industry.

Facility-specific economic impacts are estimated by using model plant information under the three switching scenarios. The assumption of no switching (Scenario A) represents the highest cost and economic impact scenario for most affected industries, while the assumption of switching with waste segregation (Scenario B) represents the lowest cost and economic impact scenario for most of the affected industries. As previously stated, EPA considers Scenario A to be an unlikely scenario; therefore, the economic impacts presented under Scenarios B and C should be regarded as the impacts most likely to occur.

2. Industry-Wide Economic Impacts

Industry-wide impacts include estimates of the change in market price for the services provided by the affected industries, the change in market output or production, the change in industry revenue, and the impact on affected labor markets in terms of full time equivalent workers lost. These impacts are summarized in Tables 19 and 20.

TABLE 19.—MEDICAL WASTE INCINERATION INDUSTRY-WIDE PRICE IMPACTS—EXISTING SOURCES PERCENT INCREASE [a]

[In percent]

Industry	Range for regulatory options 1–6		
	Scenario A No switching	Scenario B Switching with waste segregation	Scenario C Switching with no waste segregation
Hospitals	0.03–0.05	0.01	0.02–0.03
Nursing homes	0.03–0.04	0.01	0.02–0.03
Laboratories:			
Research	0.08–0.13	0.04	0.07–0.08
Medical/dental	0	0	0
Funeral homes	0	0	0
Physicians' offices	0	0	0
Dentists' offices and clinics	0	0	0
Outpatient care	0	0	0
Freestanding blood banks	0	0	0
Fire and rescue operations	0	0	0
Correctional facilities	0	0	0

TABLE 19.—MEDICAL WASTE INCINERATION INDUSTRY-WIDE PRICE IMPACTS—EXISTING SOURCES PERCENT INCREASE [a]—Continued

[In percent]

Industry	Range for regulatory options 1–6		
	Scenario A No switching	Scenario B Switching with waste segregation	Scenario C Switching with no waste segregation
Commercial incineration	2.6	2.6	2.6

[a] The price increase percentages reported represent the price increase necessary to recover annualized emission control costs for each industry.

TABLE 20.—MEDICAL WASTE INCINERATION INDUSTRY-WIDE OUTPUT, EMPLOYMENT AND REVENUE IMPACTS—EXISTING SOURCES

Industry	Range for regulatory options 1–6		
	Scenario A No switching	Scenario B Switching with waste segregation	Scenario C Switching with no waste segregation
Hospitals:			
Output decrease (%)	0–0.02	0	0–0.01
Employment decrease (FTE's)	0–647	0–174	0–388
Revenue increase or (decrease) (%)	0.02–0.05	0.01	0.02–0.03
Nursing homes:			
Output decrease (%)	0.01–0.03	0–0.01	0.01–0.02
Employment decrease (FTE's)	139–484	63–130	126–290
Revenue increase or (decrease) (%)	0.01–0.03	0–0.01	0.01–0.02
Laboratories:			
Research:			
Output decrease (%)	0.08–0.18	0.04–0.05	0.07–0.11
Employment decrease (FTE's)	124–281	56–76	112–169
Revenue increase or (decrease) (%)	(0.04)–0	(0.01)–0	(0.03)–0
Medical/dental:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	2–3	2–3	2–3
Revenue increase or (decrease) (%)	0	0	0
Funeral homes:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0
Physicians' offices:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0–1	0–1	0–1
Revenue increase or (decrease) (%)	0	0	0
Dentists' offices and clinics:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	1	1	1
Revenue increase or (decrease) (%)	0	0	0
Outpatient care:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0–1	0–1	0–1
Revenue increase or (decrease) (%)	0	0	0
Freestanding blood banks:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0
Fire and rescue operations:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0
Correctional facilities:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0

Output decreases and full time equivalents (FTE's) employment losses as a result of the regulation are shown in this table. Revenue increases and decreases are presented with decreases noted in brackets.

As shown in Table 19, industries that generate medical waste (i.e., hospitals, nursing homes, etc.) are expected to experience average price increases in the range of 0.00 to 0.13 percent, depending on the industry, regulatory option, and scenario. Table 20 shows that these industries are expected to experience output and employment impacts in the range of 0.00 to 0.18 percent. In addition, the revenue impacts for these industries are expected to range from an increase of 0.05 percent to a decrease of 0.04 percent. An increase in industry revenue is expected in cases where the price elasticity of demand for an industry's product is less than one. A price elasticity of less than one indicates that the percentage decrease in output will be less than the percentage increase in price. Since total revenue is a product of price and output, a less than proportional change in output compared to price means that total revenue should increase.

The following example illustrates how the above price impacts could be interpreted for the hospital industry. Table 19 shows that for hospitals, 0.03 percent is estimated as the price increase necessary to recover annual control costs assuming Regulatory Option 6, the most stringent regulatory option, and Scenario C, switching with no waste segregation. This change in price can be expressed in terms of the increased cost of hospitalization due to the regulation. The 1993 estimate of adjusted patient days nationwide totals 304,500,000 days. This estimate of adjusted patient-days is based on a combined estimate of in-patient and out-patient days at hospitals. Calculating the ratio of annual control cost ($86,167,082) to the number of adjusted patient days provides an estimate of $0.28/day. Therefore, the average price increase that an individual would experience for each hospital patient-day is expected to equal 28 cents.

Table 19 also shows that the average price impact for the commercial medical waste incinerator industry is approximately a 2.6 percent increase in price. Cost and economic impact estimates are the same for the commercial MWI industry regardless of the regulatory option analyzed because all six regulatory options specify identical regulatory requirements for large MWI. Average industrywide output, employment, and revenue impacts were not estimated for this sector because data such as price elasticity estimates and employment levels were not available.

3. Facility-Specific Economic Impacts

Facility-specific impacts were also estimated for the affected industries. These estimates, presented in Tables 21 and 22, were calculated for the three switching scenarios. A cost as a percent of revenue ratio was calculated to provide an indication of the magnitude of the impact of the regulation on an uncontrolled facility in each industry sector. This calculation was then compared to the industrywide price impact to determine if the facility's impacts differ significantly from the average industrywide impacts (i.e., if there is greater than a 1 percent difference).

TABLE 21.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING NO SWITCHING AND ONSITE INCINERATION—EXISTING SOURCES ANNUALIZED CONTROL COST AS A PERCENT OF REVENUE/BUDGET

[In percent]

Industry	Scenario A—No switching					
	Option					
	1	2	3	4	5	6
Hospitals—Short-term, excluding psychiatric:						
Federal Government:						
Small:						
Urban	0.09	0.37	0.37	0.41	0.41	0.46
Rural	0.09	0.09	0.37	0.41	0.41	0.46
Medium	0.20	0.20	0.20	0.20	0.22	0.22
Large	0.13	0.13	0.13	0.13	0.13	0.13
State Government:						
Small:						
Urban	0.20	0.80	0.80	0.87	0.87	0.99
Rural	0.20	0.20	0.80	0.87	0.87	0.99
Medium	0.21	0.21	0.21	0.21	0.23	0.23
Large	0.07	0.07	0.07	0.07	0.07	0.07
Local Government:						
Small:						
Urban	0.31	1.24	1.24	1.36	1.36	1.53
Rural	0.31	0.31	1.24	1.36	1.36	1.53
Medium	0.32	0.32	0.32	0.32	0.36	0.36
Large	0.10	0.10	0.10	0.10	0.10	0.10
Not-for-profit:						
Small:						
Urban	0.21	0.84	0.84	0.92	0.92	1.04
Rural	0.21	0.21	0.84	0.92	0.92	1.04
Medium	0.23	0.23	0.23	0.23	0.26	0.26
Large	0.11	0.11	0.11	0.11	0.11	0.11
For-profit:						
Small:						
Urban	0.23	0.95	0.95	1.04	1.04	1.18
Rural	0.23	0.23	0.95	1.04	1.04	1.18
Medium	0.25	0.25	0.25	0.25	0.25	0.28
Large	0.14	0.14	0.14	0.14	0.14	0.14

TABLE 21.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING NO SWITCHING AND ONSITE INCINERATION—EXISTING SOURCES ANNUALIZED CONTROL COST AS A PERCENT OF REVENUE/BUDGET—Continued

[In percent]

Industry	Scenario A—No switching					
	Option					
	1	2	3	4	5	6
Hospitals—Psychiatric, short-term and long-term:						
Small:						
Urban	0.32	1.30	1.30	1.43	1.43	1.62
Rural	0.32	0.31	1.30	1.43	1.43	1.62
Medium	0.57	0.57	0.57	0.57	0.64	0.64
Large	0.46	0.46	0.46	0.46	0.46	0.46
Nursing homes:						
Tax-paying:						
Urban	0.35	1.41	1.41	1.55	1.55	1.75
Rural	0.35	0.35	1.41	1.55	1.55	1.75
Tax-exempt:						
Urban	0.36	1.45	1.45	1.59	1.59	1.79
Rural	0.36	0.36	1.45	1.59	1.59	1.79
Commercial research labs:						
Tax-paying	0.40	0.40	0.40	0.40	0.46	0.46
Tax-exempt	0.40	0.40	0.40	0.40	0.46	0.46
Commercial incineration facilities	8.02	8.02	8.02	8.02	8.02	8.02

TABLE 22.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING SWITCHING FROM ONSITE INCINERATION TO COMMERCIAL DISPOSAL ALTERNATIVES—ALTERNATIVE WASTE DISPOSAL COST AS A PERCENT OF REVENUE/BUDGET

[In percent]

Industry	Scenario B Switching with waste segregation	Scenario C Switching without waste segregation
Hospitals—Short-term, excluding psychiatric:		
Federal Government:		
Small:		
Urban	0.03	0.10
Rural	0.03	0.17
Medium:		
Urban	0.05	0.17
Rural	0.05	0.27
Large:		
Urban	0.08	0.29
Rural	0.09	0.47
State Government:		
Small:		
Urban	0.06	0.22
Rural	0.06	0.36
Medium:		
Urban	0.05	0.18
Rural	0.05	0.29
Large:		
Urban	0.05	0.16
Rural	0.05	0.27
Local Government:		
Small:		
Urban	0.09	0.34
Rural	0.10	0.56
Medium:		
Urban	0.07	0.27
Rural	0.08	0.44
Large:		
Urban	0.06	0.22
Rural	0.06	0.36
Not-for-profit:		
Small:		
Urban	0.06	0.23
Rural	0.07	0.38
Medium:		
Urban	0.05	0.20
Rural	0.06	0.32

TABLE 22.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING SWITCHING FROM ONSITE INCINERATION TO COMMERCIAL DISPOSAL ALTERNATIVES—ALTERNATIVE WASTE DISPOSAL COST AS A PERCENT OF REVENUE/BUDGET—Continued

[In percent]

Industry	Scenario B Switching with waste segregation	Scenario C Switching without waste segregation
Large:		
Urban	0.07	0.25
Rural	0.07	0.41
For-profit:		
Small:		
Urban	0.07	0.26
Rural	0.08	0.43
Medium:		
Urban	0.06	0.21
Rural	0.06	0.34
Large:		
Urban	0.09	0.32
Rural	0.09	0.52
Hospitals—Psychiatric, short-term and long-term:		
Small:		
Urban	0.10	0.36
Rural	0.11	0.59
Medium:		
Urban	0.13	0.48
Rural	0.14	0.78
Large:		
Urban	0.29	1.05
Rural	0.31	1.70
Nursing homes:		
Tax-paying:		
Urban	0.11	0.39
Rural	0.11	0.64
Tax-exempt:		
Urban	0.11	0.40
Rural	0.12	0.65
Commercial research labs:		
Tax-paying:		
Urban	0.09	0.34
Rural	0.10	0.56
Tax-exempt:		
Urban	0.09	0.34
Rural	0.10	0.56

Tables 21 and 22 show that facilities with onsite MWI that are currently uncontrolled may experience impacts ranging from 0.03 to 1.79 percent, depending on the industry, regulatory option, and scenario. A comparison of the economic impacts expected to occur under the three switching scenarios, presented in Tables 21 and 22, indicates that the option of switching will be attractive to some facilities currently operating an onsite incinerator. For many of the uncontrolled model facilities, the economic impacts of switching to an alternative method of waste disposal are much lower than the economic impacts of choosing to install emission control equipment. The decision to switch to an alternative should preclude any facilities from experiencing a significant economic impact. These results support EPA's assertion that implementation of the regulation will likely result in either Scenarios B or C and that the costs and economic impacts of Scenario A are unlikely to occur.

Table 23 shows the impacts that would be incurred by medical waste generators that currently use an offsite medical waste incineration service. These impacts range from 0.00 to 0.02 percent and are considered negligible impacts. These results indicate that the incremental cost for the vast majority of medical waste generators are expected to be small.

TABLE 23.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS FOR FIRMS THAT UTILIZE OFFSITE WASTE INCINERATION—EXISTING SOURCES INCREMENTAL ANNUAL COST AS A PERCENT OF REVENUE/BUDGET

[In percent]

Industry	Incremental annual cost as a percent of revenue
Hospitals:	
<50 Beds	0–0.01
50–99 Beds	0–0.01
100–299 Beds	0–0.01
300 + Beds	0–0.01
Nursing homes:	
0–19 Employees:	
Tax-paying	0
Tax-exempt	0

TABLE 23.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS FOR FIRMS THAT UTILIZE OFFSITE WASTE INCINERATION—EXISTING SOURCES INCREMENTAL ANNUAL COST AS A PERCENT OF REVENUE/BUDGET—Continued

[In percent]

Industry	Incremental annual cost as a percent of revenue
20–99 Employees:	
Tax-paying	0
Tax-exempt	0
100 + Employees:	
Tax-exempt	0
Tax-paying	0
Commercial research labs:	
Tax-paying:	
0–19 Employees	0
20–99 Employees	0
100 + Employees	0
Tax-exempt	0
Outpatient care clinics:	
Physicians' clinics (Amb. Care)	
Tax-paying	0
Tax-exempt	0
Freestanding kidney dialysis facilities:	
Tax-paying	0
Tax-exempt	0–0.01
Physicians' offices	0
Dentists' offices and clinics:	
Offices	0
Clinics	.....
Tax-paying	0
Tax-exempt	0
Medical & dental labs:	
Medical	0–0.01
Dental	0–0.01
Freestanding blood banks	0–0.02
Funeral homes	0
Fire & Rescue	0
Corrections:	
Federal Government	0
State Government	0
Local Government	0

Table 22 also presents price impact estimates for the commercial medical waste incinerator sector. The analysis shows that uncontrolled medical waste incinerators required to meet any of the regulatory options would need to increase their prices by approximately 8 percent in order to recoup their control costs. Several factors indicate that it is unlikely these particular facilities would be able to increase the price of their service by 8 percent.

An examination of the MWI inventory indicates that a majority of facilities the commercial MWI sector have already implemented controls that would enable them to meet the requirements of any of the six regulatory options. Only a small number of facilities in this sector would be ''uncontrolled'' in the baseline and would, therefore, incur the majority of the costs estimated for this sector. This distribution suggests that commercial MWI that must install emission control equipment will not be able to freely increase their prices due to competition from already controlled commercial MWI. As indicated in the industrywide impact calculations, the average industrywide price increase is expected to be approximately 3 percent. Therefore, commercial MWI having to incur regulatory costs will most likely be forced to absorb some portion of their cost increase instead of passing the increase to their customers.

Another factor indicating the likely possibility that these commercial MWI would be required to absorb some portion of their cost increases is based on model plant capacity information. Many MWI are operating below full capacity, indicating that medical waste incinerator operators with excess capacity will act as a competitive force to keep incineration prices from rising.

One advantage that commercial MWI operators will experience due to the regulation will be increasing demand for commercial incineration service. Table 22 presents impact information under the assumption that some facilities with onsite incinerators will choose to switch to a lower cost alternative for medical waste disposal rather than install emission control equipment to meet the requirements of the regulation. Some facilities will probably choose one of these lower cost options, which in many cases may be to switch to commercial incineration. If implementation of the regulation will have such an effect, demand for commercial incineration should increase and commercial MWI operators should be able to offset some of their absorbed cost increases due to increased demands for their service.

Another consideration regarding the current state of the commercial MWI industry is that the small number of uncontrolled commercial MWI may currently be enjoying a cost advantage compared to the majority of controlled firms in the industry. Commercial MWI facilities that currently operate with emission control equipment presumably operate at a higher cost per unit than uncontrolled facilities. If the majority of the facilities in this industry are controlled and are able to charge prices that enable them to recapture their costs and earn reasonable profits, then uncontrolled facilities that are probably operating at a lower cost are likely to be enjoying profits exceeding the levels earned by the controlled facilities in the industry.

Based on these explanations, EPA estimates that the price of commercial incineration is likely to increase by an average of approximately 2.6 percent. Some uncontrolled facilities in this industry may need to absorb some of their cost increases due to implementation of this regulation. However, due to factors such as increased demand for commercial incineration and possible cost advantages currently enjoyed by these facilities, the cost of the regulation should be achievable.

This economic impact section examines possible economic impacts that may occur in industries that will be directly affected by this regulation. Therefore, the analysis includes an examination of industries that generate medical waste or dispose medical waste. Secondary impacts such as subsequent impacts on air pollution device vendors and MWI vendors are not estimated due to data limitations. Air pollution device vendors are expected to experience an increase in demand for their products due to the regulation. This regulation is also expected to increase demand for commercial MWI services. However, due to economies of scale, this regulation is expected to shift demand from smaller incinerators to larger incinerators. Therefore, small MWI vendors may be adversely affected by the regulation. Lack of data on the above effects prevents quantification of the economic impacts on these secondary sectors.

IV. Regulatory Options and Impacts for New MWI

As discussed earlier, the MACT ''floor'' defines the least stringent emission standards the EPA may adopt for new MWI. However, as also discussed earlier, the Clean Air Act requires EPA to examine alternative emission standards (i.e., regulatory options) more stringent than the MACT floor. The EPA must consider the cost, environmental, and energy impacts of these regulatory options and select one that reflects the maximum reduction in emissions that EPA determines is achievable (i.e., MACT).

At proposal, the EPA concluded all new MWI would need good combustion and dry scrubbers to meet the MACT floors for CO, PM, and HCl. Consequently, EPA was left to consider only two regulatory options for MACT. The first regulatory option reflected the floor (i.e., emission limitations achievable with good combustion and dry scrubbers). The second reflected emission limitations achievable with good combustion and dry scrubbers with activated carbon injection. Based on the cost, environmental, and energy impacts of the second regulatory option

relative to the first option, EPA selected the second option as MACT. Consequently, EPA proposed emission standards for new MWI based on the use of good combustion and dry scrubbers with activated carbon injection.

As discussed earlier in this notice, EPA received numerous comments containing substantial new information following the proposal. Based on this new information, new conclusions concerning the MWI inventory, MWI subcategories, performance of emission control technologies, MACT floors, and monitoring and testing options have been reached. As a result, EPA now believes there are several new regulatory options that merit consideration in selecting MACT for new MWI. The following sections summarize these new regulatory options and the EPA's initial assessment of their merits.

A. Regulatory Options

As discussed earlier, new MACT floor emission levels were developed for small, medium, and large MWI. To assess the impacts of regulatory options, EPA must first consider what emission control technology(s) new MWI may need to meet regulations based on these floor emission limits. The floor for small new MWI appears to require good combustion and moderate efficiency wet scrubbers. For medium new MWI, the MACT floor appears to require good combustion and a combined wet/dry scrubbing system without activated carbon injection. The MACT floor for large new MWI appears to require good combustion and a combined wet/dry scrubbing system with activated carbon injection.

Having identified these control technologies, the EPA is now able to review the performance capabilities of other control technologies and to identify those technologies capable of achieving even greater emission reductions. This review enables EPA to identify regulatory options more stringent than the floor that could be selected as MACT.

For small new MWI, as mentioned above, good combustion and a moderate efficiency wet scrubber system are the emission control technologies most MWI would probably need to meet the MACT floor emission levels. Therefore, these technologies serve as the basis for the first regulatory option for the MACT emission standards for small new MWI. A review of the performance capabilities of various emission control technologies summarized earlier readily identifies a second option for small new MWI. This option is to base the MACT emission standards for small new MWI on the use of good combustion and high efficiency wet scrubbing systems. This would achieve further reductions in PM emissions, but it would not further reduce other pollutants. As summarized earlier, high efficiency wet scrubbing systems do not appear to achieve greater reductions in emissions of dioxins, acid gases (e.g., HCl), or metals (i.e., Hg, Pb, or Cd) than do moderate efficiency wet scrubbing systems.

Reviewing the performance capabilities of emission control technologies also identifies a third option for small new MWI. This regulatory option is to base the MACT emission standards for small new MWI on the use of good combustion and a combined dry/wet scrubbing system with activated carbon injection. This alternative would further reduce emissions of Pb, Cd, and dioxins, but would not further reduce emissions of other air pollutants. The combined system, however, generally costs about two and a half times what high-efficiency wet scrubbing systems cost to operate annually, and the overall difference in the emissions control performance between the two systems is relatively small. As a result, at this point, to limit and manage the total number of regulatory options under consideration, the EPA has chosen not to include this third regulatory option for small new MWI.

For medium new MWI, as discussed earlier, the use of good combustion and a combined wet/dry scrubbing system without activated carbon injection appears to be necessary to meet the MACT floor emission limits. Therefore, this option is the first regulatory option for medium new MWI. The second regulatory option is to base the emission standards for medium new MWI on good combustion and a combined wet/dry scrubbing system with activated carbon injection.

Finally, for large new MWI, as discussed earlier, the use of good combustion and a combined wet/dry scrubbing system with activated carbon injection appears necessary to meet the MACT floor emission limits. Because no other air pollution control technologies have been identified that can achieve more stringent emission limits, the EPA is not inclined at this point to consider other regulatory options for large new MWI.

The regulatory options outlined above are combined in Table 24. This table summarizes the technology basis for the regulatory options for the various MACT standards the EPA believes merit consideration as MACT for new MWI. This table is constructed *only* to organize and structure an analysis of the cost, environmental, and energy impacts associated with the various MACT standards in order to consider these impacts in selecting MACT for new MWI. As mentioned earlier, the MACT standards for new MWI will not include requirements to use a specific emission control system or technology; the MACT standards will only include emission limits, which may be met by any means or by using any control system or technology the owner or operator of the MWI decides to use to meet these emission limits.

TABLE 24.—LEVEL OF AIR POLLUTION CONTROL ASSOCIATED WITH EACH REGULATORY OPTION FOR NEW MWI

MWI size	Regulatory options		
	1	2	3
Small ≤200 lb/hr	Good combustion and moderate efficiency wet scrubber.	Good combustion and moderate efficiency wet scrubber.	Good combustion and high efficiency wet scrubber.
Medium 201–500 lb/hr	Good combustion, dry injection/fabric filter system, and high efficiency wet scrubber.	Good combustion, dry injection/fabric filter system with carbon, and high efficiency wet scrubber.	Good combustion, dry injection/fabric filter system with carbon, and high efficiency wet scrubber.
Large >500 lb/hr	Good combustion, dry injection/fabric filter system with carbon, and high efficiency wet scrubber.	Good combustion, dry injection/fabric filter system with carbon, and high efficiency wet scrubber.	Good combustion, dry injection/fabric filter system with carbon, and high efficency wet scrubber.

The emission limits associated with each of the regulatory options for small, medium, and large new MWI are presented in Table 25.

TABLE 25.—EMISSION LIMITATIONS ASSOCIATED WITH EACH REGULATORY OPTION FOR SMALL, MEDIUM, AND LARGE NEW MWI

	1 and 2	3	1	2 and 3	1–3
PM, gr/dscf	0.03	0.015	0.015	0.015	0.015
CO, ppmdv	40	40	40	40	40
CDD/CDF, ng/dscm	125	125	125	25	25
TEQ CDD/CDF, ng/dscm	2.3	2.3	2.3	0.6	0.6
HCl, ppmdv	15 or 99%	15 or 99%	15 or 99%	15 or 99%	15 or 99%
SO_2, ppmdv	55	55	55	55	55
NO_x, ppmdv	250	250	250	250	250
Pb, mg/dscm	1.2 or 70%	1.2 or 70%	0.07 or 98%	0.07 or 98%	0.07 or 98%
Cd, mg/dscm	0.16 or 65%	0.16 or 65%	0.04 or 90%	0.04 or 90%	0.04 or 90%
Hg, mg/dscm	0.55 or 85%	0.55 or 85%	0.55 or 85%	0.55 or 85%	0.55 or 85%

Regulatory Option 1 in Table 25 reflects the performance of the emission control system or technology needed to meet the MACT floor. For small new MWI, Regulatory Option 1 reflects emission limits based on good combustion and moderate efficiency wet scrubbers. For medium new MWI, Regulatory Option 1 reflects emission limits based on good combustion and a combined wet/dry scrubbing system without carbon. For large new MWI, Regulatory Option 1 reflects emission limits based on good combustion and a combined wet/dry scrubbing system with activated carbon injection.

Regulatory Option 1 does not reflect the most stringent emission limits achievable for all subcategories. Consequently, the Clean Air Act requires EPA to examine the costs and other impacts of regulatory options more stringent than Regulatory Option 1. Each regulatory option examined reflects slightly more stringent emission standards.

Regulatory Option 2 is the same as Regulatory Option 1 for small and large MWI. Medium MWI would be required to meet emission limits associated with good combustion and a combined wet/dry scrubbing system with activated carbon injection. Regulatory Option 3 would establish emission limits for small MWI based on good combustion and high efficiency wet scrubbers. Requirements for medium and large MWI would remain the same under Regulatory Option 3 as under Regulatory Option 2.

B. National Environmental and Cost Impacts

This section presents a summary of the air, water, solid waste, energy, and cost impacts of the three regulatory options for new MWI. Economic impacts are discussed in Section IV.C. All impacts are nationwide resulting from the implementation of the new source performance standards for new MWI.

1. Analytical Approach

As discussed at proposal and within this notice, healthcare facilities may choose from among a number of alternatives for treatment and disposal of their medical wastes; however, these alternatives are generally more limited for healthcare facilities located in rural areas than for those located in urban areas. In fact, as stated at proposal, most estimates are that less than half of hospitals today currently operate onsite medical waste incinerators. The clear trend over the past several years has been for more and more hospitals to turn to the use of alternative onsite medical waste treatment technologies or commercial offsite treatment and disposal services. Consequently, even fewer hospitals are now likely to operate onsite medical waste incinerators.

More than half of existing hospitals today, therefore, have chosen to use other means of treatment and disposal of their medical waste than operation of an onsite incinerator. This is a clear indication that alternatives to the use of onsite incinerators exist and that they are readily available in many cases (although as mentioned above, these alternatives—particularly the availability and competitive cost of offsite commercial treatment and disposal services—tend to be more limited in rural areas than in urban areas). For other healthcare facilities, such as nursing homes, outpatient clinics, doctors and dentists offices, etc., only very few facilities currently operate onsite medical waste incinerators. Therefore, for these types of healthcare facilities, the percentage of such facilities using alternative means of treatment and disposal of medical waste—particularly commercial treatment and disposal services—is much higher, probably higher than 95 percent. This high percentage is further confirmation of the availability of alternatives to onsite incinerators for the treatment and disposal of medical waste.

A very likely reaction and outcome associated with the adoption of MACT standards for new MWI, therefore, is an increase in the use of these alternatives by healthcare facilities for treatment and disposal of medical waste. The EPA's objective is not to encourage the use of alternatives or to discourage the use of onsite medical waste incinerators; EPA's objective is to adopt MACT emission standards for new MWI that fulfill the requirements of Section 129 of the Clean Air Act. In doing so, however, one outcome associated with adoption of these MACT standards is likely to be an increase in the use of alternatives and a decrease in the use of onsite medical waste incinerators. Consequently, EPA should acknowledge and incorporate this outcome into the analyses of the cost, environmental, and energy impacts associated with the MACT emission standards.

In these analyses of the cost, environmental, and energy impacts, the selection of an alternative form of medical waste treatment and disposal by a healthcare facility, rather than the purchase of an onsite medical waste incinerator and the emission control technology necessary to meet the MACT emission limits, is referred to as ''switching''. Switching was incorporated in the analyses at proposal and was the basis for the conclusion at proposal that adoption of the proposed MACT emission standards could lead to as many as 80 percent of healthcare facilities to choose an alternative means of medical waste treatment and disposal over the purchase of an MWI. Although switching was not EPA's objective, it was a potential outcome of the regulations that EPA believed should be

acknowledged, considered, and discussed at proposal.

Switching has also been incorporated into the new analyses of the cost, environmental, and energy impacts associated with the three new regulatory options. The new analyses, however, incorporate three scenarios: one scenario that ignores switching and two scenarios that consider switching. Scenario A assumes that each new MWI will be installed and will comply with the appropriate regulatory option (i.e., no switching). This scenario results in the highest costs because it assumes no potential new MWI owner will switch to a less expensive waste disposal method. This scenario is clearly unrealistic and grossly overstates the national costs associated with MACT emission standards. It should *not* be viewed as representative or even close to representative of the impacts associated with the MACT emission standards. This scenario is so misleading that EPA considered not including it in the analysis; some may take it out of context and use it as representative, when it is in no way representative of the impacts of the MACT emission standards. The EPA finally decided to include this scenario in the analysis only because some may ask ''what if * * *?'' and the EPA wanted to be in a position to answer such questions.

Switching Scenarios B and C are much more realistic and more representative of the cost, environmental, and energy impacts associated with the MACT emission standards for new MWI. Only these scenarios merit serious review and consideration in gauging the potential impacts associated with the MACT emission standards. Both Scenarios B and C assume switching occurs when the cost associated with purchasing and installing the air pollution control technology or system necessary to comply with the MACT emission standard (i.e., a regulatory option) is greater than the cost of choosing an alternative means of treatment and disposal.

The difference in Scenarios B and C is the assumption of how much separation of the medical waste stream into an infectious medical waste stream and a noninfectious medical waste stream currently occurs at healthcare facilities that today operate a medical waste incinerator. Some have stated that, for the most part, hospitals that are currently operating onsite medical waste incinerators practice little separation of medical waste into infectious and noninfectious waste; generally all the medical waste at the facility is incinerated.

Based on estimates in the literature that only 10 to 15 percent of medical waste is potentially infectious and the remaining 85 to 90 percent is noninfectious, Scenario B assumes that only 15 percent of the waste currently being burned at a healthcare facility operating an onsite medical waste incinerator is potentially infectious medical waste. The 85 percent noninfectious waste is municipal waste that needs no special handling, treatment, transportation, or disposal. It can be sent to a municipal landfill or municipal combustor for disposal. Thus, under Scenario B, when choosing an alternative to an onsite medical waste incinerator, in response to adoption of MACT emission standards, a healthcare facility need only chose an alternative form of medical waste treatment and disposal for 15 percent of the waste stream currently burned onsite and may send the remaining 85 percent to a municipal landfill. In other words, if a hospital plans to burn 100 pounds of waste, Scenario B assumes 85 pounds are noninfectious and 15 pounds are potentially infectious. This scenario results in the lowest costs because 85 percent of the waste is disposed at the relatively inexpensive cost of municipal waste disposal.

On the other hand, it is unlikely that all healthcare facilities that consider purchasing an MWI will be able to or will decide to segregate the waste stream to be burned in the incinerator. If a hospital already separates medical waste into infectious and noninfectious waste streams, for example, this hospital would be unable to separate the waste stream any further. In other words, if a hospital plans to burn 100 pounds of waste, Scenario C assumes all 100 pounds are potentially infectious. Scenario C, therefore, assumes that all medical waste to be burned at a healthcare facility that purchases a medical waste incinerator is potentially infectious medical waste and must be treated and disposed of accordingly. As a result, Scenario C leads to higher costs than Scenario B.

For the purposes of determining impacts of the emission standards under switching Scenarios B and C, new commercial (offsite) incinerators and onsite incinerators used to burn healthcare waste were treated separately. The commercial incinerators were not subjected to the switching analyses under Scenarios B and C because switching to an alternative method of waste disposal (e.g., commercial disposal) is not feasible for commercial facilities. An assumption was made that commercial facilities would add on the control associated with the emission standards. Only the new onsite MWI were subject to the switching analyses under Scenarios B and C. On the other hand, a commercial waste disposal company does have the option of purchasing an alternative technology (e.g., autoclave or microwave) rather than installing a new MWI. Consequently, while switching was not included in this analysis for commercial MWI, it is an option that could result in lower costs.

Scenarios B and C represent the likely range of impacts associated with the MACT emission standards for new MWI. The actual impacts of a MACT emission standard (i.e., a regulatory option) is most likely to fall somewhere within the range represented by Scenarios B and C.

2. Air Impacts

As outlined above, the impacts associated with three MACT emission standards or regulatory options, under three scenarios reflecting switching, have been assessed. Baseline emissions (i.e., emissions in the absence of adoption of the MACT emission standards) and emissions under each MACT emission standard or regulatory option are summarized in Tables 26, 27, and 28. Emissions under Scenario A (no switching) are summarized in Table 26; emissions under Scenario B (switching with waste separation) are summarized in Table 27; and emissions under Scenario C (switching without waste separation) are summarized in Table 28.

TABLE 26.—BASELINE EMISSIONS COMPARED WITH EMISSIONS IN THE FIFTH YEAR AFTER IMPLEMENTATION OF THE NSPS

[Scenario A]
[Metric Units]

Pollutant, units	Baseline	Regulatory Options		
		1	2	3
PM, Mg/yr	28	2.7	2.7	2.3

TABLE 26.—BASELINE EMISSIONS COMPARED WITH EMISSIONS IN THE FIFTH YEAR AFTER IMPLEMENTATION OF THE NSPS—Continued

[Scenario A]
[Metric Units]

Pollutant, units	Baseline	Regulatory Options		
		1	2	3
CO, Mg/yr	14	14	14	14
CDD/CDF, g/yr	47	12	7.2	7.2
TEQ CDD/CDF, g/yr	1.1	0.28	0.17	0.17
HC1, Mg/yr	64	3.1	3.1	3.1
SO_2, Mg/yr	28	28	28	28
NO_x, Mg/yr	130	130	130	130
Pb, Mg/yr	0.39	0.02	0.02	0.02
Cd, Mg/yr	0.001	3.5×10^{-3}	3.5×10^{-3}	3.5×10^{-3}
Hg, Mg/yr	0.21	0.12	0.12	0.12

To convert Mg/yr to ton/yr, multiply by 1.1. To convert g/yr to lb/yr, divide by 453.6.

TABLE 27.—BASELINE EMISSIONS COMPARED WITH EMISSIONS IN THE FIFTH YEAR AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES

[Scenario B]
[Metric Units]

Pollutant, units	Baseline	Regulatory options		
		1	2	3
PM, Mg/yr	28	2.1	2.1	2.1
CO, Mg/yr	14	6.5	6.5	6.5
CDD/CDF, g/yr	47	5.9	5.9	5.9
TEQ CDD/CDF, g/yr	1.1	0.14	0.14	0.14
HC1, Mg/yr	64	1.5	1.5	1.5
SO_2, Mg/yr	28	14	14	14
NO_x, Mg/yr	130	65	65	65
Pb, Mg/yr	0.39	0.031	0.031	0.031
Cd, Mg/yr	0.051	4.6×10^{-3}	4.6×10^{-3}	4.6×10^{-3}
Hg, Mg/yr	0.21	0.056	0.056	0.056

To convert Mg/yr to ton/yr, multiply by 1.1 To convert g/yr to lb/yr, divide by 453.6.

TABLE 28.—BASELINE EMISSIONS COMPARED WITH EMISSIONS IN THE FIFTH YEAR AFTER IMPLEMENTATION OF THE NSPS

[Scenario C]
[Metric Units]

Pollutant, units	Baseline	Regulatory options		
		1	2	3
PM, Mg/yr	28	4.1	4.1	4.1
CO, Mg/yr	14	14	14	14
CDD/CDF, g/yr	47	12	12	12
TEQ CDD/CDF, g/yr	1.1	0.28	0.28	0.28
HC1, Mg/yr	64	3.1	3.1	3.1
SO_2, Mg/yr	28	28	28	28
NO_x, Mg/yr	130	130	130	130
Pb, Mg/yr	0.39	0.06	0.06	0.06
Cd, Mg/yr	0.051	8.9×10^{-3}	8.9×10^{-3}	8.9×10^{-3}
Hg, Mg/yr	0.21	0.12	0.12	0.12

To convert Mg/yr to ton/yr, multiply by 1.1 To convert g/yr to lb/yr, divide by 453.6.

As discussed in previous sections, new information has led to new conclusions about the MWI inventory, performance of technology, and control levels associated with each new MWI. As a result, revised estimates of annual baseline emissions and emissions under each regulatory option are significantly lower than estimates developed at proposal. There are two primary reasons for the lower emission estimates. First, a greater level of emission control is expected at new MWI than was assumed at proposal. Second, more MWI were projected to be built at proposal than current estimates.

3. Water and Solid Waste Impacts

Estimates of wastewater impacts were developed for only Regulatory Option 3, Scenario A, which reflects all new MWI equipped with wet scrubbers in the

absence of switching. Assessing these impacts under Scenario A without any consideration of the effect of switching grossly overstates the magnitude of these impacts. Under Scenarios B and C more than half of the new MWI are expected not to be built, resulting in significantly lower impacts. This approach of estimating and summarizing impacts under Scenario A, at this point, was taken as a matter of expediency to share new information and provide an opportunity for public comment.

Under Regulatory Option 3, Scenario A, 3.3 million gallons of additional wastewater would be generated in the fifth year by MWI as a result of the NSPS. This amount is the equivalent of wastewater produced annually by one small hospital. Therefore, when considering the wastewater produced annually at healthcare facilities nationwide, the increase in wastewater resulting from the implementation of the MACT emission standards for new MWI is insignificant.

With regard to solid waste impacts, about 88,800 Mg (97,900 tons) of medical waste would be burned in the fifth year in new MWI in the absence of Federal regulations, producing about 8,880 Mg/yr (9,790 tons/yr) of solid waste (bottom ash) disposed of in landfills. To determine the solid waste impacts for the NSPS, impacts were developed for Regulatory Option 3, Scenario B. This option is associated with the most switching and the most separation of waste for disposal in municipal landfills and thus, produces the greatest estimated impact.

Under Regulatory Option 3, Scenario B, 43,600 Mg/yr (48,000 tons/yr) of additional solid waste would result from the adoption of the NSPS. However, compared to municipal waste, which is disposed in landfills at an annual rate of over 91 million Mg/yr (100 million tons/yr), the increase in solid waste from the implementation of the MWI standards is insignificant.

4. Energy Impacts

The emission control technologies used by new MWI to comply with the MACT emission limits consume energy. Estimates of energy impact were developed for Regulatory Option 3, Scenario A. Under Scenarios B and C, which include switching, it is not clear whether overall national energy consumption would increase, decrease, or remain the same. Alternatives to incineration require energy to operate; however, information is not available to estimate whether these alternatives use more or less energy than MWI.

The energy impacts associated with the MACT emission standards could include additional auxiliary fuel (natural gas) for combustion controls and additional electrical energy for operation of the add-on control devices, such as wet scrubbers and dry scrubbers. It was assumed that all new MWI would be installed with combustion controls in the absence of the NSPS in order to meet State regulations for new MWI. Therefore, there is no increase in the total national usage of natural gas for combustion controls under Regulatory Option 3, Scenario A. Total national usage of electrical energy for the operation of add-on control devices would increase by about 9,800 megawatt hours per year (MW-hr/yr) (33.4 billion British thermal units per year (10^9 Btu/yr)). Once again, compared to the amount of energy used by health care facilities such as hospitals (approximately 2,460 MMm^3/yr of natural gas and 23.2 million MW-hr/yr of electricity) the increase in energy usage that results from implementation of the MWI emission standards is insignificant.

5. Cost Impacts

The cost impacts on individual healthcare facilities that consider purchasing an MWI vary depending on the MACT emission standard or regulatory option; the actual cost to purchase and install any additional air pollution control equipment; the cost of alternative means of treatment and disposal where they are located; and other factors, such as liability issues related to disposal and State and local medical waste treatment and disposal requirements. In general, facilities considering purchasing smaller MWI will have a greater incentive to use alternative means of treatment and disposal because their onsite incineration cost (per pound of waste burned) will be higher.

Large healthcare facilities with larger amounts of waste to be treated or healthcare facilities that serve as regional treatment centers for waste generated at other healthcare facilities in the area may have some cost advantages compared to smaller facilities. Due to economies of scale, their cost of burning waste may be lower (i.e., dollars per pound burned), even after purchasing and installing a complete air pollution control system to comply with the emission standards.

Table 29 contains the estimated increase in national annual costs associated with each of the MACT emission standards or regulatory options under Scenario A (no switching), Scenario B (switching with separation of waste), and Scenario C (switching with no separation of waste). As discussed earlier, Scenario A is unrealistic and grossly overstates the national cost impacts. The costs associated with the MACT emission standards under Scenarios B and C represent the likely range of national cost impacts and only these costs merit serious consideration and review.

TABLE 29.—COSTS OF THE REGULATORY OPTIONS OF THE NSPS

[Scenarios A, B, and C]

[Million $/year]

Scenario	Regulatory options		
	1	2	3
A	32.3	32.8	33.7
B	10.8	10.8	10.8
C	24.0	24.0	24.0

The nationwide annual costs presented in Table 29, excluding Scenario A, range from $10.8 million/yr for the regulatory options under Scenario B to $24.0 million/yr for the regulatory options under Scenario C. These nationwide annual costs are significantly lower than the $74.5 million/yr estimated for the proposed emission standards. The difference in the proposed and the current nationwide annual cost estimates can be attributed to the difference in the number of new MWI that were predicted to be installed at proposal and the current estimate of the number of new MWI. For example, at proposal it was estimated that approximately 700 new MWI would be installed by the fifth year after adoption of the emission standards. It is now estimated that approximately 235 new MWI will be installed by the fifth year after adoption of the standards.

C. Economic Impacts

Section IV.B.1 described assumptions pertaining to three analysis scenarios: no switching, switching with waste segregation, and switching with no waste segregation. Section IV.B.5 presented annual cost estimates that have been developed for each of the six regulatory options. This section incorporates these assumptions and cost data to estimate potential economic impacts that might result from implementation of these regulatory options.

The goal of the economic impact analysis is to estimate the market response of affected industries to the emission guidelines and to identify any adverse impacts that may occur as a result of the regulation. Industries that

operate onsite waste incinerators (hospitals, nursing homes, research labs, and commercial waste incinerators) and those that utilize offsite medical waste incinerators (hospitals, nursing homes, medical/dental laboratories, funeral homes, physicians' offices, dentist offices, outpatient care, freestanding blood banks, fire and rescue operations, and correctional facilities) will potentially be affected by the regulation. Industrywide impacts, including changes in market price, output or production, revenues, and employment for the affected industries, are estimated for each regulatory option assuming the three switching scenarios. Facility-specific impacts are estimated for hospitals of varying sizes, ownerships, and operating characteristics; nursing homes; commercial research labs; and commercial waste incineration based on engineering model plant cost estimates under each of the three switching scenarios.

1. Analytical Approach

The analytical approach to estimate industrywide and facility specific economic impacts and evaluate the economic feasibility of switching are briefly described. For a more detailed description refer to docket item IV–A–9. Prices are stated at 1993 levels.

Economic impacts for new MWI are calculated under several assumptions. First, the costs that are used to estimate the economic impacts of the NSPS include control costs from both the EG and NSPS. This approach is used to account for market adjustments (e.g., price, etc.) that would have had to occur under implementation of the EG first. This approach allows for the establishment of a future baseline scenario. Second, due to lack of information, revenue data for each of the affected industries were not adjusted for growth during the 5 year time period.

The average price changes anticipated to occur in each industry sector for each of the regulatory options are estimated by comparing the annual control cost estimates to annual revenues for each affected industry. This calculation provides an indication of the magnitude of a price change that would occur for each industry sector to fully recover its annual control costs. The resulting cost-to-revenue ratio represents the price increase necessary on average for firms in the industry to recover the increased cost of environmental controls. Percent changes in output or production are estimated using the price impact estimate and a high and low estimate of the price elasticity of demand. Resulting changes in revenues are estimated based upon the estimated changes in price and output for an industry. Employment or labor market impacts result from decreases in the output for an industry and are assumed to be proportional to the estimated decrease in output for each industry.

Facility-specific economic impacts are estimated by using model plant information under the three switching scenarios. The assumption of no switching (Scenario A) represents the highest cost and economic impact scenario for most affected industries, while the assumption of switching with waste segregation (Scenario B) represents the lowest cost and economic impact scenario for most of the affected industries. As previously stated, EPA considers Scenario A to be an unlikely scenario; therefore, the economic impacts presented under Scenarios B and C should be regarded as the impacts most likely to occur.

2. Industry-Wide Economic Impacts

Industry-wide impacts include estimates of the change in market price for the services provided by the affected industries, the change in market output or production, the change in industry revenue, and the impact on affected labor markets in terms of full time equivalent workers lost. These impacts are summarized in Tables 30 and 31.

TABLE 30.—MEDICAL WASTE INCINERATION INDUSTRY-WIDE PRICE IMPACTS—NEW SOURCES PERCENT INCREASE

[Percent][a]

Industry	Range for regulatory options 1–6		
	Scenario A No switching	Scenario B Switching with waste segregation	Scenario C Switching with no waste segregation
Hospitals	0.05	0.01	0.03
Nursing homes	0.05	0.01	0.03
Laboratories:			
Research	0.15–0.16	0.04	0.09
Medical/dental	.....	0	0
Funeral homes	0	0	0
Physicians' offices	0	0	0
Dentists' offices and clinics	0	0	0
Outpatient care	0	0	0
Freestanding blood banks	0.01	0.01	0.01
Fire and rescue operations	0	0	0
Correctional facilities	0	0	0
Commercial incineration	3.8	3.8	3.8

[a]The price increase percentages reported represent the price increase necessary to recover annualized emission control costs for each industry.

TABLE 31.—MEDICAL WASTE INCINERATION INDUSTRY-WIDE OUTPUT, EMPLOYMENT AND REVENUE IMPACTS—NEW SOURCES

Industry	Range for regulatory options 1–6		
	Scenario A No switching	Scenario B Switching with waste segregation	Scenario C Switching with no waste segregation
Hospitals:			
Output decrease (%)	0–0.02	0–0.01	0–0.01
Employment decrease (FTE's)	0–767	0–200	0–457
Revenue increase or (decrease) (%)	0.02–0.05	0.01	0.02–0.03
Nursing homes:			
Output decrease (%)	0.02–0.04	0.01	0.01–0.02
Employment decrease (FTE's)	260–574	74–150	168–342
Revenue increase or (decrease) (%)	0.03–0.04	0–0.01	0.01–0.02
Laboratories:			
Research:			
Output decrease (%)	0.15–0.21	0.04–0.06	0.09–0.13
Employment decrease (FTE's)	231–333	65–87	149–199
Revenue increase or (decrease) (%)	(0.05)–0	(0.01)–0	(0.03)–0
Medical/dental:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	3–5	3–5	3–5
Revenue increase or (decrease) (%)	0	0	0
Funeral homes:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0
Physicians' offices:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0–2	0–2	0–2
Revenue increase or (decrease) (%)	0	0	0
Dentists' offices and clinics:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	1–2	1–2	1–2
Revenue increase or (decrease) (%)	0	0	0
Outpatient care:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0–1	0–1	0–1
Revenue increase or (decrease) (%)	0	0	0
Freestanding blood banks:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0–0.01	0–0.01	0–0.01
Fire and rescue operations:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0
Correctional facilities:			
Output decrease (%)	0	0	0
Employment decrease (FTE's)	0	0	0
Revenue increase or (decrease) (%)	0	0	0

Output decreases and full time equivalents (FTE's) employment losses as a result of the regulation are shown in this table. Revenue increases and decreases are presented with decreases noted in brackets.

As shown in Table 30, industries that generate medical waste (i.e., hospitals, nursing homes, etc.) are expected to experience average price increases in the range of 0.00 to 0.16 percent, depending on the industry, regulatory option, and scenario. Table 31 shows that these industries are expected to experience output and employment impacts in the range of 0.00 to 0.21 percent. In addition, the revenue impacts for these industries are expected to range from an increase of 0.05 percent to a decrease of 0.05 percent. An increase in industry revenue is expected in cases where the price elasticity of demand for an industry's product is less than one. A price elasticity of less than one indicates that the percentage decrease in output will be less than the percentage increase in price. Since total revenue is a product of price and output, a less than proportional change in output compared to price means that total revenue should increase.

The following example illustrates how the above price impacts could be interpreted for the hospital industry. Table 30 shows that for hospitals, 0.03 percent is estimated as the price increase necessary to recover annual control costs assuming Regulatory Option 3, the most stringent regulatory option, and Scenario C, switching with no waste segregation. This change in price can be expressed in terms of the increased cost of hospitalization due to the regulation. The 1993 estimate of adjusted patient days nationwide totals 304,500,000 days. This estimate of adjusted patient-days is based on a

combined estimate of in-patient and out-patient days at hospitals. The total annual control cost for the EG and NSPS for hospitals required to comply with regulatory option 3 is estimated as $101,652,807. Assuming that the ratio of adjusted patient-days to revenue does not significantly change over time, the expected average price increase for each hospital patient-day is expected to equal 33 cents.

Table 30 also shows that the average price impact for the commercial medical waste incinerator industry is approximately a 3.8 percent increase in price. Cost and economic impact estimates are the same for the commercial MWI industry regardless of the regulatory option analyzed because all three regulatory options specify identical regulatory requirements for large MWI. Average industrywide output, employment, and revenue impacts were not estimated for this sector because data such as price elasticity estimates and employment levels were not available.

3. Facility-Specific Economic Impacts

Facility-specific impacts were also estimated for the affected industries. These estimates, presented in Tables 32 and 33, were calculated for the three switching scenarios. A cost as a percent of revenue ratio was calculated to provide an indication of the magnitude of the impact of the regulation on an uncontrolled facility in each industry sector. This calculation was then compared to the industrywide price impact to determine if the facility's impacts differ significantly from the average industrywide impacts (i.e., if there is greater than a 1 percent difference).

TABLE 32.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING NO SWITCHING AND ONSITE INCINERATION—NEW SOURCES ANNUALIZED CONTROL COST AS A PERCENT OF REVENUE BUDGET

[Percent]

Industry	Option 1	Option 2	Option 3
Hospitals—Short term, excluding psychiatric:			
Federal Government			
Small			
Urban	0.36	0.36	0.41
Rural	0.36	0.36	0.41
Medium	0.33	0.49	0.49
Large	0.16	0.16	0.16
State Government			
Small			
Urban	0.76	0.76	0.88
Rural	0.76	0.76	0.88
Medium	0.35	0.51	0.51
Large	0.09	0.09	0.09
Local Government			
Small			
Urban	1.18	1.18	1.36
Rural	1.18	1.18	1.36
Medium	0.53	0.78	0.78
Large	0.12	0.12	0.12
Not-for-profit			
Small			
Urban	0.80	0.80	0.93
Rural	0.80	0.80	0.93
Medium	0.39	0.58	0.58
Large	0.14	0.14	0.14
For-profit			
Small			
Urban	0.91	0.91	1.04
Rural	0.91	0.91	1.04
Medium	0.41	0.61	0.61
Large	0.17	0.17	0.17
Hospitals—Psychiatric, short term and long term:			
Small			
Urban	1.25	1.25	1.44
Rural	1.25	1.25	1.44
Medium	0.95	1.40	1.40
Large	0.56	0.56	0.56
Nursing Homes:			
Tax-Paying			
Urban	1.35	1.35	1.56
Rural	1.35	1.35	1.56
Tax-exempt			
Urban	1.39	1.39	1.59
Rural	1.39	1.39	1.59
Commercial research labs:			
Tax-paying	0.68	1.00	1.00
Tax-exempt	0.68	1.00	1.00
Commercial Incineration Facilities	11.82	11.82	11.82

TABLE 33.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING SWITCHING FROM ONSITE INCINERATION TO COMMERCIAL DISPOSAL ALTERNATIVES ALTERNATIVE WASTE DISPOSAL COST AS A PERCENT OF REVENUE BUDGET

[Percent]

Industry	Scenario B Switching with waste segregation	Scenario C Switching without waste segregation
Hospitals—Short-term, excluding psychiatric:		
Federal Government:		
Small		
Urban	0.03	0.10
Rural	0.03	0.17
Medium		
Urban	0.05	0.17
Rural	0.05	0.27
Large		
Urban	0.08	0.29
Rural	0.09	0.47
State Government:		
Small		
Urban	0.06	0.22
Rural	0.06	0.36
Medium		
Urban	0.05	0.18
Rural	0.05	0.29
Large		
Urban	0.05	0.16
Rural	0.05	0.27
Local Government:		
Small		
Urban	0.09	0.34
Rural	0.10	0.56
Medium		
Urban	0.07	0.27
Rural	0.08	0.44
Large		
Urban	0.06	0.22
Rural	0.06	0.36
Not-for-profit:		
Small		
Urban	0.06	0.23
Rural	0.07	0.38
Medium		
Urban	0.05	0.20
Rural	0.06	0.32
Large		
Urban	0.07	0.25
Rural	0.07	0.41
For-profit:		
Small		
Urban	0.07	0.26
Rural	0.08	0.43
Medium		
Urban	0.06	0.21
Rural	0.06	0.34
Large		
Urban	0.09	0.32
Rural	0.09	0.52
Hospitals—Psychiatric, short-term and long-term:		
Small		
Urban	0.10	0.36
Rural	0.11	0.59
Medium		
Urban	0.13	0.48
Rural	0.14	0.78
Large		
Urban	0.29	1.05
Rural	0.31	1.70
Nursing homes:		
Tax-paying		
Urban	0.11	0.39
Rural	0.11	0.64
Tax-exempt		
Urban	0.11	0.40

TABLE 33.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS ASSUMING SWITCHING FROM ONSITE INCINERATION TO COMMERCIAL DISPOSAL ALTERNATIVES ALTERNATIVE WASTE DISPOSAL COST AS A PERCENT OF REVENUE BUDGET—Continued

[Percent]

Industry	Scenario B Switching with waste segregation	Scenario C Switching without waste segregation
Rural	0.12	0.65
Commercial research labs:		
Tax-paying		
Urban	0.09	0.34
Rural	0.10	0.56
Tax-exempt		
Urban	0.09	0.34
Rural	0.10	0.56

Tables 32 and 33 show that facilities with onsite MWI that are currently uncontrolled may experience impacts ranging from 0.03 to 1.59 percent, depending on the industry, regulatory option, and scenario. A comparison of the economic impacts expected to occur under the three switching scenarios, presented in Tables 32 and 33, indicates that the option of switching will be attractive to some facilities that might have considered operating an onsite incinerator in the absence of this regulation. For many of these facilities, the economic impacts of switching to an alternative method of waste disposal are much lower than the economic impacts of choosing to install emission control equipment. The decision to switch to an alternative method of medical waste disposal should preclude any facilities from experiencing a significant economic impact. These results support EPA's assertion that implementation of the regulation will likely result in either Scenarios B or C and that the costs and economic impacts of Scenario A are unlikely to occur.

Table 34 shows the impacts that would be incurred by medical waste generators that currently use an offsite medical waste incineration service. These impacts range from 0.00 to 0.02 percent and are considered negligible impacts. These results indicate that the incremental cost for the vast majority of medical waste generators are expected to be small.

TABLE 34.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS FOR FIRMS THAT UTILIZE OFFSITE WASTE INCINERATION—NEW SOURCES INCREMENTAL ANNUAL COST AS A PERCENT OF REVENUE/BUDGET

[Percent]

Industry	Incremental annual cost as a percent of revenue
Hospitals:	
<50 Beds	0–0.01
50–99 Beds	0–0.01
100–299 Beds	0–0.01
300 + Beds	0–0.01
Nursing homes:	
0–19 Employees	
Tax-paying	0
Tax-exempt	0
20–99 Employees	
Tax-paying	0–0.01
Tax-exempt	0–0.01
100 + Employees	
Tax-paying	0
Tax-exempt	0
Commercial research labs:	
Tax-paying	
0–19 Employees	0
20–99 Employees	0
100 + Employees	0
Tax-exempt	0
Outpatient care clinics:	
Physicians' clinics (Amb. Care)	
Tax-paying	0–0.01
Tax-exempt	0–0.01
Freestanding kidney dialysis facilities	
Tax-paying	0–0.01
Tax-exempt	0–0.01
Physicians' offices	0
Dentists' offices and clinics:	
Offices	0
Clinics	
Tax-paying	0
Tax-exempt	0
Medical & dental labs:	
Medical	0–0.01

TABLE 34.—MEDICAL WASTE INCINERATION PER FACILITY IMPACTS FOR FIRMS THAT UTILIZE OFFSITE WASTE INCINERATION—NEW SOURCES INCREMENTAL ANNUAL COST AS A PERCENT OF REVENUE/BUDGET—Continued

[Percent]

Industry	Incremental annual cost as a percent of revenue
Dental	0–0.01
Freestanding blood banks	0.01–0.02
Funeral homes	0
Fire & Rescue	0
Corrections:	
Federal Government	0
State Government	0
Local Government	0

Table 33 also presents price impact estimates for the commercial medical waste incinerator sector. The analysis shows that a new medical waste incinerator required to meet any of the regulatory options would need to increase its prices by approximately 11.82 percent in order to recoup its control costs. The large difference between the facility-specific price increase compared to the industry-wide price increase (3.8 percent) for this industry suggests that it is unlikely that a new commercial MWI would be able to increase the price of its service by 11.82 percent.

Although a ''switching'' analysis was not developed for the commercial MWI sector, recent trends in the medical waste treatment and disposal industry suggest that the concept of switching may also be applicable to the commercial MWI sector. A company in this industry that might have decided to open a new incinerator may reconsider the option of opening an alternative

technology, such as autoclaving. These alternative technologies will seem more attractive from a cost perspective due to the requirements that regulation places on new MWI. Therefore, some companies in this industry will have an incentive to choose to open an alternative treatment unit, such as an autoclave unit. Some companies in the medical waste treatment and disposal industry have already begun to make these ''switching'' decisions. Since companies in this industry have demonstrated the ability to operate various types of medical waste treatment and disposal units, the option of ''switching'' should be seen as a viable alternative for commercial MWI operators.

This economic impact section examines possible economic impacts that may occur in industries that will be directly affected by this regulation. Therefore, the analysis includes an examination of industries that generate medical waste or dispose medical waste. Secondary impacts such as subsequent impacts on air pollution device vendors and MWI vendors are not estimated due to data limitations. Air pollution device vendors are expected to experience an increase in demand for their products due to the regulation. This regulation is also expected to increase demand for commercial MWI services. However, due to economies of scale, this regulation is expected to shift demand from smaller incinerators to larger incinerators. Therefore, small MWI vendors may be adversely affected by the regulation. Lack of data on the above effects prevents quantification of the economic impacts on these secondary sectors.

V. Inclinations for Final Rule

At various points throughout this notice, EPA has indicated ''inclinations'' regarding the final regulations for MWI, based on the new information and revised analyses now available. For example, as discussed in Section II of this notice, EPA is inclined to: subcategorize MWI by size rather than by type, where judged appropriate in the final regulations; adopt the NYSDOH definition of medical waste for the purpose of determining what incinerators the final regulations apply to; determine compliance with the final regulations using parameter monitoring and routine inspection/maintenance rather than CEMS; defer to the States the judgement of what constitutes an acceptable operator training program; and develop a separate regulation for medical waste ''pyrolysis'' units. In this final section, EPA inclinations regarding the regulatory options outlined earlier are discussed.

A note of caution should be observed and kept in mind by the reader, however, with regard to these EPA inclinations. These ''inclinations'' should not be viewed as final or, for that matter, even tentative EPA decisions. All options discussed in this notice and any additional options which may arise from further public comment will be considered in developing the final standards and guidelines for MWI. The primary purpose of these inclinations is to solicit public comment.

It is also important to reiterate some additional points. First, as mentioned earlier, all of the information and analyses reviewed in this notice, particularly the discussions below with their focus on air pollution control technology, are often misunderstood and lead some to assume that the final regulations will require the use of a specific air pollution control technology—this is not the case. The final regulations must be based upon the performance capabilities of air pollution control technology; as a result, EPA assesses air pollution control technologies and draws conclusions regarding their performance capabilities. These conclusions regarding performance capabilities take the form of emission limits which could be achieved through the use of the various air pollution control technologies. This approach permits EPA to identify and consider the different options for the regulations, in terms of emission limits.

The final regulations will not require use of any specific air pollution control technology. The final regulations will include emission limits (i.e., concentration levels in the gases released to the atmosphere) for specific air pollutants (e.g., hydrogen chloride, lead, etc.) that an MWI must achieve. The decision on how to meet these emission limits is left to the MWI owner or operator; an owner or operator may select any equipment or any means available to comply with these emission limits.

Second, as also mentioned earlier, Section 129 of the Clean Air Act directs EPA to develop regulations for MWI which are based on maximum achievable control technology (MACT). Section 129 defines MACT as the maximum reduction in emissions which is achievable, considering cost, environmental, and energy impacts. Section 129 also states, however, that for new MWI MACT can be no less stringent than the best similar MWI and for existing MWI MACT can be no less stringent than the best 12 percent of existing MWI. These minimum stringency requirements for the standards (new MWI) and the guidelines (existing MWI) are referred to as the MACT ''floors.'' The emission limits in the final regulations can be no less stringent than the MACT floor emission limits.

Finally, the MACT floors are only the starting point for determining MACT. Since MACT is the maximum reduction in air pollution emissions that is achievable, considering cost, environmental, and energy impacts, if more stringent emission limits than the MACT floor are achievable, EPA must identify these more stringent emission limits and consider them in selecting the MACT emission limits for the final regulations.

A. New MWI

As discussed in Section IV, the MACT floor for large new MWI appears to require the use of good combustion and a combined dry/wet scrubber with activated carbon. There is no air pollution control technology which could achieve lower emissions than this system. Consequently, EPA is inclined to establish emission limitations for large new MWI based on good combustion and a combined dry/wet scrubber system with activated carbon (i.e., the MACT floor).

For medium new MWI, the MACT floor appears to require the use of good combustion and a combined dry/wet scrubber system without activated carbon. In this case, one regulatory option more stringent than the MACT floor would reflect the addition of activated carbon to the combined dry/wet scrubber system. On a national basis, because of switching to the use of alternative means of medical waste disposal, the addition of activated carbon results in a negligible cost increase. Where a typical medium new MWI was constructed, the addition of activated carbon would reduce emissions of dioxin and would increase air pollution control costs by less than 4 percent. As a result, EPA is inclined to establish emission limitations for medium new MWI based on good combustion and a combined dry/wet scrubber system with activated carbon (i.e., more stringent than the MACT floor).

For small new MWI, four small existing MWI have been identified which currently operate with good combustion and moderate efficiency wet scrubbers; therefore, the MACT floor appears to require the use of good combustion and a moderate efficiency wet scrubber. Consideration of the impact of this MACT floor indicates that few new small MWI are likely to be

constructed due to the substantial increase in the cost of a new small MWI as a result of the moderate efficiency wet scrubber and the availability of switching to an alternative means of medical waste disposal.

One regulatory option more stringent than this MACT floor would reflect the use of good combustion and a high efficiency wet scrubber. Consideration of this option indicates that the nationwide impacts would be negligible, primarily because few new small MWI would be constructed (i.e., because of switching to alternative means of medical waste disposal). Where a typical new small MWI was constructed, however, the high efficiency wet scrubber would only reduce PM emissions by a small amount and would increase air pollution control costs by about 15 percent. As a result, EPA is inclined to establish emission limitations for small new MWI based on the use of good combustion and a moderate efficiency wet scrubber (i.e., the MACT floor).

B. Existing MWI

As discussed in Section III, the MACT floor for large existing MWI appears to require the use of good combustion and a high efficiency wet scrubber. One regulatory option more stringent than this MACT floor is the use of dry scrubbers with activated carbon. However, a dry scrubber typically costs much more than a high efficiency wet scrubber, and a dry scrubber with activated carbon would result in only a very small additional reduction in dioxin, Pb, and Cd emissions. For large existing MWI already equipped with wet scrubbers, replacing a wet scrubber with a dry scrubber would be exorbitantly expensive. As a result, EPA is inclined to establish emission limitations for large existing MWI based on the use of good combustion and a high efficiency wet scrubber (i.e., the MACT floor). As discussed in Section III, these emission limitations could also be achieved using a dry scrubber with activated carbon.

For medium existing MWI, the MACT floor appears to require the use of good combustion and a moderate efficiency wet scrubber. One regulatory option more stringent than this MACT floor would reflect the use of good combustion and a high efficiency wet scrubber. On a nation-wide basis, while this more stringent option would result in a relatively small cost increase, it would also result in only a small decrease in PM emissions. For a typical medium MWI that installed or upgraded an existing wet scrubber to a high efficiency wet scrubber, air pollution control costs would increase by about 15 to 25 percent. As a result, EPA is inclined to establish emission limitations for medium existing MWI based on the use of good combustion and a moderate efficiency wet scrubber (i.e., the MACT floor). As mentioned above and in Section III, these emission limitations could also be achieved using a dry scrubber with activated carbon.

For small existing MWI, the MACT floor appears to require the use of good combustion; add-on air pollution control would not be needed to meet the MACT floor. One regulatory option more stringent than this MACT floor would reflect the use of good combustion and a low efficiency wet scrubber. Consideration of this option, as well as other options outlined below, is the subject of the remainder of this section. At this point, EPA has no inclination, but solicits comment on the options available.

If the guidelines for small existing MWI were established based on the use of good combustion and wet scrubbing, the analysis indicates that almost all healthcare facilities operating small MWI would switch to the use of alternative means of medical waste disposal. From a national perspective, this would minimize emissions of PM, dioxin, acid gases, and metals from small existing MWI at a relatively low cost because of switching. For most healthcare facilities using small existing MWI, the cost of switching to the use of alternative means of medical waste disposal would be negligible. On this basis, one might argue that EPA should establish emission guidelines for small existing MWI based on the use of good combustion and wet scrubbers.

On the other hand, if a healthcare facility chooses to install a wet scrubbing system on its small existing MWI, the cost of waste disposal at this facility would more than double and the emission reduction achieved would be relatively small. The wet scrubber-based option would effectively preclude continued use of the MWI, whereas guidelines based on the use of good combustion alone would permit many healthcare facilities with small MWI to continue to use these MWI, preserving incineration as a viable medical waste disposal option for these healthcare facilities. On this basis, one might argue that EPA should establish emission guidelines for small existing MWI based on the use of good combustion alone.

As mentioned earlier in this notice, some commenters expressed concern about the availability and/or the cost of alternative means of medical waste disposal to healthcare facilities located in remote or rural locations. In this case, the conclusion that costs would be negligible because of switching would be incorrect, and such a facility could be faced with adverse impacts. The availability and/or cost of alternative means of medical waste disposal in urban areas, however, does not appear to be an issue. Competition among commercial medical waste disposal services, formation of healthcare facilities into groups for the purpose of leading commercial disposal services to bid for waste disposal contracts, as well as other forms of cooperation among healthcare facilities in urban areas appears to ensure that alternative means of medical waste disposal are readily available at reasonable costs to healthcare facilities in urban areas.

This consideration of the potential difference in the availability and/or cost of alternative means of medical waste disposal to healthcare facilities located in rural or urban areas leads to additional regulatory options. Small existing MWI could be subcategorized into those located in urban areas and those located in rural areas.

As mentioned, the MACT floor for small existing MWI only appears to require the use of good combustion; it does not appear to require the use of good combustion and a wet scrubber. The guideline for small existing MWI located in urban areas could be based on the use of good combustion and a low efficiency wet scrubber (i.e, beyond the MACT floor). The guideline for small existing MWI located in rural areas, however, could be based on the use of good combustion alone (i.e., the MACT floor). On the other hand, the guideline for small existing MWI located in rural areas could be based on the use of good combustion and low efficiency wet scrubbers (i.e., beyond the MACT floor), but permit—on a case by case basis—a healthcare facility which met certain criteria to comply with a guideline based on the use of good combustion alone (i.e., the MACT floor).

These options of differing requirements for small existing MWI in urban and rural areas were examined in a broad sense under Regulatory Option 2, which would establish emission limitations based on good combustion alone in rural areas, but establish emission limitations based on good combustion and wet scrubbers in urban areas. The difference between these two options is that the second option would establish a set of criteria (much more comprehensive than simply ''rural location'') to permit a small existing MWI in a rural location to comply with requirements based on the use of good combustion alone.

The attractiveness of this second option is that it would appear to minimize emissions from small existing MWI (urban or rural) while providing relief—on a case by case basis—for those few small MWI located in rural areas where the impacts of compliance might be particularly severe due to the limited availability of alternative means of medical waste disposal. The EPA, therefore, solicits comment on the following options:

(1) Guidelines for small existing MWI located in both urban and rural areas based on the use of good combustion alone;

(2) Guidelines for small existing MWI located in urban areas based on the use of good combustion and wet scrubbing, and guidelines for small existing MWI located in rural areas based on the use of good combustion alone;

(3) Guidelines for small existing MWI located in urban and rural areas based on the use of good combustion and wet scrubbers, but with the guidelines permitting small existing MWI located in rural areas to meet requirements based on the use of good combustion alone, provided these MWI meet certain criteria; and

(4) Guidelines for small existing MWI in both urban and rural areas based on the use of good combustion and wet scrubbers.

As mentioned above, EPA has no inclination with regard to the guidelines for small existing MWI. Each of the options outlined above merits serious consideration. Since the option outlined above with criteria for small existing MWI located in rural areas to meet requirements—on a case by case basis—based on the use of good combustion alone would seem to achieve the environmental benefits, but avoid the cost impacts, of the most stringent option, EPA specifically solicits comment on what the criteria associated with this option might be.

For example, these criteria might include: location with respect to an Metropolitan Statistical Area [MSA] (i.e., either outside an MSA or more than a specified number of miles from an MSA); location with respect to a commercial waste disposal company or a vendor of alternative treatment technology; some other measure of the lack of alternative disposal options; some measure of economic impact of switching waste disposal methods or some other reason why switching would not be possible; etc. The criteria could also be structured to allow good combustion alone only where a healthcare facility generates less than some very small amount of medical waste on a daily or weekly basis.

List of Subjects in 40 CFR Part 60

Air pollution control, New source performance standards, Emission guidelines, Medical waste incinerators.

Dated: June 12, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–15585 Filed 6–19–96; 8:45 am]

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Federal Register

Thursday
June 20, 1996

Part V

Department of Commerce

Economic Development Administration

National Technical Assistance, Research and Evaluation: Requests for Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 950302065–6173–03]

RIN 0610–ZA03

National Technical Assistance, Research and Evaluation—Request for Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice of availability of funds.

SUMMARY: A total of $328,500,000 is available to EDA for all of its programs for FY 1996 (See Notice of Funding Availability for FY 1996 at 61 FR 29526), of which approximately $2,125,000 (including funds to be transferred to EDA from the Department of Defense's Office of Economic Adjustment, DOD/OEA,) is or will be available for National Technical Assistance and for Research and Evaluation for specific projects which will aid in better understanding the causes of and solutions to economic distress/underemployment and unemployment throughout the Nation in the specific priority areas described herein. Additional funding may or may not be available. EDA issues this Notice describing the conditions under which eligible applications for these National Technical Assistance under 13 CFR Part 307, Subpart C, and Research and Evaluation under 13 CFR Part 307, Subpart D, projects will be accepted and selected for funding. EDA is soliciting proposals for the specific projects described herein which will be funded if acceptable proposals are received. Remaining funding, if any, may be used to fund additional projects.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on June 27, 1996, at 2:00 p.m., in the Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Avenue, N.W., Washington, D.C. 20230, Room 7419, at which time questions on the National Technical Assistance and Research and Evaluation projects can be answered. Please provide written questions (See Addresses section below) by June 24, 1996. Background information packets relevant to each of the projects will be made available.

Initial proposals for funding under this program will be accepted through July 22, 1996. Initial proposals received after that time will not be considered for funding.

By July 22, 1996, EDA will advise successful proponents to submit full applications, (containing complete proposals as part of the application) OMB Control Number 0610–0094. Completed applications must be submitted to EDA by August 15, 1996. EDA will make these awards no later than September 30, 1996.

ADDRESSES: Send initial proposals and full applications, as applicable, to either: Lewis R. Podolske, Acting Director, Technical Assistance Program, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, D.C. 200230 (National Technical Assistance); or John J. McNamee, Acting Director, Research and Evaluation Program, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, D.C. 20230 (Research and Evaluation).

FOR FURTHER INFORMATION CONTACT: Lewis R. Podolske, (202) 482–2127 (National Technical Assistance); or John J. McNamee, (202) 482–4085 (Research and Evaluation).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Public Works and Economic Development Act of 1965, (Pub. L. 89–136, 42 U.S.C. 3121–3246h), as amended (PWEDA) at § 3151 authorizes EDA as follows: to provide technical assistance which would be useful in reducing or preventing excessive unemployment or underemployment by conducting, among other things, studies evaluating the needs of, and the development of potential for economic growth in distressed areas (42 U.S.C. 3151(a)); and a program of research to assist in the formulation and implementation of national, state and local programs to raise income levels and other solutions to the problems of unemployment, underemployment, underdevelopment and chronic depression in distressed areas and regions (42 U.S.C. 3151(c)(B)). The Omnibus Appropriations Act of 1996, Public Law 104–134, makes funds available for these programs.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development-Technical Assistance; 11.312 Economic Development—Research and Evaluation Program.

C. Program Descriptions

For descriptions of these programs see EDA's final rule at 13 CFR chapter III, 61 FR 7979, March 1, 1996, as corrected at 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995.

D. Additional Information and Requirements

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either: 1. The delinquent account is paid in full; 2. A negotiated repayment schedule is established and at least one payment is received; or 3. Other arrangements satisfactory to DoC are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applicants seeking an early start, i.e., to begin a project before EDA approval, must obtain a letter from EDA allowing such early start. Such approval may be given with the understanding that an early start does not constitute project approval. Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of EDA to cover pre-award costs.

The total dollar amount of the indirect costs proposed in an application under any EDA program must not exceed either the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, which ever is less.

If an application is selected for funding, EDA has no obligation to provided any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

Unless otherwise noted below, eligibility, program objectives and descriptions, application procedures, selection procedures, evaluation criteria and other requirements for all programs are set forth in EDA's final rule at 13 CFR Chapter III, 61 FR 7979, March 1, 1996, as corrected at 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995.

II. Areas of Special Emphasis

EDA seeks proposals for the specific projects described as follows:

A. National Technical Assistance Program

- State Technology Planning.

EDA invites technical assistance proposals pertaining to innovative and useful science and technology planning programs by states to assist distressed communities.

Background: EDA awards planning grants under section 302(a) of PWEDA, (42 U.S.C. 3151a(a)) to strengthen the economic development planning capability of states, cities and substate entities to ensure a more productive use of resources in reducing the effect of economic problems, particularly those resulting in high unemployment and low incomes. EDA has awarded approximately 15 state grants since 1990 that relate to state technology planning as a tool for economic development. The scopes of work of these grants, the project files and final reports are available at the six EDA regional offices. Other Federal programs also provide assistance to states to prepare statewide technology plans. Among these programs are the U.S. Department of Commerce (DoC) National Institute of Standards and Technology's State Technology Extension Program (STEP), and the National Science Foundation's Experimental Program to Stimulate Competitive Research (EPSCoR). In addition, other technology plans have been developed by national organizations, by states, or as regional or local efforts.

Scope of Work: Under this grant award the recipient is expected to canvas the universe of planning efforts undertaken by states to use science and technology to assist distressed communities to enhance their economic development capabilities. As part of the project, the recipient must review EDA and other Federal and state efforts to promote the establishment of science and technology plans that support regional, state, or substate economic development. The task will include the review of project files, final reports, and plans, and interviews with staff by means of site visits and telephone conversations.

Science and technology plans compiled during the canvass may encompass coordination of data bases, education plans related to technology, manufacturing extension services, telecommunications improvement and coordination, electronic commerce, business development using cyberspace, or other objectives. The recipient of this award is expected to compare and evaluate these science and technology plans for their impact on distressed areas, the best practices employed in targeting distressed areas, their innovative approach, their successful implementation, their economic development impact, and their replicability in other states.

The resulting data must be appropriately analyzed and the results, with recommendations as appropriate, presented in a final report to be available for use by all states and other interested parties.

The applicant will also be required to conduct briefings and training workshops for organizations interested in using the approaches compiled and examined under this project. These briefings and training workshops will be conducted in Washington, D.C., and the six EDA regional offices and will total no more than one such briefing/workshop for each of the seven locations.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project cost.

Timing: The project should be completed and the final report submitted by March 31, 1997.

- Impact of Incubator Investments.

EDA invites technical assistance proposals to develop criteria to evaluate the impact of the incubator on the community.

Background: In North America there are about 540 business incubation programs serving more than 8,000 in-house clients and affiliates. Over 5,000 companies have ''graduated'' from these incubation programs. Fifty-three percent of the incubators are considered urban, 28 percent rural, and 19 percent suburban. The basic types of incubators are: mixed use 47 percent, technology 20 percent, light manufacturing 13 percent, service 9 percent and micro enterprise/empowerment 11 percent.

Local, state and Federal Government agencies, economic development agencies, colleges and universities, for-profit firms, nonprofit organizations such as neighborhood revitalization organizations, as well as combinations of all these groups have provided financial assistance to construct and operate business incubation programs. Each sponsor may have its own goals for participation in the incubation programs. These goals may include diversification of the economy, development or expansion of small business sector of the local economy, increased employment and income in general and sometimes in specific neighborhoods, increased property usage and values, business retention, maintenance of population in particular areas, transfer of technology from universities and research laboratories, and development of a targeted technology infrastructure.

Many incubation programs fail to keep records of incubator outcomes related to firm growth, employment, revenues, achievements of goals, and other community benefits. This may be due to failure to develop evaluation criteria, or the lack of resources to measure performance and determine outcomes. This project may require the development of performance measures and outcomes in such instances to be used by economic development organizations.

Most performance outcome information that will be developed or gathered will provide only a ''score'' of how well the characteristic being measured is doing. Outcome indicators, in general, will not tell the extent to which the program has actually caused the observed outcomes. Only a substantive in-depth program evaluation can determine the extent to which program activity caused the measured results—the impact of the program on the local economy.

An incubator's impact on a local community and economy comes from its ability to create a dynamic environment for the creation of new enterprises, and hence, new work. These goals are rarely realized over the time-span a firm is in an incubator, but extend into the long-term because of the nature of the business development cycle. Therefore, the goal of an external evaluation should be to determine progress toward long-term developmental goals. Proposals sought hereby will determine the appropriate evaluation methodology for the impact of various kinds of incubation programs on their local economies.

Scope of Work: The successful applicant will: (1) develop performance measures for different types of incubator programs if not already available; (2) test the measures against a representative sample of 50 to 100 diverse incubator programs; (3) determine and analyze in depth the impact of the incubator investments on the local economy; (4) prepare a final report on the methodology developed and the analysis performed, as well as the long-term policy implications of different kinds of incubation programs; and (5) conduct briefings and training workshops in Washington, D.C., and EDA's six Regional Offices on the methodology developed, the analysis performed and the policy implications and will total no more than one such briefing/workshop for each of the seven locations.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project cost.

Timing: The project should be completed and the final report submitted by June 30, 1997.

B. Research and Evaluation Program

• Performance Measure Testing and Impact of Public Infrastructure Investments.

EDA invites a research and evaluation proposal pertaining to performance measurement testing and the impact of public infrastructure investments. The primary purpose of this project is to develop a methodology that local, state and other Federal agencies can adapt and replicate to analyze the impacts that result from their public infrastructure and other investments. The test subjects for this project will be EDA grant projects. There are dual components. Each component has its own scope of work and deadline, although the two components are inherently related. The two components are:

(I) Performance Measure Testing—to gather and analyze data to test newly-developed program core performance measures; and (II) Impact of Public Infrastructure Investment—to develop and test a methodology for determining the impacts (economic benefits) resulting from public infrastructure investments on local economies. While the ultimate objective is a workable methodology, an essential prerequisite is the determination of the effectiveness of performance measures.

I. Performance Measure Testing—Background: EDA has recently established a core set of performance measures for each of its grant program areas. These measures can be tested by reviewing two groups of projects that have been approved in previous years to determine the extent to which these specific performance measures are valid or need refining. The project will involve a review of project files, interviews with EDA staff and grantees, site visits, surveys (written or phone), etc. The resulting data must be appropriately analyzed and the results presented in a separate final report for each group of projects.

A. *The Performance Measures.* The following core measures are to be tested under this project:

• Performance and outcomes at project completion—Construction Projects.

1. Construction schedule met as to start and finish dates.

2. Private sector dollars invested in the EDA Project (proposed, at time of approval).

3. Private sector dollars invested in the EDA project (actual, at time of completion).

4. Other dollars (Federal, state and local) invested in the EDA Project.

5. Other dollars invested (nonfederal, local and private) directly related to, but not part of the EDA Project.

6. Local capacity improved Diversification of local economy.

7. Local capacity improved: Intended beneficiary(ies) actually established in the community.

• Performance and outcomes at project completion—Capacity-Building Projects.

1. For Research/Evaluation and Technical Assistance projects: Project start and finish dates met.

2. For Planning projects: Annual update of Overall Economic Development Program (OEDP) completed.

3. For all capacity-building projects, grantee comment: with 1 to 10 (10=best) numerical response for following questions:

a. Quality of local OEDP/Adjustment Assistance (Title IX) Strategy.

b. Extent of participation by government, business and community leaders, i.e., building of community partnerships.

c. Extent projects implemented are based on OEDP/Title IX Strategy.

d. Quality of evaluation or feasibility study.

e. Impact of feasibility study on project planning.

• Performance and outcomes at project completion—Revolving Loan Fund (RLF) Projects.

1. Implementation schedule for disbursement of RLF dollars met.

2. Jobs created and retained (actual) through RLF loans.

3. Number of businesses assisted by the RLF.

4. Non-EDA dollars invested.

a. Private sector dollars invested.

b. Other dollars invested.

5. RLF capital base (grant+local share+net income generated—write-offs).

• Project outcomes at 2 and 4 years after completion—Construction Projects.

1. Jobs created and retained, as estimated on application.

2. Jobs created and retained—actual.

3. Private sector dollars invested in the EDA project—actual.

4. Other dollars (Federal, state and local) invested in the EDA project—actual.

5. Other dollars invested (nonfederal, local and private) directly related to, but not part of the EDA project.

6. Other dollars invested indirectly related to the EDA project.

7. Increase in local tax base (percentage) (actual or based on recognized multiplier).

Project outcomes at 2 and 4 years after completion—Capacity-Building Projects.

For all capacity-building projects, grantee comment: with 1 to 10 (10-best) numerical response for following questions:

1. Quality of local OEDP/Title IX Strategy.

2. Extent of participation by government, business and community leaders, i.e., building of community partnerships.

3. Extent projects implemented are based on OEDP/Title IX Strategy.

4. Quality of evaluation or feasibility study.

5. Impact of feasibility study on project planning.

• Project outcomes at 2 and 4 years after completion—RLF Projects.

1. Jobs created and retained (actual) through RLF loans.

2. Number of businesses assisted by the RLF.

3. Private sector dollars invested.

4. Other dollars invested.

5. RLF capital base (grants+local share+net income generated—write-offs).

B. *The Projects.* The core measures are to be tested on the following two groups of projects:

1. Fiscal Year (FY) completed Public Works projects.

Under its Public Works program, EDA makes infrastructure grants to help distressed communities generate long-term, private sector jobs and diversity their economies. Among the types of projects funded are water and sewer facilities, access roads to industrial sites, and business incubator buildings. The universe of projects for the analysis sought is approximately 175 EDA public works grants for which final construction activities and project closeout were completed between October 1, 1989, and September 30, 1990. The individual projects are located throughout the U.S. The project files are retained in the six EDA regional offices.

2. Defense Adjustment Assistance Projects.

Under this program EDA makes grants to help communities design and implement strategies for adjustment to changes in their economic situation that cause or threaten to cause serious structural damage to their economic base due to defense downsizing or base closures. Grants under this program include infrastructure improvements similar to those in 1 above, strategically-targeted business development and financial assistance, assistance for developing adjustment strategies (planning), or technical assistance.

This group of projects includes grants approved in FY 1993 through FY 1995 as follows:

FY 1993 36 projects for $48 million
FY 1994 81 projects for $162 million
FY 1995 73 projects for $135 million

Many of these grants are currently active, that is, the grant-funded project is not yet completed. The projects are located throughout the U.S. The project files are retained in the six EDA regional offices.

Scope of Work: The successful applicant will determine, on both a project-by-project basis and in the aggregate, the extent to which the two groups of projects met the core performance measurement standards that EDA has established, how effective the standards measure the program's performance, and what adjustments to the core measures may be necessary based on this analysis.

In separate final reports on the public works and defense adjustment assistance project components, the applicant must fully document how the tests were conducted and provide the basis for any changes recommended.

The applicant will also be required to conduct briefings and training workshops for organizations interested in learning about the results of the performance measurement project. These workshops will be conducted in Washington, and in EDA's six regional offices and will total no more than one such briefing/workshop for each of the seven locations.

Cost: No local share match is required for this project. Half of the funding for the testing of performance measures on the defense program will be provided by the Office of Economic Adjustment of the Department of Defense.

Timing: This component of the project should be completed and the final reports submitted by February 28, 1997.

II. Impact of Public Infrastructure Investments—Backgrounds: The Federal Government and states administer several grant programs that provide financial assistance to communities for constructing or expanding public infrastructure facilities, although only EDA projects and performance measures are being analyzed in this project. These grant programs may strive toward various social goals, such as ensuring the availability of safe drinking water by replacing water lines, expanding communications links by building or maintaining public highways, or, in the case of the EDA public works program, reducing economic distress by fostering the creation of new employment opportunities. Some of these programs have begun to measure their own performances. EDA has developed and will apply a core set of performance measures to its programs on a prospective basis beginning October 1, 1996. These measures are expected to produce quantifiable outcomes of EDA's programs.

The component of this two-part project described in the previous section will test EDA's core performance measures to gain knowledge for the economic development community of how performance measures can be applied, tested, analyzed and adjusted. Most outcomes measured by the core performance measures, however, will provide only a ''score'' of how well the particular characteristics being measured are doing. The outcome indicators will *not* generally tell the extent to which the program has actually caused the observed outcomes. Only a substantive in-depth program evaluation can reasonably uncover the link between performance indicators and program activities. There is, moreover, no widely accepted methodology for determining the economic and social benefits—the economic impacts on the local community—that actually result from public works infrastructure investments.

Previous evaluations of EDA's public works program have suggested that criteria such as project utilization, job creation/retention efficiency, job quality, shift-share analysis, attribution (whether EDA's contribution was necessary for the implementation of the project), related private sector investments, increases in the tax revenues, and other outcomes could be used to measure the economic impact of public works projects on the local economy. The second component of this project will develop an appropriate methodology for evaluating the economic impacts of EDA's infrastructure investments.

Much of the economic impacts from public infrastructure investments are believed to occur a considerable time after the completion of project construction. To maximize the probability that these impacts will have been realized, EDA proposes that approximately 175 EDA public works grants, for which final construction activities and project closeout were completed between October 1, 1989 and September 30, 1990, serve as the universe for this economic impact analysis. This is the same group of projects referred to in I.B.1. above.

In the development of the methodology, EDA suggests that the analysis of impacts be targeted and focused to realistic boundaries within which economic impacts on a local economy can reasonable be attributed to the EDA infrastructure investment. In many instances, the area of measurable and reasonably attributable impacts may be smaller than traditional areas of socioeconomic measurement such as city or county or state boundaries. Boundaries targeted for this analysis may have to be focused down to the level of census tracts. In the process of conducting the analysis, developing the methodology and subsequently testing it upon the specified universe of infrastructure projects, therefore, EDA expects the recipient to limit to the greater extent possible any broad-scale comparison of local impacts to unreasonably large and/or national boundaries.

Communities that received grants under the public works program are dispersed across the Nation. The project files for these grants are located in EDA's six regional offices.

Scope of Work: The successful applicant will develop a methodology for determining and measuring the economic impacts of specific public infrastructure investments. The methodology will be tested on the previously-mentioned 175 EDA public works grants completed in FY 1990. EDA expects the methodology to reflect the core measures that will be applied to EDA's programs, as well as other relevant measures suggested by the analysis of the public works projects.

The final report must fully document the methodology used for the project as well as revisions suggested by testing the methodology on the 175 public works projects. Actual impacts identified for each of the 175 public works projects must also be documented in the final report.

The applicant will also be required to conduct briefings and training workshops for organizations interested in using the methodology developed under this project. These briefings and training workshops will be conducted in Washington, D.C., and the six EDA regional offices and will total no more than one such briefing/workshop for each of the seven locations.

Cost: No local match is required for this project.

Timing: This second component of the project should be completed and the final report submitted by June 30, 1997.

- Performance Measurement Bibliography.

EDA invites research proposals to develop an annotated bibliography of current literature on economic development performance measurement and economic impact studies.

Background: With the current emphasis on improved program performance measured by results, service quality, and customer satisfaction, economic development funders at the Federal, state and local level are faced with the challenge of developing measures and methods for determining how well their programs perform. EDA has recently established a program performance and evaluation system to measure the output and outcomes of its program funding. This system builds on existing efforts at measuring the performance of economic development programs at the Federal and state levels.

The bibliography should chronicle the universal principles and standards for measuring the outcomes and impacts of economic development investments, with reference to current and recent benchmarking, performance measurement and economic impact studies.

Scope of Work: The successful applicant will (1) survey current and recent literature on economic development performance measurement and impact studies; (2) organize the literature in appropriate groupings; (3) in a final report, provide brief comments on the content of each article or book; (4) assemble a prototype public library containing copy of each article or book included in the annotated bibliography, including a computer disk version, where available, for inclusion in a future on-line public library; and (5) conduct a briefing on the findings in the Washington, D.C., office of EDA.

Cost: No local match is required for this project.

Timing: This project should be completed and the final report submitted by December 31, 1996.

- EDA/DOD–OEA/Federal Government Role in Cluster-Based Economic Development.

EDA invites research and evaluation proposals to determine the role EDA, the Department of Defense's Office of Economic Adjustment (DOD/ OEA) or other Federal agencies might play in promoting cluster development as an economic development tool, particularly as it relates to defense conversion.

Background: Industry or business clusters are important economic development tools to the extent that they facilitate regional competitive advantages in the development and production of high-value, large-market goods or services. Some proponents suggest that a successful cluster development requires the presence of three specific elements: (1) Collaborative and competitive networks that form the supporting infrastructure for technology-based businesses; (2) a strong, basic manufacturing base characterized by multiple competing firms rather than several large, vertically integrated firms; and (3) a strong commitment among business and government leaders to reinforcing the region's viability as a regional hub for high value manufacturing.

EDA has promoted cluster development as an economic development tool in communities whose economies have been adversely affected by defense expenditures reductions. In the case of flat panel display development in Florida and efficient pollution-free vehicle development in California, EDA provided funding to assist already-established, cluster-oriented organizations construct or equip test facilities for products produced by the members of the organizations. California organizations, including, but not limited to the Goldstrike Partnership and Regional Technology Alliance, Bay Area Economic Forum, Joint Venture Silicon Valley, and the High Technology Council of Los Angeles, received EDA funding for the development of a collaborative process involving the members of certain industries and stakeholders. EDA also awarded DRI/ McGraw-Hill a grant to define and identify the industry clusters that drive the U.S. economy; explore the emerging practices of states and regions in fostering cluster development; and convene the first national conference on cluster-driven regional economic development.

Scope of Work: The successful applicant will (1) analyze the role of cluster development in economic development in general and in defense adjustment, in particular; (2) document the degree to which the three elements thought to be necessary for cluster development were present in the EDA-supported cluster development projects and whether the EDA assistance facilitated or followed the development of those elements; (3) determine if all three elements must be present for the formation of a successful technology-based business or industry cluster; (4) determine if, how, and at what cost Federal support can influence the development of those elements; (5) estimate the time-frame required for the development of those elements; (6) suggest the appropriate role, if any, the Federal Government should play in promoting cluster development. The applicant will be required to submit a final report documenting its findings from this project and to conduct briefings and training workshops for entities interested in the results of this project. These briefings and training workshops will be conducted in Washington, D.C., and the six EDA regional offices and will total no more than one such briefing/workshop for each of the seven locations.

In undertaking this analysis, the applicant will review the cluster projects that EDA has funded to identify the various stages of organization and project development of the cluster process in different communities. This will require examining EDA grant files and contacting various people who were involved in developing the cluster-oriented organizations and projects. Files for these projects are located in EDA's Seattle, Atlanta and Austin regional offices.

Costs: No local match is required for this project. Half of the funding for this project will be provided by the Office of Economic Adjustment (OEA) of the Department of Defense.

Timing: The project should be completed and final report submitted by June 20, 1997.

- Leveraging Capital for Defense Adjustment Infrastructure Assistance.

EDA invites research proposals to examine the potential for new and innovative techniques for leveraging significant capital for increased defense adjustment infrastructure assistance, including construction related to military base reuse.

Background: The capital required for most defense adjustment infrastructure (re)development exceeds the ability of many communities to raise. Public funding for defense adjustment appropriation is modest compared with the current need for infrastructure assistance. This project would evaluate and recommend, if appropriate, alternative approaches to financing defense adjustment infrastructure projects, such as partially securing large bond issues, or providing for the first several years of payment on large bond issues until new tenants, etc., can pick up the costs. It would also evaluate what role other Federal financing mechanisms might play. The limitations and feasibility of such alternatives are not known, but could possibly serve to greatly extend the impact of limited defense program public works funds.

Scope of Work: The successful applicant will (1) bring together a panel of public and private sector financial experts to explore the full range of realistic, innovative financing alternatives, and (2) prepare a comprehensive report and conduct briefings and training for interested parties, which document the alternatives and recommendations.

These briefings and training workshops will be conducted in Washington, D.C., and the six EDA regional offices and will total no more than one such briefing/workshop for each of the seven locations.

Cost: No local match is required for this project. Half of the funding for this report will be provided by DOD/OEA.

Timing: This project should be completed and the final report submitted by January 31, 1997.

III. How To Apply

A. Eligible Applicants

- National Technical Assistance—See 13 CFR 307.12 in EDA's final rule at 13 CFR chapter III, 61 FR 7979, March 1, 1996, as corrected in 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995. Eligible applicants are as follows: public or private nonprofit organizations including nonprofit national, state, area, district, or local organizations; accredited educational institutions or nonprofit entities representing them; public sector organizations; and Native American organizations, including American Indian tribes; local governments and state agencies. Technical Assistance grant funds may not be awarded to private individuals or for-profit organizations.
- Research and Evaluation—See 13 CFR 307.17 in EDA's final rule at 13 CFR chapter III, 61 FR 7979, March 1, 1996, as corrected in 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995. Eligible applicants are as follows: private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations with expertise relevant to economic development research.

B. Proposal Submission Procedures

The initial proposals submitted by potential applicants may not exceed ten pages in length and should be accompanied by a proposed budget, resumes/qualifications of the key staff, and proposed time line.

IV. Selection Process and Evaluation Criteria

Proposals will receive initial reviews by EDA to assure that they meet all requirements of this announcement, including eligibility and relevance to the specified projects as described herein. The Office of Economic Adjustment of the Department of Defense will participate in evaluating proposals submitted for the Cluster Development and Leveraging Capital for Defense Adjustment Infrastructure Assistance projects described above. If a proposal is selected, EDA will provide proponent with an Application Form, and EDA will carry out its selection process and evaluation criteria as described at 13 CFR part 304 and §§ 307.13, 307.14, 307.18, and 307.19 in EDA's final rule at 13 CFR chapter III, 61 FR 7979, March 1, 1996, as corrected in 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995.

From the full proposals and application, EDA will select the applicants it deems most qualified and cost effective. EDA anticipates that more full proposals and applications will be invited than will eventually be funded.

All project records are located in or are accessible through the six EDA regional offices. Unless otherwise specified in other sections of this RFP, EDA staff support will be limited to providing access to the records.

Paperwork Reduction Act

OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995 under OMB Control Number 0610–AA47.

Dated: June 13, 1996.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 96–15531 Filed 6–17–96; 10:12 am]

BILLING CODE 3510–24–M

Federal Register

Thursday
June 20, 1996

Part VI

Department of the Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Costs Related to Legal/Other Proceedings; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 95–020]

RIN 9000–AH05

Federal Acquisition Regulation; Costs Related to Legal/Other Proceedings

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. The rule also clarifies, in FAR 31.205–47(e)(3), that the maximum reimbursement contractors can receive for legal costs in connection with agreements reached under paragraph (c) of FAR 31.205–47 is 80 percent of otherwise allowable and allocable incurred costs.This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR Case 95–020 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–020.

SUPPLEMENTARY INFORMATION:

A. Background

This case was initiated to clarify the proper interpretation of cost principle FAR 31.205–47 as it relates to *qui tam* suits not joined in by the Government.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small entities are awarded on a competitive fixed-price basis, and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 95–020) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–47 is amended by revising paragraph (b) introductory text, (c) and (e)(3) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees) or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

* * * * *

(c) (1) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

* * * * *

(e) * * *

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in subparagraph (c)(1) explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

* * * * *

[FR Doc. 96–14839 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday
June 20, 1996

Part VII

Department of the Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 26 and 52

Federal Acquisition Regulation; Collection of Historically Black Colleges and Universities/Minority Institutions Award Data; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26 and 52

[FAR Case 95–306]

RIN 9000–AH02

Federal Acquisition Regulation; Collection of Historically Black Colleges and Universities/ Minority Institutions Award Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 12928, which states that agencies will provide periodic reporting on their progress made in awards to Historically Black Colleges and Universities and Minority Institutions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–306 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–306.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule adds a new subpart to FAR Part 26 and a solicitation provision to Part 52 to implement Executive Order 12928, which states that agencies will provide periodic reporting on their progress made in awards to Historically Black Colleges and Universities and Minority Institutions.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to Government reporting requirements and merely requires offerors to provide certain identification information with their offers. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq*. (FAR case 95–306), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 26 and 52

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 26 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 26 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 26–OTHER SOCIOECONOMIC PROGRAMS

2. Part 26 is amended by adding Subpart 26.2 to read as follows:

Subpart 26.2—Historically Black Colleges and Universities and Minority Institutions

Sec.

26.200 Scope of subpart.
26.201 Definitions.
26.202 General policy.
26.203 Data collection and reporting requirements.
26.204 Solicitation provision.

Subpart 26.2—Historically Black Colleges and Universities and Minority Institutions

26.200 Scope of subpart.

(a) This subpart implements the provisions of Executive Order 12928 of September 16, 1994, which promote participation of Historically Black Colleges and Universities (HBCU) and Minority Institutions (MI) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

26.201 Definitions.

As used in this subpart—

Historically Black College or University means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority Institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which for the purpose of this subpart includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

26.202 General policy.

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

26.203 Data collection and reporting requirements.

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive Order.

26.204 Solicitation provision.

The contracting officer shall insert the provision at 52.226–xx, Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micropurchase threshold, for research, studies, supplies or services of the type normally acquired from higher educational institutions.

Part 52—Solicitation Provisions and Contract Clauses

3. Section 52.226–xx is added to read as follows:

52.226–xx Historically Black College or University and Minority Institution Representation.

As prescribed in 26.204, insert the following provision:

Historically Black College or University and Minority Institution Representation (Date)

(a) Definitions.

Historically Black College or University means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority Institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135(d)-5(3)) which for the purpose of this subpart includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

(b) *Representation.* The offeror represents that it—

☐ is, ☐ is not a Historically Black College or University;

☐ is, ☐ is not a Minority Institution.

(End of provision)

[FR Doc. 96–14842 Filed 6–19–96; 8:45 am]

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Federal Register

Thursday
June 20, 1996

Part VIII

Department of the Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Independent Research and Development/ Bid and Proposal in Cooperative Arrangements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 95–024]

RIN 9000–AH03

Federal Acquisition Regulation; Independent Research and Development/Bid and Proposal in Cooperative Arrangements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are proposing to amend Federal Acquisition Regulation (FAR) Part 31 to permit contractor contributions of independent research and development (IR&D) costs under NASA cooperative arrangements to be treated as allowable indirect costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–024.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published a class deviation (interim rule) in the May 2, 1994, Federal Register (59 FR 22521) with the final rule published in the September 8, 1994, Federal Register (59 FR 46359). The class deviation eliminates the prohibition at FAR 31.205–18(e) against treatment of contractor IR&D contributions under NASA cooperative arrangements as allowable indirect costs. This proposed FAR rule would eliminate the need for the NASA class deviation.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis, and the cost principles do not apply. The cost principles only apply to contracts for which cost or pricing data has been submitted. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite FAR case 95–024 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–18(e) is revised to read as follows:

31.205–18 Independent research and development and bid and proposal costs.

* * * * *

(e) *Cooperative arrangements.* IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs may also include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under

(1) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(2) Sections 203(c) (5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c) (5) and (6));

(3) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency, or

(4) Other equivalent authority. IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

[FR Doc. 96–14841 Filed 6–19–96; 8:45 am]

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Federal Register

Thursday
June 20, 1996

Part IX

Department of the Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 16 and 52
Federal Acquisition Regulation; Performance Incentives for Fixed-Price Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16 and 52

[FAR Case 93–603]

RIN 9000–AH07

Federal Acquisition Regulation; Performance Incentives for Fixed-Price Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) by allowing performance incentives alone and not just when performance incentives are coupled with cost incentives. Thus award fees will be allowed in fixed-price contracts. Also, they have agreed to some editorial changes to the related clauses.This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93–603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 93–603.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR currently only provides for the use of performance incentives together with cost incentives. This FAR revision proposes an amendment to the FAR allowing performance incentives to be used alone. This proposed change will allow agencies to recognize and reward contractors that share the Government's commitment to quality and perform at a level that exceeds the minimum in terms of quality, timeliness, technical ingenuity and effective management.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule authorizes the government to use an additional type of contract under the Federal Acquisition Regulation. The rule authorizes award fees in fixed price contract performance incentives alone and not just when performance incentives are coupled with cost incentives. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 93–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16 and 52

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 16 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 16 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16–TYPES OF CONTRACTS

2. Section 16.204 is amended by removing the citation ''16.405'' and inserting ''16.406'' in its place.

3. Section 16.403–3 is added to read as follows:

16.403–3 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed-price contracts as provided in 16.405.

4. Section 16.405 is redesignated as 16.406 and a new 16.405 is added to read as follows:

16.405 Other applications of award fees.

The ''award amount'' portion of the fee may be used in other types of contracts under the following conditions:

(a) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used.

(b) A ''base fee'' (fixed amount portion) is not used.

(c) A level above the contracting officer approves the use of the ''award amount.''

(d) An award review board and procedures are established for conduct of the evaluation.

(e) The administrative costs of evaluation do not exceed the expected benefits.

(f) The contract expressly excludes from the operation of the disputes clause any disagreement by the contractor concerning the amount of the award fee.

PART 52–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.216–16 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

52.216–16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

* * * * *

6. Section 52.216–17 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

52.216–17 Incentive Price Revision—Successive Targets.

As prescribed in 16.406(b), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

* * * * *

[FR Doc. 96–14838 Filed 6–19–96; 8:45 am]

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Federal Register

Thursday
June 20, 1996

Part X

Department of the Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulations; Foreign Selling Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 95–021]

RIN 9000–AH04

Federal Acquisition Regulation; Foreign Selling Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Department of Defense, General Services Administration and National Aeronautics and Space Administration are considering increasing the threshold for application of the foreign selling costs allowability ceiling from $2.5 million to $5.0 million. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–021 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–021.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR rule would revise FAR 31.205–38(c)(2)(ii) by increasing the threshold for applicability of the foreign selling costs allowability ceiling from $2.5 million to $5.0 million. The proposed rule also would revise FAR 31.205–38(c)(2)(iii) by deleting obsolete language. This action is being proposed in an effort to reduce contractors' administrative burden.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. The cost principles only apply to contracts for which cost or pricing data has been submitted. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 95–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–38 [Amended]

2. Section 31.205–38(c)(2)(i) is amended by removing the semicolon at the end and inserting '', and'' in its place; in (c)(2)(ii) by removing ''$2,500,000'' and inserting ''$5,000,000'' in its place, by removing the semicolon at the end and inserting a period in its place; and by removing paragraph (c)(2)(iii).

[FR Doc. 96–14840 Filed 6–19–96; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday
June 20, 1996

Part XI

Department of Transportation

Federal Railroad Administration

49 CFR Part 234

Grade Crossing Signal System Safety; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–5; Notice No. 8I

RIN 2130–AA97

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule amendments.

DATES: This interim final rule is effective August 19, 1996.

Written comments concerning this rule must be filed no later than July 22, 1996.

SUMMARY: FRA is amending the final rule requiring that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. The final rule being amended also requires that railroads take specific and timely actions to protect the traveling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. The amendments issued today are technical corrections which clarify the rule which was published on September 30, 1994.

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SUPPLEMENTARY INFORMATION:

Background

On September 30, 1994, FRA published a final rule (59 FR 50086) requiring that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. The final rule also requires that railroads take specific and timely actions to protect the traveling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems.

Because maintenance, inspection, and testing and timely response to warning device malfunctions is a new regulatory field, actual experience under the new final regulations is invaluable in determining where the regulations are working and where they need to be clarified or revised. Shortly after the regulations were issued, an FRA Technical Resolution Committee (TRC) met to discuss the regulations, their interpretation and implementation. Included in the TRC were FRA signal and train control specialists from across the country along with headquarters staff. Representatives from labor and management (which had earlier in the regulatory process submitted a proposal which became the basis for the maintenance and inspection portion of the final rule) were invited to attend certain sessions as non-voting members to offer their perspective and expertise to the group, together with representatives of two States active in the State Participation Program. Although the purpose of this TRC was to develop the appropriate application and interpretation of the final rule, the discussion, together with other lessons learned during implementation, also indicated the need to clarify certain portions of the regulatory text. Additionally, the American Short Line Railroad Association, the Brotherhood of Railroad Signalmen, and the Association of American Railroads jointly filed a Petition for Reconsideration with FRA requesting that FRA stay enforcement of certain sections of the final rule (§§ 234.215 and 234.223) pending further consideration of those provisions. Subsequent to the joint filing, FRA issued and Interim Policy Manual addressing, among others, the issues and questions raised by the petitioners. FRA granted the petition for reconsideration although it did not agree to stay enforcement since enforcement issues had been addressed in the Interim Policy Manual. This notice is in part a response to the joint petition for reconsideration.

FRA has not provided prior notice and request for public comment prior to making the amendments contained in this rule. FRA has concluded that such notice and comment are impracticable, unnecessary and contrary to the public interest under 5 U.S.C. 553 since FRA is either making minor technical changes in response to the past year's operational experience of railroads and employees working under the provisions of the final rule or the amendments are purely ''housekeeping''. Additionally, all issues addressed by these amendments were previously the subject of detailed notice and extensive comment in the development of the initial final rule in this proceeding. However, interested parties may comment on this rule and FRA will consider those comments. For this reason, FRA has issued this as an interim final rule so that it can take effect while any comments are being considered. If comments persuade FRA that further amendments are necessary, it will address them in a subsequent notice. As noted above, comments must be submitted no later than July 22, 1996.

Section-by-Section Amendments

§ 234.1 (''Scope'')

In order to correct a typographical error, the first sentence of this section is being amending by adding ''for'' between ''testing standards'' and ''highway-rail grade crossing.''

§ 234.3 (''Application'')

This section is not being changed, however, despite the attempt in the preamble to the final rule to fully explain the type of rail operations which are covered by these regulations, based on the number of questions that have been posed, it has become clear that we were not entirely successful. As stated in the rule, this part applies to all railroads except (1) a railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation, (2) rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation, or (3) a passenger railroad that operates trains only on track inside an installation that is insular. Part 209 of title 49 of the Code of Federal Regulations defines a railroad as any form of non-highway ground transportation that runs on rails or electromagnetic guideways, excluding rapid transit operations not connected to the general railroad system of transportation. The following discussion addresses specific types of rail operations and whether this rule applies to that operation.

Rail rapid transit—this part does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

Rail passenger operations—this part does apply to passenger railroad operations if any of the following exists on the line of railroad: (a) a public highway-rail crossing that is in use; (b) an at grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; (d) or its operations are within 30 feet of those of any other railroad. If any of these conditions exist, all grade crossings over which the railroad operates, both public and private crossings, are subject to this rule. It is important to note that the fact that a passenger railroad is not

connected to the general railroad system does not in itself affect a railroad's duty to comply with this part. An analysis must be made as to the presence of the above mentioned factors.

Rail freight operations—this part applies to all freight railroads which are part of the general railroad system of transportation. FRA's regulations generally exclude railroads whose entire operations are confined to an industrial installation, i.e., ''plant railroads'' such as those in steel mills that do not go beyond the plant's boundaries. However, even where a railroad operates outside of the general system, other railroads that are part of that system may have occasion to enter the first railroad's property. In that case the plant railroad would have to meet FRA's highway-rail grade crossing warning system standards if a general system railroad operated over the grade crossing. These regulations do not apply to a freight carrying railroad (and the grade crossings over which it operates) which is not part of the general railroad system of transportation. Both public and private crossings that general system railroads operate over are covered by this part.

§ 234.5 (''Definitions'')

A benefit of reviewing FRA's and railroads' experience with this new rule is that ''fine tuning'' can be accomplished based on real world experience. Shortly after the rule was implemented, it became clear that the rule did not adequately address those cases in which a portion of a warning system operated correctly while other portions or components did not perform as intended. FRA is revising the definition of ''activation failure'' and is newly defining ''partial activation'' to address those situations.

The definition of ''activation failure'' is being revised to provide that activation failure includes the situation in which a grade crossing signal system does not indicate the approach of a train within the meaning of this paragraph if—(1) more than 50% of the flashing lights (not gate arm lights) on any approach lane to the crossing are not functioning as intended, or (2) in the case of an approach lane for which two or more pairs of flashing lights are provided, there is not at least one flashing light pair operating as intended. Back lights on the far side of the crossing are not considered in making these determinations. FRA believes that if more than half of the flashing lights directed to a motorist's approach are not operating properly, a motorist does not receive sufficient warning that a train is approaching. Similarly, if a motorist's approach is normally provided with one or more pairs of alternately flashing lights, if at least one pair is not operating properly, sufficient warning is not being provided.

The definition of ''appropriately equipped flagger'' is being revised to leave greater discretion with railroads in determining the type of clothing to be worn by flaggers. The definition contained in the final rule was based on the Federal Highway Administration's standards pertaining to flaggers and flagging equipment for highway traffic control contained in the Manual on Uniform Traffic Control Devices (MUTCD). FRA has received information from manufacturers that the requirement for nighttime visibility of 1000 feet is not possible to meet under all conditions and therefore manufacturers can not certify to a purchaser that the clothing would comply with the regulatory requirement. FRA is thus deleting the 1000 feet requirement. While it is revising its requirements from those standards for highway construction flagging contained in the MUTCD, FRA recommends that railroads be aware of the standards and follow them to the greatest extent possible. Copies of the latest MUTCD provisions regarding flagging will be available from FRA, as well as FHWA, as changes are made in this area.

FRA is clarifying this provision by redefining ''appropriately equipped flagger'' as ''a person other than a train crewmember who is equipped with a vest, shirt, or jacket of a color appropriate for daytime flagging such as orange, yellow, strong yellow green or fluorescent versions of these colors or other generally accepted high visibility colors. For nighttime flagging, similar outside garments shall be retro reflective. Acceptable hand signal devices for daytime flagging include '' STOP/SLOW'' paddles or red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.''

Please note that this definition is also being clarified by replacing the ''and'' in ''STOP/SLOW paddles and red paddles'' with ''or''. Additionally, this provision will now permit yellow-green clothing and other generally acceptable colors.

As noted above, FRA is adding a definition of''partial activation''to address those situations in which the warning provided a motorist by a malfunctioning system is of a level that supplemental actions are necessary to provide an adequate level of safety. ''Partial activation'' means activation of a highway-rail grade crossing warning system indicating the approach of a train, however, the full intended warning is not provided due to one of the following conditions:

(1) At non-gated crossings equipped with one pair of lights designed to flash alternately, one of the two lights does not operate properly (and approaching motorists can not clearly see flashing back lights from the warning lights on the other side of the crossing);

(2) At gated crossings, the gate arm is not in a horizontal position; or

(3) At gated crossings, any portion of a gate arm is missing if that portion had held a gate arm flashing light.

§ 234.6 (''Penalties'')

This section is being clarified in two ways. First, a typographical error is corrected in the phrase ''imminent hazard of death of injury.'' That phrase should read ''imminent hazard of death or injury.'' Additionally, this section is being amended to ensure that the original intent of FRA is understood by the regulated community as well as by FRA and State inspectors enforcing this rule. Railroads can not be held responsible for conditions of non-compliance with the rule which are beyond their control. Actions of third parties can cause grade crossing warning systems to be in noncompliance. For instance, large motor vehicles may brush flashing lights, resulting in misalignment. Motorists often break off gates. Vandals sometimes break flashing light units. Railroads should not be liable under this rule for those conditions over which they have no control and which the railroad could not have prevented through the exercise of due diligence. The concept of due diligence includes the obligation to take appropriate action when a railroad discovers an instance of non-compliance or when it receives sufficiently reliable information suggesting non-compliance that warrants investigation. Accordingly, this section is being clarified to include the following: ''The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.'' This clarification as to the compliance obligations of railroads under Part 234 is in no way intended to affect whatever common law liability the railroad may otherwise be subject to.

§ 234.9 (''Grade crossing system failure reports'')

Paragraph ''a''. There appears to be some confusion as to where activation reports required by this paragraph are to be sent. This paragraph states that reports should be completed in accordance with instructions printed on the form. At the present time, the form requires that the report should be sent to the FRA's headquarters. FRA is in the process of amending the instructions to instruct railroads to send the forms to the FRA regional office in which the railroad headquarters is located. While we prefer that reports be sent to the regional offices, until the form is changed, a railroad may continue to send reports to Washington.

Paragraph ''b''. This section relating to false activation reports, expired on April 1, 1994. This paragraph is therefore being deleted.

§ 234.11 (''Railroad rules'')

This section, originally part of the 1991 reporting rule, was necessary to provide FRA with background information to assist FRA in formulating maintenance, inspection, and testing requirements. Inasmuch as the rules have been instituted, there is no further need for the information required by this section. This section was inadvertently retained in the final rule and is therefore now being deleted.

§ 234.13 (''Grade crossing signal systems information'')

This section required that certain grade crossing information be filed with FRA by April 1, 1992. This section was inadvertently retained in the final rule and is therefore now being deleted.

§ 234.103 (''Timely response to reported malfunctions'').

Paragraph ''b'' of this section requires that until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105 (''activation failure'') and 234.107 (''false activation''). This paragraph is being revised to include reference to new § 234.106 (''partial activation'').

§ 234.106 (''Partial activation'')

This new section clarifies the responsibilities of a railroad in the situation in which a grade crossing warning device provides some warning of an approaching train, but at a level less than that designed for the system. This section requires that upon receipt of a credible report of a partial activation, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing in the same manner as required for false activation in § 234.107.

§ 234.207 (''Adjustment, repair, or replacement of component'')

Paragraph ''b'' of this section is being amended to include § 234.106 (partial activation) among those sections based upon which a railroad must take certain action until repair of an essential component is completed. Thus, until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105 (''activation failure''), § 234.106 (''partial activation''), or § 234.107 (''false activation'').

§ 234.215 (''Standby power'')

Under the provisions of the final rule, this section requires the railroad to provide a backup power source so that the warning system will continue to function normally until the primary source of power is restored. This section was the subject of the Petition for Reconsideration submitted by the Brotherhood of Railroad Signalmen, the American Short Line Railroad Association, and the Association of American Railroads in which they jointly requested reconsideration of certain aspects of the final rule. The petition for reconsideration requested that FRA stay enforcement of this section's requirement that a standby source of power ''be provided with sufficient capacity to operate the warning system during any period of primary power interruption.'' As noted above, FRA granted the petition for reconsideration.

In its Interim Policy Manual issued on April 14, 1995, FRA indicated that ''this section requires the railroad to provide a backup power source so that the warning system will continue to function normally until the primary source of power is restored.'' This section is being revised to more clearly reflect the proper interpretation of the rule language. FRA is therefore amending this provision to provide that a railroad is required to install and properly maintain a standby power source in order to operate the system for a reasonable length of time during a primary power interruption. Determining the capacity of the standby power source will be at the discretion of each individual railroad. The designated capacity must be specified on the system plans required to be kept at each grade crossing warning system location. Factors which should be considered by the railroad are the power demands of particular location, the likelihood of discovery of the primary power outage (i.e., the presence of electronic notification devices, power off indicators, likelihood of employee discovery), the availability and proximity of maintenance employees, and the number of trains that are operated over the crossing.

§ 234.223 (''Gate arm'')

This section is amended to clarify that the provision requiring that each gate arm shall assume the horizontal position at least five seconds before the arrival of any train at the crossing applies to normal train movements through the crossing. By adding ''normal train movement through the crossing'' we are making clear that the five second requirement does not apply when trains are performing switching operations or making station stops within the grade crossing approach circuit. This section was intended to ensure that when a train enters the approach circuit to the grade crossing without stopping, the gates will be down at least five seconds prior to the arrival of such train. While it is possible to design and install the approach circuits to activate the system in a predetermined amount of time for a train's entrance onto such approach circuit, it is not possible to ensure the timing of the warning system gates for train movements such as switching movements and passenger train stops made within the approach circuit. Train crews must adhere to railroad operating rules before entering a grade crossing while performing switching movements or departing from stations.

§ 234.225 (''Activation of warning system.'')

This section requires that each highway-rail grade crossing warning system be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time before the crossing is occupied by rail traffic. This section is being amended to clarify that the 20 second warning time requirement applies to normal through train operations rather than switching movements or train operations that require stopping short of the grade crossing. A crossing warning system is not designed for those situations in which a switching movement occupies a grade crossing approach circuit or trains stop short of a grade crossing. In those situations the warning system activates but if a train does not cross the grade crossing itself within a set period of time (or in newer

designs if the motion detector does not detect motion) the system will cease providing a warning (''time out''). When the train then occupies the crossing after the system has timed out, a full 20 seconds warning time may not be provided. In those cases, railroad operating rules require that alternative warning be provided the motorist.

§ 234.231 (''Fouling wires'')

This section addressed the situation in which a turnout located within a grade crossing train detection circuit is equipped with fouling wires. This section is being revised to clarify that installation of a single duplex wire with a single plug acting as fouling wires is prohibited. The revised section provides that existing installations having single duplex wires with a single plug acting as fouling wires may be continued in use until they require repair or replacement.

§ 234.237 (''Switch equipped with circuit controller'')

The heading for this section was ''Switch equipped with circuit controller.'' This heading is being changed to the more accurate and descriptive ''Reverse switch cut-out circuit.''

§ 234.239 (''Tagging of wires and interference of wires or tags with signal apparatus'')

This section is being revised to clarify that its requirements apply to each wire at each terminal in all housings, including switch circuit controllers and terminal or junction boxes. This section does not apply to flashing light units, gate arm light units and other auxiliary light units. Further clarification is provided by stating that the local wiring on a solid state crossing controller rack will not require tags if the wiring is an integral part of the solid state equipment.

§ 234.247 (''Purposes of inspections and tests; removal from service of relay or device failing to meet test requirements'')

This section addresses the purposes of inspections and tests and the removal from service of devices failing to meet test requirements. Subpart D of Part 234 (Maintenance, Inspection, and Testing) is not intended to apply to grade crossing warning systems on out of service track. To do otherwise would create a pointless regulatory requirement in which tests and inspections are performed to ensure the operability of a device that will not be operating. Accordingly, this section is being clarified to provide that the provisions of Subpart D apply only to active railroad tracks. If a railroad elects not to comply with the requirements of this subpart because a track is out of service, or the railroad suspends operations during a portion of the year, a full inspection and tests of all required components must be successfully completed before operations resume. FRA is therefore revising the first sentence and adding an additional sentence of this section to read: ''The inspections and tests set forth in §§ 234.249 through 234.271 are required at highway-rail grade crossings located on in-service railroad tracks and shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function. A railroad may elect not to comply with the requirements of these sections if tracks over the grade crossing are out of service or the railroad suspends operations during a portion of the year, and the grade crossing warning system is also temporarily taken out of service. A full inspection and all required tests must be successfully completed before railroad operations over the grade crossing resume.''

§ 234.259 (''Warning time'')

This section is being amended to provide that, in addition to testing the warning system for the prescribed warning time every 12 months, the system be tested whenever it is modified because of a change in train speeds. The preamble to the final rule noted that the labor/management group ''state that it would be more appropriate to test warning time once each year, or when the warning system is modified in connection with changes in authorized train speeds.'' FRA accepted this suggestion and extended the period between tests from three months to one year but inadvertently omitted the requirement that the system be tested whenever modified due to changes in authorized train speeds. Although the preamble to the final rule indicated FRA's intention to include this in the final rule, such language was not in fact included. This section is being revised to correct that oversight.

§ 234.263 (''Relays'')

This section is being revised to add a new subsection ''c'' to provide a phase-in period for the industry to test relays, which, as of the effective date of the rule, had not been tested within the period required by this section. As it has in done in appropriate circumstances in the past, FRA is providing a ''phase-in'' period to allow railroads to come into compliance with certain provisions of the new rule. In situations such as this, when tests are required every one, two, or four years, or in the case of insulation resistance tests (§ 234.267), every ten years, FRA establishes a schedule by which a railroad must be in full compliance with a new testing requirement. To do otherwise would result in numerous violations immediately upon the effective date of a new rule. Such a result would be unfair and would not necessarily lead to improved safety. FRA is thus adding new subsection ''c'' to provide that not less than 50% of relays requiring testing on four year intervals shall be completed by the end of calendar year 1996, not less than a total of 75% by the end of calendar year 1997; and 100% by the end of calendar year 1998. New subsection ''d'' provides that testing of relays requiring testing on two year intervals shall be completed by the end of calendar year 1996.

§ 234.265 (''Timing relays and timing devices'')

This section requires that each timing relay and timing device be tested at least once every twelve months. It also requires that the timing be maintained at not less than 90% nor more than 110% of the predetermined time interval. The predetermined time interval must be shown on the plans or marked on the timing relay or timing device.

This section is being revised to clarify that internal timing devices associated with motion detectors, motion sensors, and grade crossing predictors are not subject to the requirements of this section.

§ 234.267 (''Insulation resistance tests, wires in trunking and cables'')

The heading for this section was accurate in the preamble of the final rule, but was incomplete in the actual body of the rule. Accordingly, the heading is being amended to add ''wires in trunking and cables'' to ''Insulation resistance tests.''

As it has done with relay testing (§ 234.263), FRA is providing a ''phase-in'' period to allow railroads to come into compliance with the testing provisions of this new requirement. FRA is thus adding new section ''e'' to provide that not less than 50% of the required insulation resistance testing shall be completed by the end of calendar year 1996, not less than a total of 75% by the end of calendar year 1997; and 100% by the end of calendar year 1998.

§ 234.273 (''Results of tests'')

The language of this section is incomplete in that it excludes ''inspections'' from both the title and the body of the rule, despite the clear understanding that §§ 234.247 through 234.271 includes both inspections and tests. The TRC recommended that the language in this section be amended to more closely reflect the purpose of the rule. Therefore, this section is being amended to include ''inspections'' together with ''tests.''

E.O. 12866 and DOT Regulatory Policies and Procedures

These amendments have been evaluated in accordance with existing policies and procedures. Because these amendments are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that this revisions do not constitute a significant rule under either Executive Order 12866 or DOT's regulatory policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

These amendments to Part 234 do not change any information collection requirements.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, ''Federalism,'' and it has been determined that these amendments to Part 234 do not have federalism implications to warrant the preparation of a Federalism Assessment.

Since a number of technical and clarifying changes are being made to this part, the entire part is being republished as amended. In that way interested parties do not need to wait for the next publication of the yearly codification of the Code of Federal Regulations for a complete current version of the rule.

List of Subjects in 49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

The Rule

In consideration of the foregoing, 49 CFR part 234 is revised as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY [AMENDED]

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Appendix B—Alternate Methods of Protection under 49 CFR 234.105(c), 234.106, and 234.107(c).

Authority: 49 U.S.C.20103, 20107, 20108, 20111, 20112, 20114, 21301, 21302, 21304, and 21311 (formerly Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, and 438, as amended)); 49 U.S.C.20901 and 20102 (formerly the Accident Reports Act); 45 U.S.C. 38 and 42; and 49 CFR 1.49(f), (g), and (m).

Subpart A—General

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 234.3 Application.

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

§ 234.4 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

§ 234.5 Definitions.

As used in this part:

''Activation failure'' means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.) A grade crossing signal system does not indicate the approach of a train within the meaning of this paragraph if—more than 50% of the flashing lights (not gate arm lights) on any approach lane to the crossing are not functioning as intended, or in the case of an approach lane for which two or more pairs of flashing lights are provided, there is not at least one flashing light pair operating as intended. Back lights on the far side of the crossing are not considered in making these determinations.

''Appropriately equipped flagger'' means a person other than a train crewmember who is equipped with a vest, shirt, or jacket of a color appropriate for daytime flagging such as orange, yellow, strong yellow green or fluorescent versions of these colors or other generally accepted high visibility colors. For nighttime flagging, similar outside garments shall be retro reflective. Acceptable hand signal devices for daytime flagging include '' STOP/SLOW'' paddles or red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used. Inasmuch as Part VI of the Federal Highway Administration's Manual on Uniform Traffic Control Devices addresses standards and guides for flaggers and flagging equipment for highway traffic control, FRA recommends that railroads be aware of the standards and follow them to the greatest extent possible. Copies of the latest MUTCD provisions regarding flagging will be available from FRA, as well as FHWA, as changes are made in this area.

''Credible report of system malfunction'' means specific information regarding a malfunction at an identified highway-rail crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

''False activation'' means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

''Highway-rail grade crossing'' means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

''Partial activation'' means activation of a highway-rail grade crossing warning system indicating the approach of a train, however, the full intended warning is not provided due to one of the following conditions:

(1) at non-gated crossings equipped with one pair of lights designed to flash alternately, one of the two lights does not operate properly (and approaching motorists can not clearly see flashing back lights from the warning lights on the other side of the crossing);

(2) at gated crossings, the gate arm is not in a horizontal position; or

(3) at gated crossings, any portion of a gate arm is missing if that portion normally had a gate arm flashing light attached.

''Train'' means one or more locomotives, with or without cars.

''Warning system malfunction'' means an activation failure, a partial activation, or a false activation of a highway-rail grade crossing warning system.

§ 234.6 Penalties.

(a) *Civil penalty.* Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Subpart B—Reports

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving an activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424–0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9 of this part (activation failure report) and 49 CFR 225.11 (accident/ incident report).

(b) Each telephone report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of accident;

(4) U. S. DOT-AAR Grade Crossing Identification Number;

(5) Circumstances of the accident, including operating details of the grade crossing warning device;

(6) Number of persons killed or injured, if any;

(7) Maximum authorized train speed; and

(8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form No. 6180–83, ''Highway-Rail Grade Crossing Warning System Failure Report,'' shall be used for this purpose and completed in accordance with instructions printed on the form.

Subpart C—Response to Reports of Warning System Malfunction

§ 234.101 Employee notification rules.

Each railroad shall issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

§ 234.103 Timely response to report of malfunction.

(a) Upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate the report and determine the nature of the malfunction. The railroad shall take appropriate action as required by § 234.207.

(b) Until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105, 234.106 or 234.107 of this part.

(c) Nothing in this subpart requires repair of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the traveling public and railroad employees.

§ 234.105 Activation failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

(a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):

(1)(i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.106 Partial activation.

Upon receipt of a credible report of a partial activation, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing in the same manner as required for false activations (§ 234.107).

§ 234.107 False activation.

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall promptly initiate efforts to warn highway users and railroad employees at the crossing by taking the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning).

(1)(i) If an appropriately equipped flagger is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing.

(3) In lieu of complying with paragraphs (c) (1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of § 234.105, ''Activation failure.''

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.109 Recordkeeping.

(a) Each railroad shall keep records pertaining to compliance with this subpart. Records may be kept on forms provided by the railroad or by electronic means. Each railroad shall keep the following information for each credible report of warning system malfunction:

(1) Location of crossing (by highway name and DOT/AAR Crossing Inventory Number);

(2) Time and date of receipt by railroad of report of malfunction;

(3) Actions taken by railroad prior to repair and reactivation of repaired system; and

(4) Time and date of repair.

(b) Each railroad shall retain for at least one year (from the latest date of railroad activity in response to a credible report of malfunction) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

Subpart D—Maintenance, Inspection, and Testing

Maintenance Standards

§ 234.201 Location of plans.

Plans required for proper maintenance and testing shall be kept at each highway-rail grade crossing warning system location. Plans shall be legible and correct.

§ 234.203 Control circuits.

All control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle.

§ 234.205 Operating characteristics of warning system apparatus.

Operating characteristics of electromagnetic, electronic, or electrical apparatus of each highway-rail crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

§ 234.207 Adjustment, repair, or replacement of component.

(a) When any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.

(b) Until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105, Activation failure, § 234.106, Partial activation, or § 234.107, False activation, of this part.

§ 234.209 Interference with normal functioning of system.

(a) The normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

(b) Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal train movements or switching operations, where the warning system is not designed to accommodate those activities.

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

§ 234.211 Security of warning system apparatus.

Highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry.

§ 234.213 Grounds.

Each circuit that affects the proper functioning of a highway-rail grade crossing warning system shall be kept free of any ground or combination of grounds that will permit a current flow of 75 percent or more of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to: circuits that include track rail; alternating current power distribution circuits that are grounded in the interest of safety; and common return wires of grounded common return single break circuits.

§ 234.215 Standby power system.

A standby source of power shall be provided with sufficient capacity to operate the warning system for a reasonable length of time during a period of primary power interruption. The designated capacity shall be specified on the aplans required by § 234.201 of this part.

§ 234.217 Flashing light units.

(a) Each flashing light unit shall be properly positioned and aligned and shall be visible to a highway user approaching the crossing.

(b) Each flashing light unit shall be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition.

(c) All light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 65 maximum.

§ 234.219 Gate arm lights and light cable.

Each gate arm light shall be maintained in such condition to be properly visible to approaching highway users. Lights and light wire shall be secured to the gate arm.

§ 234.221 Lamp voltage.

The voltage at each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

§ 234.223 Gate arm.

Each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching highway users. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any normal train movement through the crossing. At those crossings equipped with four quadrant gates, the timing requirements of this section apply to entrance gates only.

§ 234.225 Activation of warning system.

A highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time for the normal operation of through trains before the grade crossing is occupied by rail traffic.

§ 234.227 Train detection apparatus.

(a) Train detection apparatus shall be maintained to detect a train or railcar in any part of a train detection circuit, in accordance with the design of the warning system.

(b) If the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, ''Activation failure,'' to safeguard highway users.

§ 234.229 Shunting sensitivity.

Each highway-rail grade crossing train detection circuit shall detect the application of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of any part of the circuit.

§ 234.231 Fouling wires.

Each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. Each conductor shall be of sufficient conductivity and shall be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted. Installation of a single duplex wire with single plug acting as fouling wires is prohibited. Existing installations having single duplex wires with a single plug for fouling wires may be continued in use until they require repair or replacement.

§ 234.233 Rail joints.

Each non-insulated rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be

bonded by means other than joint bars and the bonds shall be maintained in such condition to ensure electrical conductivity.

§ 234.235 Insulated rail joints.

Each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing shall be maintained to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

§ 234.237 Reverse switch cut-out circuit.

A switch, when equipped with a switch circuit controller connected to the point and interconnected with warning system circuitry, shall be maintained so that the warning system can only be cut out when the switch point is within one-half inch of full reverse position.

§ 234.239 Tagging of wires and interference of wires or tags with signal apparatus.

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus. This requirement applies to each wire at each terminal in all housings including switch circuit controllers and terminal or junction boxes. This requirement does not apply to flashing light units, gate arm light units and other auxiliary light units. The local wiring on a solid state crossing controller rack does not require tags if the wiring is an integral part of the solid state equipment.

§ 234.241 Protection of insulated wire; splice in underground wire.

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to that of the wire spliced.

§ 234.243 Wire on pole line and aerial cable.

Wire on a pole line shall be securely attached to an insulator that is properly fastened to a cross arm or bracket supported by a pole or other support. Wire shall not interfere with, or be interfered with by, other wires on the pole line. Aerial cable shall be supported by messenger wire. An open-wire transmission line operating at voltage of 750 volts or more shall be placed not less than 4 feet above the nearest cross arm carrying active warning system circuits.

§ 234.245 Signs.

Each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the highway user.

Inspections and Tests

§ 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.

(a) The inspections and tests set forth in §§ 234.249 through 234.271 are required at highway-rail grade crossings located on in service railroad tracks and shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function.

(b) If a railroad elects not to comply with the requirements of these sections because all tracks over the grade crossing are out of service or the railroad suspends operations during a portion of the year, or the railroad suspends operations during a portion of the year, and the grade crossing warning system is also temporarily taken out of service a full inspection and all required tests must be successfully completed before railroad operations over the grade crossing resume.

(c) Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

§ 234.249 Ground tests.

A test for grounds on each energy bus furnishing power to circuits that affect the safety of warning system operation shall be made when such energy bus is placed in service and at least once each month thereafter.

§ 234.251 Standby power.

Standby power shall be tested at least once each month.

§ 234.253 Flashing light units and lamp voltage.

(a) Each flashing light unit shall be inspected when installed and at least once every twelve months for proper alignment and frequency of flashes in accordance with installation specifications.

(b) Lamp voltage shall be tested when installed and at least once every 12 months thereafter.

(c) Each flashing light unit shall be inspected for proper visibility, dirt and damage to roundels and reflectors at least once each month.

§ 234.255 Gate arm and gate mechanism.

(a) Each gate arm and gate mechanism shall be inspected at least once each month.

(b) Gate arm movement shall be observed for proper operation at least once each month.

(c) Hold-clear devices shall be tested for proper operation at least once every 12 months.

§ 234.257 Warning system operation.

(a) Each highway-rail crossing warning system shall be tested to determine that it functions as intended when it is placed in service. Thereafter, it shall be tested at least once each month and whenever modified or disarranged.

(b) Warning bells or other stationary audible warning devices shall be tested when installed to determine that they function as intended. Thereafter, they shall be tested at least once each month and whenever modified or disarranged.

§ 234.259 Warning time.

Each crossing warning system shall be tested for the prescribed warning time at least once every 12 months and when the warning system is modified because of a change in train speeds. Electronic devices that accurately determine actual warning time may be used in performing such tests.

§ 234.261 Highway traffic signal pre-emption.

Highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, shall be tested at least once each month.

§ 234.263 Relays.

(a) Except as stated in paragraph (b) of this section, each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

(b)(1) Alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years.

(2) Alternating current centrifugal type relays shall be tested at least once every 12 months.

(c) Testing of relays requiring testing on four year intervals shall be completed in accordance with the following schedule:

(1) Not less than 50% by the end of calendar year 1996;

(2) Not less than a total of 75% by the end of calendar year 1997; and

(3) One hundred percent by the end of calendar year 1998.

(d) Testing of relays requiring testing on two year intervals shall be completed by the end of calendar year 1996.

§ 234.265 Timing relays and timing devices.

Each timing relay and timing device shall be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the 41 predetermined time interval. The predetermined time interval shall be shown on the plans or marked on the timing relay or timing device. Timing devices which perform internal functions associated with motion detectors, motion sensors, and grade crossing predictors are not subject to the requirements of this section.

§ 234.267 Insulation resistance tests, wires in trunking and cables.

(a) Insulation resistance tests shall be made when wires or cables are installed and at least once every ten years thereafter.

(b) Insulation resistance tests shall be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Insulation resistance tests shall be performed when wires, cables, and insulation are dry.

(c) Subject to paragraph (d) of this section, when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action shall be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests shall be made annually.

(d) A circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

(e) Required insulation resistance testing that does not conform to the required testing schedule of this section shall be completed in accordance with the following schedule:

(1) Not less than 50% by the end of calendar year 1996;

(2) Not less than a total of 75% by the end of calendar year 1997; and

(3) One hundred percent by the end of calendar year 1998.

§ 234.269 Cut-out circuits.

Each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended. For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

§ 234.271 Insulated rail joints, bond wires, and track connections.

Insulated rail joints, bond wires, and track connections shall be inspected at least once every three months.

§ 234.273 Results of inspections and tests.

(a) Results of inspections and tests made in compliance with this part shall be recorded on forms provided by the railroad, or by electronic means, subject to approval by the Associate Administrator for Safety. Each record shall show the name of the railroad, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left.

(b) Each record shall be signed or electronically coded by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly § 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

(c) Each record shall be retained until the next record for that test is filed but in no case for less than one year from the date of the test.

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Reports		
234.7 Accidents involving grade crossing signal failure	$5,000	$7,500
234.9 Grade crossing signal system failure reports	2,500	5,000
Subpart C—Response to Reports of Warning System Malfunction		
Sec.		
234.101 Employee notification rules	2,500	5,000
234.103 Timely response to report of malfunction	2,500	5,000
234.105 Activation failure		
(a) Failure to notify—train crews	5,000	7,500
Other railroads	5,000	7,500
(b) Failure to notify law enforcement agency	2,500	5,000
(c) Failure to comply with—flagging requirements	5,000	5,000
Speed restrictions	5,000	7,500
(d) Failure to activate horn or whistle	5,000	7,500
234.106 Partial activation		
(a) Failure to notify—train crews	5,000	7,500
Other railroads	5,000	7,500
(b) Failure to notify law enforcement agency	2,500	5,000
(c) Failure to comply with—flagging requirements speed restrictions	5,000	7,500
(d) Failure to activate horn or whistle	5,000	7,500
234.107 False activation		
(a) Failure to notify—train crews	5,000	7,500
Other railroads	5,000	7,500
(b) Failure to notify law enforcement agency	2,500	5,000
(c) Failure to comply with—flagging requirements	5,000	7,500
Speed restrictions	5,000	7,500
(d) Failure to activate horn or whistle	5,000	7,500
234.109 Recordkeeping	1,000	2,000
Subpart D—Maintenance, Inspection, and Testing		
Maintenance Standards:		
234.201 Location of plans	1,000	2,000
234.203 Control circuits	1,000	2,000
234.205 Operating characteristics of warning system apparatus	2,500	5,000

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section		Violation	Willful violation
234.207	Adjustment, repair, or replacement of component	2,500	5,000
234.209	Interference with normal functioning of system	5,000	7,500
234.211	Locking of warning system apparatus	1,000	2,000
234.213	Grounds	1,000	2,000
234.215	Standby power system	5,000	7,500
234.217	Flashing light units	1,000	2,000
234.219	Gate arm lights and light cable	1,000	2,000
234.221	Lamp voltage	1,000	2,000
234.223	Gate arm	1,000	2,000
234.225	Activation of warning system	5,000	7,500
234.227	Train detection apparatus	2,500	5,000
234.229	Shunting sensitivity	2,500	5,000
234.231	Fouling wires	1,000	2,000
234.233	Rail joints	1,000	2,000
234.235	Insulated rail joints	1,000	2,000
234.237	Switch equipped with circuit controller	1,000	2,000
234.239	Tagging of wires and interference of wires or tags with signal apparatus	1,000	2,000
234.241	Protection of insulated wire; splice in underground wire	1,000	2,000
234.243	Wire on pole line and aerial cable	1,000	2,000
234.245	Signs	1,000	2,000
Inspections and Tests:			
234.247	Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements	2,500	5,000
234.249	Ground tests	2,500	5,000
234.251	Standby power	5,000	7,500
234.253	Flashing light units and lamp voltage	1,000	2,000
234.255	Gate arm and gate mechanism	1,000	2,000
234.257	Warning system operation	2,500	5,000
234.259	Warning time	1,000	2,000
234.261	Highway traffic signal pre-emption	1,000	2,000
234.263	Relays	1,000	2,000
234.265	Timing relays and timing devices	1,000	2,000
234.267	Insulation resistance tests, wires in trunking and cables	2,500	5,000
234.269	Cut-out circuits	1,000	2,000
234.271	Insulated rail joints, bond wires, and track connections	2,500	5,000
234.273	Results of tests	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

APPENDIX B TO PART 234.—ALTERNATE METHODS OF PROTECTION UNDER 49 CFR 234.105(c), 234.106, AND 234.107(c)

[This is a summary—see body of text for complete requirements]

	Flagger for each direction of traffic	Police officer present	Flagger present, but not one for each direction of traffic	No flagger/no police
False Activation	Normal Speed	Normal Speed	Proceed with caution—maximum speed of 15 mph.	Proceed with caution—maximum speed of 15 mph.
Partial Activation*	Normal Speed	Normal Speed	Proceed with caution—maximum speed of 15 mph.	Proceed with caution—maximum speed of 15 mph.
Activation Failure**	Normal Speed	Normal Speed	Proceed with caution—maximum speed of 15 mph.	Stop: Crewmember flag traffic and reboard.

*Partial activiation—full warning not given.

Non-gated crossing with one pair of lights designed to flash alternatively, one light does not work (and back-lights from other side not visible).

Gated crossing—gate arm not horizontal; or any portion of a gate arm is missing if that portion had held a gate arm flashing light.

**Activitation failure includes—if more than 50% of the flashing lights on any approach lane not functioning; or if an approach lane has two or more pairs of flashing lights, there is not at least one pair operating as intended.

Issued in Washington, D.C. on May 30, 1996.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 96–15299 Filed 6–19–96; 8:45 am]

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Federal Register

Thursday
June 20, 1996

Part XII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9, et al.
Federal Acquisition Regulation; Certification Requirements—Drug-Free Workplace; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 13, 23 and 52

[FAR Case 96–311]

RIN 9000–AH06

Federal Acquisition Regulation; Certification Requirements—Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing to amend the Federal Acquisition Regulation (FAR) to delete the requirement for an offeror to provide a certification regarding a drug-free workplace. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 96–311 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405; telephone: (202) 501–4755. Please cite FAR case 96–311.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4301(a) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106) amended 41 U.S.C. 701 to eliminate the requirement for an offeror to certify that it will take certain actions to provide a drug-free workplace. The proposed rule revises FAR Subpart 23.5 to remove the requirement for the certification and removes the solicitation provision at FAR 52.223–5.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule eliminates a certification requirement, the underlying policy regarding maintenance of a drug-free workplace has not changed. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*, (FAR case 96–311), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 13, 23 and 52

Government procurement.

Dated: May 12, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 9, 13, 23 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 9, 13, 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.406–2 is amended by revising paragraph (b)(2) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(b) * * *

(2) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690 as indicated by—

(i) Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(ii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.505).

* * * * *

3. Section 9.407–2 is amended by revising paragraph (a)(4) to read as follows:

9.407.2 Causes for suspension.

(a) * * *

(4) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—

(i) Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(ii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

4. Section 13.111 is amended by revising paragraphs (h) and (i) and removing paragraph (j) to read as follows:

13.111 Inapplicable provisions and clauses.

* * * * *

(h) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation; and

(i) 52.223–6, Drug-Free Workplace, except for individuals.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Section 23.504 is amended by revising the introductory text of paragraph (a); revising paragraph (b); removing paragraph (c); and redesignating paragraph (d) as (c) to read as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1(g) and 19.602- 1(a)(2)(i)) for a contract that exceeds the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

* * * * *

(b) No individual shall be awarded a contract of any dollar value unless that individual agrees that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled

substance in the performance of the contract.

* * * * *

23.504 [Amended]

5b. In addition to the above, section 23.504 is amended by removing ''calendar'' from the following places:

(a) 23.504(a)(4)(ii);

(b) 23.504(a)(5);

(c) 23.504(a)(6) introductory text; and

(d) newly designated 23.504(c).

6. Section 23.505 is amended by revising the heading and the introductory text of paragraph (a); in paragraph (a)(2) by removing ''; or'' and inserting a period in its place; by removing paragraph (b), redesignating (c) as (b) and revising the introductory text of newly designated (b) to read as follows:

23.505 Contract clause.

(a) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, except as provided in paragraph (b) of this section, in solicitations and contracts—

* * * * *

(b) Contracting officers shall not insert the clause at 52.223–6, Drug-Free Workplace, in solicitations and contracts, if—

* * * * *

7. Section 23.506 is amended by revising paragraph (d) to read as follows:

23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223–5 [Reserved]

8. Section 52.223–5 is removed and reserved.

52.223–6 [Amended]

9. Section 52.223–6 is amended in the introductory text by removing ''(b)''.

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Airworthiness directives:
- McDonnell Douglas; published 5-16-96

Class D airspace; published 4-23-96
Class D and E airspace; published 3-18-96
Class E airspace; published 2-27-96
IFR altitudes; published 6-3-96
Restricted areas; published 4-24-96
VOR Federal airways; published 3-12-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
- Seat belt assemblies and child restraint systems--
  - Colorfastness requirements removed; published 5-6-96

TREASURY DEPARTMENT
Customs Service
Reporting and recordkeeping requirements:
- Customs entry processing; streamlining; correction; published 6-20-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:

Karnal bunt disease--
California; comments due by 6-24-96; published 4-25-96
Plant-related quarantine, foreign:
Fruits and vegetables; importation; comments due by 6-28-96; published 4-29-96

ARMS CONTROL AND DISARMAMENT AGENCY
Service of process, production of official information, and agency employees testimony; comments due by 6-28-96; published 5-28-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska scallop; comments due by 6-28-96; published 5-3-96
Summer flounder; comments due by 6-24-96; published 5-7-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Federal Acquisition Streamlining Act of 1994; implementation--
Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96
Late offers consideration; comments due by 6-24-96; published 4-25-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
North Carolina; comments due by 6-24-96; published 5-23-96
Pennsylvania; comments due by 6-28-96; published 6-11-96
Washington; comments due by 6-24-96; published 5-23-96
Clean Air Act:
State operating permits programs--
Vermont; comments due by 6-27-96; published 5-24-96
Hazardous waste program authorizations:
Kentucky; comments due by 6-24-96; published 5-23-96
Tennessee; comments due by 6-24-96; published 5-23-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methyl esters of tall-oil fatty acids; comments due by 6-28-96; published 5-29-96
Metolachlor; comments due by 6-24-96; published 5-24-96

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Maritime services--
Large cargo and small passenger ships; radio installation inspection; comments due by 6-24-96; published 6-4-96
Radio stations; table of assignments:
Minnesota; comments due by 6-28-96; published 5-14-96
Nevada; comments due by 6-27-96; published 5-10-96
Virginia; comments due by 6-24-96; published 5-7-96

FEDERAL DEPOSIT INSURANCE CORPORATION
Government securities sales practices:
Banks' conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96
Securities transactions; recordkeeping and confirmation requirements; comments due by 6-24-96; published 5-24-96

FEDERAL RESERVE SYSTEM
Membership of State banking institutions and international banking operations (Regulations H and K):
Banks conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96
Truth in lending (Regulation Z):
Creditor-liability rules for closed-end loans secured by real property or dwellings (consummated on or after September 30, 1995); comments due by 6-24-96; published 5-24-96

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Acquisition Streamlining Act of 1994; implementation--
Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96
Late offers consideration; comments due by 6-24-96; published 4-25-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food standards of identity, quality and container fill and common or unusual name for nonstandardized foods; comments due by 6-28-96; published 5-1-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal regulatory review:
Hearing procedures; streamlining; comments due by 6-24-96; published 4-23-96
Manufactured home construction and safety standards:
Transportation of manufactured homes; overloading of tires by up to 18 percent; comments due by 6-24-96; published 4-23-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Northern spotted owl; comments due by 6-27-96; published 6-17-96

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Lessees; flexibility in keeping leases in force beyond primary term; comments due by 6-24-96; published 4-25-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate conrol, custody, care, etc.:
Intensive confinement center program; comments due by 6-25-96; published 4-26-96

LIBRARY OF CONGRESS
Procedures and services:
Library materials acquisition by non-purchase means and surplus library materials disposition; comments due by 6-24-96; published 5-23-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Acquisition Streamlining Act of 1994; implementation--
Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96
Late offers consideration; comments due by 6-24-96; published 4-25-96

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Nixon administration presidential historical materials; preservation, protection, and access procedures; comments due by 6-24-96; published 4-23-96

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Investment and deposit activities; comments due by 6-26-96; published 3-5-96

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Nuclear power plants--
Decommissioning; financial assurance requirements; comments due by 6-24-96; published 4-8-96

SOCIAL SECURITY ADMINISTRATION
Supplementary security income:
Aged, blind, and disabled--
Administration fees for making State supplementary payments and interest on such payment funds; comments due by 6-25-96; published 4-26-96

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; comments due by 6-25-96; published 4-26-96
Regattas and marine parades:
Connecticut River Raft Race; comments due by 6-27-96; published 5-13-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:

Aerospace Technologies of Australia; comments due by 6-28-96; published 3-22-96

Boeing; comments due by 6-24-96; published 4-25-96

Fairchild; comments due by 6-24-96; published 4-26-96

Hamilton Standard; comments due by 6-24-96; published 4-24-96

Hartzell Propeller Inc.; comments due by 6-25-96; published 4-26-96

Learjet; comments due by 6-24-96; published 5-13-96

New Piper Aircraft, Inc.; comments due by 6-25-96; published 4-25-96

SAAB; comments due by 6-24-96; published 4-25-96

Class B airspace; comments due by 6-24-96; published 5-10-96

Class E airspace; comments due by 6-28-96; published 5-29-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety regulations:

Parts and accessories necessary for safe operation--

Manufactured homes transportation; overloading of tires by up to 18 percent; comments due by 6-24-96; published 4-23-96

Right-of-way and environment:

Right-of-way program administration; obsolete and redundant regulations removed; comments due by 6-24-96; published 4-25-96

TREASURY DEPARTMENT

Comptroller of the Currency

Government securities sales practices:

Banks' conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96