10–3–96
Vol. 61 No. 193
Pages 51575–51766

# Federal Register

Thursday
October 3, 1996

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

## SUBSCRIPTIONS AND COPIES

PUBLIC
- Subscriptions:
  - Paper or fiche 202–512–1800
  - Assistance with public subscriptions 512–1806
- General online information 202–512–1530
- Single copies/back copies:
  - Paper or fiche 512–1800
  - Assistance with public single copies 512–1803

FEDERAL AGENCIES
- Subscriptions:
  - Paper or fiche 523–5243
  - Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: October 22, 1996 at 9:00 a.m.

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

# Contents

Federal Register

Vol. 61, No. 193

Thursday, October 3, 1996

**African Development Foundation**
NOTICES
Meetings; Sunshine Act, 51672

**Agricultural Marketing Service**
RULES
Kiwifruit grown in California, 51575–51577

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Forest Service
*See* Grain Inspection, Packers and Stockyards Administration
*See* Natural Resources Conservation Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 51672
Import quotas and fees:
Raw cane sugar, and sugars, syrups, and molasses, 51672–51673

**Antitrust Division**
NOTICES
National cooperative research notifications:
Ohio Aerospace Institute, 51720, 51720–51721
Wilfred Baker Engineering, Inc., 51721

**Arms Control and Disarmament Agency**
RULES
Privacy Act; implementation, 51593–51596

**Broadcasting Board of Governors**
NOTICES
Meetings; Sunshine Act, 51675

**Census Bureau**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51675–51676

**Centers for Disease Control and Prevention**
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Minority and other community-based organizations prevention projects, 51702–51708
Hot mix asphalt pavers; engineering control guidelines; comment request, 51708–51712

**Children and Families Administration**
RULES
Developmental disabilities program
Correction, 51751

**Coast Guard**
RULES
Waterfront facilities:
Passenger vessel and terminal security
Policy clarification, 51597–51598

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Commodity Futures Trading Commission**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 51689
Meetings; Sunshine Act, 51689

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 51689–51690

**Defense Department**
*See* Navy Department

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Electric Clearinghouse, Inc., 51690–51691
PECO Energy Co., 51691–51692

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 51599–51611
Pennsylvania, 51598–51599
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 51631–51666
Pennsylvania, 51638–51651
Texas, 51651–51659
NOTICES
Toxic and hazardous substances control:
Premanufacture exemption approvals; correction, 51751

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Federal Aviation Administration**
PROPOSED RULES
Airworthiness directives:
AlliedSignal Inc., 51618–51619
Boeing, 51621–51625
de Havilland, 51619–51621

**Federal Energy Regulatory Commission**
NOTICES
Electric utilities (Federal Power Act):
Open access non-discriminatory transmission services provided by public utilities—
Wholesale competition promotion; stranded cost recovery by public and transmitting utilities, 51696
Environmental statements; availability, etc.:
Alabama Power Co., 51696–51697
Armstrong Energy Resources, 51697
Continental Hydro Corp., 51697

Niagara Mohawk Power Corp. et al., 51697
Public Service Co. of Colorado, 51697
Transcontinental Gas Pipe Line Corp. et al., 51697–51699
Hydroelectric applications, 51699–51701
*Applications, hearings, determinations, etc.:*
Alabama-Tennessee Natural Gas Co., 51692
Brooklyn Union Gas Co., 51692–51693
Columbia Gas Transmission Corp., 51693
Columbia Gulf Transmission Co., 51693–51694
Natural Gas Pipeline Co. of America, 51694
Panhandle Eastern Pipe Line Co., 51694
Questar Pipeline Co., 51694–51695
Transcontinental Gas Pipe Line Corp., 51695
Wyoming Interstate Co., Ltd., 51695–51696

**Federal Maritime Commission**
**NOTICES**
Agreements filed, etc., 51701
Freight forwarder licenses:
Senrac Transportation Services et al., 51701

**Federal Reserve System**
**NOTICES**
Banks and bank holding companies:
Formations, acquisitions, and mergers, 51701–51702
Permissible nonbanking activities, 51702

**Federal Trade Commission**
**RULES**
Industry guides:
Leather and imitation leather products, select, 51577–51584

**Fish and Wildlife Service**
**NOTICES**
Endangered and threatened species permit applications, 51714–51715
Environmental statements; availability, etc.:
Incidental take permits—
Travis County, TX; golden-cheeked warbler, 51715
Meetings:
Garrison Diversion Unit Federal Advisory Council, 51715
Klamath River Basin Fisheries Task Force, 51715–51716

**Food and Drug Administration**
**RULES**
Animal drugs, feeds, and related products:
New drug applications—
Oxytetracycline Type A medicated articles, 51588–51593
Color additives:
1,4-Bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester copolymers 51584–51587
Food additives:
Adjuvants, production aids, and sanitizers—
Sodium 2,2'-methylenebis (4,6-di-tert-butylphenyl) phosphate, 51587–51588
**PROPOSED RULES**
Human drugs:
Drug monograph system (OTC); additional conditions; eligibility criteria, 51625–51631
**NOTICES**
Medical devices; premarket approval:
HeartMate IP LVAS, 51712–51713

**Foreign-Trade Zones Board**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Minnesota
Plastic Products Co., Inc.; plastic in-line skate manufacturing facilities, 51676

**Forest Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 51673–51674

**Grain Inspection, Packers and Stockyards Administration**
**NOTICES**
Timely service and open season pilot programs, 51674

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* Health Care Financing Administration
*See* Substance Abuse and Mental Health Services Administration
**NOTICES**
Committees; establishment, renewal, termination, etc.:
Chronic Fatigue Syndrome Coordinating Committee, 51754

**Health Care Financing Administration**
**RULES**
Medicare:
End stage renal disease—
Routine extended care services provided in swing-bed hospital; new payment methodology, 51611–51617

**Housing and Urban Development Department**
**RULES**
Residential antidisplacement and relocation assistance plans, one-for-one replacement requirements, and relocation benefits; Federal regulatory reform, 51756–51760
**NOTICES**
Senior Executive Service:
Performance Review Board; membership, 51714

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* National Park Service
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 51746

**International Trade Administration**
**NOTICES**
Antidumping:
Gray portland cement and clinker from—
Mexico, 51676–51681
Countervailing duties:
Agricultural tillage tools from—
Brazil, 51681–51682
Carbon steel products from—
Belgium, 51682–51683
Cut-to-length carbon steel plate from—
Sweden, 51683–51687
Export trade certificates of review, 51687–51688

**Justice Department**
*See* Antitrust Division
*See* Parole Commission
**NOTICES**
Americans with Disabilities Act; barrier free design regulations certifications:
Texas, 51719
Pollution control; consent judgments:
Coaters, Inc., et al., 51719–51720
General Electric Co., 51720

**Labor Department**
**RULES**
Federal contracting agencies obligations; permanent replacement of lawfully striking employees; CFR part removed, 51596–51597

**Land Management Bureau**
**PROPOSED RULES**
Land resource management:
Disposition; sales—
Townsites; land disposal for school purposes, 51666–51667
Minerals management:
Multiple use; mining; and mining claims under general mining laws, 51667–51669
**NOTICES**
Recreation management restrictions, etc.:
San Juan County, WA; supplementary rules establishment, 51716

**National Bankruptcy Review Commission**
**NOTICES**
Meetings, 51721–51722

**National Highway Traffic Safety Administration**
**PROPOSED RULES**
Motor vehicle safety standards:
School bus transportation; public meeting, 51669–51670
**NOTICES**
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 51739–51742

**National Labor Relations Board**
**NOTICES**
Meetings; Sunshine Act, 51722

**National Oceanic and Atmospheric Administration**
**RULES**
Ocean and coastal resource management:
Marine sanctuaries—
Cordell Bank National Marine Sanctuary; coordinates correction, 51577
**PROPOSED RULES**
Fishery conservation and management:
Pacific Coast groundfish, 51670–51671
**NOTICES**
Permits:
Marine mammals, 51688

**National Park Service**
**NOTICES**
Native American human remains and associated funerary objects:
Alaska State Office, BLM, Anchorage, AK—
Inventory from Hooper Bay, AK, 51716–51717
Inventory from Unalakleet, AK, 51716
California Academy of Sciences, CA; inventory from Hawaii, 51717
Los Angeles County Museum of Natural History, CA; inventory from Hawaii, 51717–51718
Nevada State Office, BLM, Reno, NV; inventory from White Pine County et al., NV, 51718

**National Science Foundation**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 51722–51724
Meetings:
Astronomical Sciences Special Emphasis Panel, 51724
Cognitive, Psychological and Language Sciences Advisory Panel, 51724
Developmental Mechanisms Advisory Panel, 51724–51725
Earth Sciences Proposal Review Panel, 51725
Elementary, Secondary and Informal Education Special Emphasis Panel, 51725
Federal Networking Council Advisory Committee, 51725–51726
Information, Robotics and Intelligent Systems Special Emphasis Panel, 51726
Neuroscience Advisory Panel, 51726
Physics Special Emphasis Panel, 51726
Physiology and Behavior Advisory Panel, 51726–51727
Senior Executive Service:
Performance Review Board; membership, 51727

**Natural Resources Conservation Service**
**NOTICES**
Environmental statements; availability, etc.:
Raccoon Island Breakwaters Demonstration Project, LA, 51675

**Navy Department**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 51690

**Nuclear Regulatory Commission**
**NOTICES**
Memorandums of understanding:
NRC emergency response data system utilization—
Wisconsin, 51727–51729
Petitions; Director's decisions:
Maine Yankee Atomic Power Co., 51729
Reports; availability, etc.:
Portable gauge licenses; program-specific guidance, 51729–51730

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Parole Commission**
**NOTICES**
Meetings; Sunshine Act, 51721

**Personnel Management Office**
**NOTICES**
Organization, functions, and authority delegations:
Claims settlement procedures transferred from General Accounting Office, 51730–51731

**Presidential Documents**
**Invalid Status Code**
Supporting Families: Collecting Delinquent Child Support Obligations (EO 13019), 51763–51765

**Prospective Payment Assessment Commission**
NOTICES
Meetings, 51731

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Substance Abuse and Mental Health Services Administration

**Railroad Retirement Board**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51731

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp. et al., 51731–51734
Pacific Stock Exchange, Inc., 51734–51737

**Sentencing Commission, United States**
*See* United States Sentencing Commission

**State Department**
NOTICES
Meetings:
International Telecommunications Advisory Committee, 51739

**Substance Abuse and Mental Health Services Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 51713–51714
Meetings; advisory committees:
October, 51714

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 51631

**Surface Transportation Board**
NOTICES
Motor carriers:
Control exemptions—
Coach USA, Inc., 51742–51743
Railroad operation, acquisition, construction, etc.:
Louisiana & Delta Railroad, Inc., 51743

**Trade Representative, Office of United States**
NOTICES
Tariff-rate quota amount determinations:
Raw and refined sugar; correction, 51751

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board

**Treasury Department**
*See* Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 51743–51745
Meetings:
Debt Management Advisory Committee, 51745–51746

**United States Information Agency**
NOTICES
Grants and cooperative agreements; availability, etc.:
College and university affiliations program, 51746–51750

**United States Sentencing Commission**
NOTICES
Practice and procedure internal rules promulgation; comment request, 51738–51739

---

**Separate Parts In This Issue**

**Part II**
Department of Health and Human Services, 51754

**Part III**
Department of Housing and Urban Development, 51756–51760

**Part IV**
The President, 51763–51765

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

---

**Electronic Bulletin Board**
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Executive Orders:**
13019.....51763

**7 CFR**
920.....51575

**14 CFR**
**Proposed Rules:**
39 (4 documents) .....51618, 51619, 51621, 51624

**15 CFR**
922.....57577

**16 CFR**
24.....51577

**21 CFR**
73.....51584
178.....51587
558.....51588
**Proposed Rules:**
330.....51625

**22 CFR**
603.....51593

**24 CFR**
42.....51756
91.....51756
92.....51756
570.....51756

**29 CFR**
270.....51596

**30 CFR**
**Proposed Rules:**
913.....51631

**33 CFR**
120.....51597
128.....51597

**40 CFR**
52 (2 documents) .....51598, 51599
**Proposed Rules:**
52 (4 documents) .....51631, 51638, 51651, 51659

**42 CFR**
413.....51611

**43 CFR**
**Proposed Rules:**
2760.....51666
3740.....51667
3810.....51667
3820.....51667

**45 CFR**
1386.....51751

**49 CFR**
**Proposed Rules:**
571.....51669

**50 CFR**
**Proposed Rules:**
660.....51670

# Rules and Regulations

Federal Register
Vol. 61, No. 193
Thursday, October 3, 1996

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

**[Docket No. FV96–920–3 IFR]**

### Kiwifruit Grown in California; Reduction of Reporting Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule reduces the reporting requirements for California kiwifruit handlers who ship less than 10,000 trays or tray equivalents per fiscal year. The changes in reporting requirements were unanimously recommended by the Kiwifruit Administrative Committee (Committee), the agency responsible for the local administration of the Federal marketing order for kiwifruit grown in California. This interim final rule decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program.

**DATES:** Effective October 4, 1996; comments received by November 4, 1996 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax # (202) 720–5698.

**FOR FURTHER INFORMATION CONTACT:** Kurt J. Kimmel, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127, Fax # (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' This order is 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, 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 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 approximately 65 handlers of kiwifruit who are subject to regulation under the marketing order and approximately 500 producers of kiwifruit in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of kiwifruit handlers and producers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule reduces the number of reports required to be filed by small kiwifruit handlers (those who handle less than 10,000 tray equivalents per year). The decrease in the number of reports required to be filed does not inhibit the effective operation of the order. It is estimated that less than 100,000 tray equivalents would be shipped by those eligible for the reduced reporting requirement, or approximately one percent of California kiwifruit production. A majority of these small volume handlers, eligible for the reduced reporting requirement, sell fruit for two to five growers. Generally, kiwifruit shipments are small and may consist of less than 50 trays at a time. Shipment information from these small volume handlers will be added into the total shipments at the end of each fiscal year. The lack of shipment information that will be provided by these handlers on a monthly basis is insignificant. The Committee is still able to levy

assessments on those handlers eligible for the reduced reporting requirement based on the information in the shipment reports that is still required twice per season.

This rule directly benefits small kiwifruit handlers. It is anticipated that approximately 20 of the 65 handlers are eligible for the reduced reporting burden authorized by this rule. The range of volume of kiwifruit handled by kiwifruit handlers is extremely broad with some handlers handling as few as 50 tray equivalents and others over 1 million tray equivalents. The majority of handlers fall in the middle and on average ship between 100,000 and 800,000 tray equivalents.

Based on available information, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. In addition, the order authorizes the Committee to collect information from kiwifruit handlers in order to efficiently operate the program.

The Committee met on June 12, 1996, and unanimously recommended reducing the reporting burden for handlers who ship less than 10,000 tray equivalents per season. Such handlers, if they qualified with the committee, will no longer be required to complete biweekly inventory reports and will only be required to fill out a monthly shipment report twice per year.

Section 920.60 of the order authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Section 920.160(a) of the order's rules and regulations requires a report of shipments to be filed with the Committee by the fifth day of the month following such shipment, or such other later time established by the Committee. This report is used to compile statistical information on shipments and to calculate assessments owed under the marketing order. Pursuant to § 920.160(b) each handler must file a Kiwifruit Inventory Shipment System (KISS) report on the fifth and twentieth day of each month. The information collected in the KISS report is used to track inventories of California kiwifruit and provide inventory statistics, in aggregate, to the industry. Both of these reports are also required under the authority of the California Kiwifruit Commission (State Commission), which administers a State program.

Prior to the 1995–96 season, the State Commission determined that the reporting burden of the KISS report and the shipment report was disproportionately impacting small volume handlers. As a result, the State Commission created an alternate reporting system, known as ''Reporting EZ.'' It allows handlers who ship less than 10,000 tray equivalents per season to file the shipment report twice per season instead of monthly and exempts handlers from filing the KISS report.

Similarly, this rule reduces the frequency that the shipment report is filed and eliminates the filing of a KISS report for those handlers that ship less than 10,000 trays or tray equivalents per fiscal year so that the ''Reporting EZ'' program is authorized under both the State program and the Federal order. Handlers shipping under 10,000 trays or tray equivalents per season will only have to fill out the shipment report twice per year. The first report is due January 5 or such other later time established by the Committee and includes information on fresh shipments from the beginning of the fiscal year (August 1 through December 31). The second shipment report is due the fifth day of the month following each handler's last shipment for the season and includes shipments from January 1 until the end of shipping season.

In order for a handler to qualify for the ''Reporting EZ'' program, the Committee must make a determination prior to October 31 (near the beginning of the shipping season). The information that the Committee will use to determine whether a handler is qualified is available from the State Commission. The State Commission already requires handlers to submit information in order to determine whether a handler intends to ship under 10,000 tray equivalents per year. Thus, the Committee will not need to place any additional reporting burden on kiwifruit handlers in order to determine handler eligibility for the ''Reporting EZ'' program. The State Commission and the Committee have a written memorandum of understanding that provides for the sharing of information while keeping proprietary information confidential. Once the handler has qualified, the Committee will then notify handlers that they are eligible for the ''Reporting EZ'' program.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (Pub. L. 104–13) and have been assigned OMB number 0581–0149.

This rule reduces the reporting burden on approximately 20 handlers of kiwifruit who have been spending approximately 240 hours completing the shipment reports and the KISS reports.

This rule invites comments on a reduction in the reporting requirements currently prescribed under the California kiwifruit marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, the information and recommendation submitted by the Committee, and other information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the reporting requirements under the marketing order and should be implemented prior to the shipping season which begins October 1; (2) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.160 paragraphs (a) and (b) introductory text are revised to read as follows:

### § 920.160 Reports.

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other later time established by

the committee: *Provided,* That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year. The first report shall be due no later than January 5 and the final report no later than the fifth day of the following month after such shipment is completed for the season, or such other later times established by the committee. Such report shall show:

(1) The reporting period;

(2) the name and other identification of the shipper;

(3) the number of containers by type and weight by shipment destination category;

(4) inventory at the end of the reporting period by container, and with respect to flats, the size of the kiwifruit;

(5) the amount of kiwifruit lost in repack; and

(6) the amount of fruit set aside for processing.

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections ''KISS/Add Inventory,'' ''KISS/Deduct Inventory,'' and ''KISS/Shipment,'' on or before December 5th, or such other later time as the committee may establish.

* * * * *

Dated: September 27, 1996.

Sharon Bomer Lauritsen,

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 96–25280 Filed 10–2–96; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

### Boundaries of the Cordell Bank National Marine Sanctuary; Correction

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correcting amendment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is correcting a discrepancy in the coordinates of the Cordell Bank National Marine Sanctuary, California.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Moore at (301) 713–3141.

**SUPPLEMENTARY INFORMATION:** The Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary) was designated in 1989. SRD issued final regulations, effective August 9, 1989, that included the coordinates of the boundary of the CBNMS (15 CFR part 922, subpart K, Appendix A). NOAA recently became aware of a minor discrepancy in the boundary coordinates of the Sanctuary: one boundary coordinate was erroneously duplicated at Points No. 27 and No. 29. This notice corrects that discrepancy by deleting Point No. 27 and re-numbering the boundary points that follow. Neither the actual boundary nor the area of the Sanctuary are affected by this correction.

NOAA has decided to make this document effective immediately because public comment and delayed effective date are not necessary due to the minimal nature of the correcting amendment.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 23, 1996.

David L. Evans,

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

## PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Appendix A to subpart K of part 922 is revised to read as follows:

### Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

| Point No. | Latitude | Longitude |
|---|---|---|
| 1 ..... | 38°15′51.72″ | 123°10′52.44″ |
| 2 ..... | 38°07′55.88″ | 123°38′33.53″ |
| 3 ..... | 38°06′45.21″ | 123°38′00.40″ |
| 4 ..... | 38°04′58.41″ | 123°37′14.34″ |
| 5 ..... | 38°04′28.22″ | 123°37′17.83″ |
| 6 ..... | 38°03′42.75″ | 123°36′55.66″ |
| 7 ..... | 38°03′11.10″ | 123°36′19.78″ |
| 8 ..... | 38°02′46.12″ | 123°36′21.98″ |
| 9 ..... | 38°02′02.74″ | 123°35′56.56″ |
| 10 ..... | 38°01′27.10″ | 123°35′55.12″ |
| 11 ..... | 38°01′22.28″ | 123°36′55.13″ |
| 12 ..... | 38°01′11.54″ | 123°37′28.21″ |
| 13 ..... | 38°00′49.16″ | 123°37′29.77″ |
| 14 ..... | 37°59′54.49″ | 123°36′47.90″ |
| 15 ..... | 37°59′12.39″ | 123°35′59.55″ |
| 16 ..... | 37°58′39.40″ | 123°35′14.85″ |
| 17 ..... | 37°58′00.57″ | 123°34′42.93″ |
| 18 ..... | 37°57′18.99″ | 123°33′43.15″ |
| 19 ..... | 37°56′56.42″ | 123°32′51.97″ |
| 20 ..... | 37°56′18.90″ | 123°32′49.24″ |
| 21 ..... | 37°55′22.37″ | 123°32′36.96″ |
| 22 ..... | 37°54′26.10″ | 123°32′21.73″ |
| 23 ..... | 37°53′07.46″ | 123°31′46.81″ |
| 24 ..... | 37°52′34.93″ | 123°31′18.90″ |
| 25 ..... | 37°51′42.81″ | 123°31′19.10″ |
| 26 ..... | 37°50′59.58″ | 123°31′02.96″ |
| 27 ..... | 37°49′22.64″ | 123°29′34.07″ |
| 28 ..... | 37°48′49.14″ | 123°28′44.61″ |
| 29 ..... | 37°48′36.95″ | 123°28′08.29″ |
| 30 ..... | 37°48′03.37″ | 123°28′23.27″ |
| 31 ..... | 37°47′41.54″ | 123°28′01.97″ |
| 32 ..... | 37°47′01.78″ | 123°27′16.78″ |
| 33 ..... | 37°46′51.92″ | 123°26′48.98″ |
| 34 ..... | 37°46′13.20″ | 123°26′04.79″ |
| 35 ..... | 37°46′00.73″ | 123°25′36.99″ |
| 36 ..... | 37°50′25.31″ | 123°25′26.53″ |
| 37 ..... | 37°54′32.28″ | 123°23′16.49″ |
| 38 ..... | 37°57′45.71″ | 123°19′17.72″ |
| 39 ..... | 37°59′29.27″ | 123°14′12.16″ |
| 40 ..... | 37°59′43.71″ | 123°08′27.55″ |
| 41 ..... | 38°03′10.20″ | 123°07′44.35″ |
| 42 ..... | 38°04′01.64″ | 123°06′58.92″ |
| 43 ..... | 38°08′33.32″ | 123°04′56.24″ |
| 44 ..... | 38°12′42.06″ | 123°07′10.21″ |

[FR Doc. 96–25152 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–08–M**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 24

### Guides for Select Leather and Imitation Leather Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule; Final Guides for Select Leather and Imitation Leather Products.

**SUMMARY:** The Federal Trade Commission (the ''Commission''), as part of its periodic review of its rules and guides, announces that it has concluded a review of its proposed Guides for Select Leather and Imitation Leather Products (''proposed Guides''), which combined and amended the provisions of Guides for the Luggage and Related Products Industry, the Guides for Shoe Content Labeling and Advertising, the Guides for the Ladies' Handbag Industry and the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts. The Commission has decided to adopt the proposed Guides, modified as discussed below.

**EFFECTIVE DATE:** The effective date of this rule is December 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Susan E. Arthur, Attorney, (214) 767–

5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 18, 1995, the Commission rescinded the Guides for the Luggage and Related Products Industry (''Luggage Guides''), the Guides for Shoe Content Labeling and Advertising (''Shoe Content Guides''), and the Guides for the Ladies' Handbag Industry (''Handbag Guides''). 60 FR 48027 (September 18, 1995). On the same day, the Commission sought public comment on proposed Guides for Select Leather and Imitation Leather Products. 60 FR 48056 (September 18, 1995). The proposed Guides combined relevant portions of the three Guides, updated certain language used in the Guides, and made other modifications to clarify and streamline the provisions of the Guides. The Commission included within the coverage of the proposed combined Guides certain provisions of the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts, 16 CFR Part 405 (''Waist Belt Rule'').[1]

The request for public comment contained questions designed to assist the Commission in determining whether the proposed Guides should be expanded in scope and to allow interested parties to apprise the Commission of any special considerations for their industries. The questions were as follows:

1. Should the proposed Guides for Select Leather and Imitation Leather Products be expanded in scope to include other products made of leather or imitation leather? Such products might include, but are not limited to, clothing, furniture, watchbands, and equestrian items.

2. Are there special considerations for these or other leather or imitation leather goods which are not addressed by the proposed Guides? How could any such special considerations be addressed by the Guides?

## II. Comments Received

Nine comments were received in response to this request for public comment. Additionally, the Commission received two Waist Belt Rule comments in response to an advance notice of proposed rulemaking published on September 18, 1995. Previously, the Commission had received 12 comments in response to its March 27, 1995 Federal Register notice on the three individual Guides and 10 comments on the Waist Belt Rule (all but three of the Waist Belt Rule comments were also submitted in response to the request for comment on the three Guides). Because the Waist Belt Rule comments concern the same or similar issues as those under consideration in this proceeding, they have been considered in this review.

In its September 18, 1995 Federal Register notice, the Commission addressed the first set of comments on the three Guides and the Waist Belt Rule, which had been received in response to its March 27, 1995 Federal Register notice. The Commission now addresses the comments received in response to the September 18, 1995 Federal Register notice and will refer to the first set of comments where appropriate or necessary to the discussion.[2]

In conducting this review, the Commission also examined the European Union Directive 94/11/EC, which applies to footwear. The Directive has as its objective informing consumers of the contents of their shoes, which is different from the Guides' aim of preventing misrepresentation caused by the appearance of leather. However, to enhance global harmonization, the Commission has, where appropriate, incorporated some of the concepts of the Directive into the Guides.

### *A. Comments Concerning the Usefulness of the Guides*

The proposed Guides are premised on the Commission's long-standing position that a product that looks like leather makes an implied representation that the product is made of leather. The Commission received a number of comments which indicated a need for the Guides. One comment, however, stated that the proposed Guides are at odds with current Commission law and policy and urged the Commission to abandon the Guides as they apply to shoes and boots.[3] This comment also said that the proposed Guides convert silence about shoe content into an ''appearance of leather'' misrepresentation and then require disclosure to cure that misrepresentation.

Specifically, the Footwear Distributors and Retailers of America argues that the proposed Guides deal with conduct that is not prohibited under modern FTC deception law. The association cites *International Harvester Co.*, 104 F.T.C. 949 (1984), as setting forth the circumstances under which the Commission will apply deception theory to omissions: (1) where the seller fails to disclose information necessary to prevent an affirmative statement from creating a misleading impression, and (2) where the seller remains silent under circumstances which constitute an implied but false representation. *International Harvester*, however, also states that a deceptive omission can arise from the physical appearance of a product, and cites as authority a case in which the Commission upheld charges against a seller who failed to disclose that a simulated wood product was actually paper. *Haskelite Mfg. Corp.*, 33 F.T.C. 1212, 1216 (1941), *aff'd*, 127 F.2d 765 (7th Cir. 1942). The proposed

[1] The Commission recently repealed the Waist Belt Rule. 61 FR 25560 (May 22, 1996).

[2] Comments Received in Response to the March 27, 1995 Federal Register Notice.

Concerning the Three Guides:

1. Rose E. Kettering (''REK''). Same comment sent regarding Waist Belt Rule
2. Matt Anderson (''MA''). Same comment sent regarding Waist Belt Rule.
3. Marilyn Raeth (''MR''). Same comment sent regarding Waist Belt Rule.
4. James A. McGarry (''JAM''). Same comment sent regarding Waist Belt Rule.
5. Lenna Mae Gara (''LMG''). Same comment sent regarding Waist Belt Rule.
6. Linda D. Lipinski (''LDL'').
7. Footwear Industries of America (''FIA'').
8. Leather Industries of America, Inc. (''LIA''). Same comment sent regarding Waist Belt Rule.
9. Luggage and Leather Goods Manufacturers of America, Inc. (''LLGMA'').
10. Cromwell Leather Company, Inc. (''CL''). Same comment sent regarding Waist Belt Rule.
11. Enger Kress (''EK'').
12. Footwear Distributors and Retailers of America (''FDRA'').

Concerning the Waist Belt Rule:

13. Stephen Toso (''ST'').
14. Humphreys, Inc. (''HI'').
15. Enger Kress (''EK2'').

Comments Received in Response to the September 18, 1995 Federal Register Notice.

Concerning the Proposed Guides:

16. Ecological Fibers, Inc. (''EFI'').
17. Leather Industries of America (''LIA2''). Addendum dated January 11, 1996 (''LIA3''). Addendum dated January 18, 1996 (''LIA4'').
18. Fried, Frank, Harris, Shriver & Jacobson (''FFHSJ'').
19. Footwear Industries of America (''FIA2''). Addendum dated January 25, 1996, to Susan Arthur (''FIA3''). Addendum dated January 25, 1996, to Secretary's Office (''FIA4''). Addendum dated January 30, 1996 (''FIA5'').
20. Footwear Distributors and Retailers of America (''FDRA2'').
21. Cromwell Leather Company, Inc. (''CL2'').
22. People for the Ethical Treatment of Animals (''PETA'').
23. Hong Kong Government Industry Department (''HK'').
24. Luggage and Leather Goods Manufacturers of America (''LLGMA2'').

Concerning the Waist Belt Rule:

24. Humphreys, Inc. (''HI2'').
25. Larry Gundersen (''LG'').

[3] FDRA2, #20 at 2.

Guides are designed to correct the same type of omission as that in *Haskelite.* Both cases provide support for the underlying premise of the Guides.

The Footwear Distributors and Retailers of America also cites *Thompson Medical,* 104 F.T.C. 648, (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 1086 (1987) and *Leonard Porter,* 88 F.T.C. 546, (1976), as support for the proposition that a product appearing to be leather does not make an implied representation concerning the material from which the product is made. In *Thompson Medical,* the Commission said that if an initial review does not permit it to conclude with confidence that an implied message exists, it will not find the implied claim unless extrinsic evidence (consumer surveys, expert testimony) allows it to conclude that such a reading is reasonable. In *Leonard Porter,* the Commission found that consumers would not generally assume that certain souvenirs were handmade in Alaska by natives. The Commission said that, simply from the appearance of the items, it could not conclude that the items possessed the capacity to deceive as to their origin and method of manufacture.[4] With regard to the appearance of leather and the potential resulting content representation created by that appearance, however, a visual examination of the item is sufficient to determine whether a representation is made. Extrinsic evidence is unnecessary to determine the existence of the claim.

The Footwear Distributors and Retailers of America comment also expresses a belief that new high-tech synthetics are far superior to the synthetics used in the early 1960's, ''offering the appearance, comfort, breathability, durability, and other qualities that are comparable or superior to leather.'' The organization believes that the performance and value of the shoe, not the materials used, drive consumer choice. Further, Footwear Distributors and Retailers of America states that consumers do not assume that footwear is made of leather nor do they care about the exact materials used in shoes.

The Commission believes that leather content representations likely are material to consumers. Two consumers who responded to the first request for comment indicated a belief that imitation leather, when used in shoes, may cause feet to sweat excessively.[5] Another stated that animal lovers, vegetarians and others who do not wish to wear leather need to know what they are buying.[6] Two other comments from the first set of comments indicated that the requirements of the Guides assist consumers in making purchasing decisions.[7] Although the Footwear Distributors and Retailers of America comment contends that these consumer comments are anecdotal evidence which should be rejected, the Commission believes that they demonstrate a desire on the part of consumers to be informed of the nature of a product and that this desire is common to a substantial number of consumers.

It seems likely that the appearance of leather in a synthetic material may be a representation that the product is leather. Further, price or other factors are unlikely to signal to consumers that a product which appears to be leather is not.[8] Products made from synthetics that look like leather, especially synthetic athletic shoes, are often priced the same as similar products made of leather.

In addition, the Guides trigger disclosures for non-leather materials only when a product appears to be leather and is not. Many synthetics are intentionally made to simulate the look of leather, apparently because many consumers prefer leather. Other synthetic products, however, are clearly and visibly synthetic, and for such products disclosure requirements would not be triggered. Thus, the application of the Guides is properly limited to situations where consumers are likely to be misled about a product's true composition.

In sum, it seems likely that that the appearance of leather in a non-leather product constitutes a representation that a product is leather. Consumers have come to rely upon the information provided pursuant to the Guides, and if the Commission did not adopt the proposed Guides, it is likely that confusion in the marketplace would result.

B. Comments Concerning Products Covered by the Guides

The request for comment on the proposed Guides contained questions related to (1) expansion of the Guides to include other types of products made of leather or imitation leather and (2) any special considerations for such products not addressed by the proposed Guides. For the reasons discussed below, the Commission has decided not to expand the Guides to cover additional types of products.

A number of comments received in response to the first Federal Register notice concerning the three individual Guides addressed the expansion issue. One comment said that a single set of guides should cover all leather-using industries.[9] Another stated that the Guides could be generalized to many, if not all, industries.[10] Leather Industries of America suggested that a set of leather definitions be developed to apply to all finished goods.[11] The Luggage and Leather Goods Manufacturers of America stated, however, that it did not endorse combining the Guides because of the special circumstances in other industries.[12] None of the second set of comments concerning the proposed Guides expressed any views on whether the Guides should be expanded to include additional products.

Other than the request for special consideration of footwear contained in the Footwear Distributors and Retailers of America comment discussed above, only one comment from the second set of comments requested any special consideration for certain products. This comment came from a company which supplies paper and cover products to the bookbinding and looseleaf industry. The comment requested an exclusion for material thinner than 10/1000th of an inch, provided that the material is identified by some name which indicates the presence of non-leather ingredients (the company suggests the term ''reinforced bonded leather'') and that the material is used as covering material.[13] No such exclusion has been incorporated into the Guides as adopted. The leather appearance of the product, rather than its thickness, makes a representation to consumers. Further, as addressed below, use of the term ''bonded leather'' is sanctioned by the proposed Guides, provided that appropriate disclosures are made.

While there are some arguments for broadening the Guides, they are not compelling. The record developed during this review does not provide sufficient support to justify expansion of the Guides. There are still many unanswered questions regarding the extent to which misrepresentations are made in other industries, how

[4] The Commission also said that complaint counsel's extrinsic consumer evidence did not appear to be representative either of current conditions or of any substantial segment of consumers and did not support a need for disclosures.

[5] REK, #1; MA, #2 at 2.

[6] LMG, #5.

[7] MR, #3 and JAM, #4.

[8] In contrast, consumers are unlikely to confuse a gold-toned product with real gold when the ''pretender'' sells for a fraction of the amount that gold items typically cost.

[9] CL, #10 at 1.

[10] EK, #11 at 2.

[11] LIA, #8 at 4–5.

[12] LLGMA, #9 at 2.

[13] EFI, #16 at 2.

consumers would interpret the appearance of leather for products in other industries, and whether there are special considerations for other industries. Thus, the Commission has decided that the Guides should not be expanded to cover additional products.[14] Nevertheless, all industries which utilize leather and imitation leather can obtain valuable guidance from the Guides. Because the Guides are interpretive of laws enforced by the Commission, these industries may obtain useful information from the Guides even though they are not specifically covered. Further, although other industries may not be within the coverage of the Guides, the Commission is in no way prevented from otherwise taking action against a company engaged in deceptive omissions.

*C. Suggested Changes to the Guides*

A number of the comments received in response to the second request for comment suggested that certain changes be made to the proposed Guides. Generally, these suggestions fall into the following categories: (1) Use of the term ''Leather,'' (2) Multi-material Shoes, (3) Disclosure Requirements, (4) Concealed Innersoles, (5) Use of the term ''Bonded Leather,'' (6) Use of the term ''Waterproof,'' and (7) Deletion of Unnecessary Provisions.

1. Use of the Term ''Leather''

Split leather is the leather which results from the splitting of hides or skins into two or more thicknesses, other than the grain or hair side. Top grain leather is the grain or hair side. As published for comment, the proposed Guides provided for use of the term ''leather'' only when the material is top grain leather. Originally, the distinction was retained because of apparent differences between the performance and appearance of top grain leather and that of split leather, as well as possible consumer expectations with regard to these materials. Upon further consideration, the Commission has decided that the term ''leather'' would also be appropriate for split leather products.

The European Union Directive 94/11/EC, which applies to footwear, allows split leather to be called ''leather'' without qualification.[15] For this reason, two comments from the first set of comments urged that the Guides be amended to allow split leather to be called ''leather.''[16] The comments suggested that technological advances have resulted in a split leather which is superior to that produced years ago. In support of preservation of the Guides' distinction between top grain and split leather, however, one of the first set of comments stated that split grain is less expensive, less attractive, and less durable than top grain leather, and that split leather is subject to ''crocking.''[17] Another of that set of comments stated that the Guides should continue to permit only top grain leather to be called ''leather'' or ''genuine leather'' and that other forms of leather should include qualifying words.[18]

One of the second set of comments reasoned that top grain leather is in fact a split—albeit the top grain split—of a cowhide or sheep-skin.[19] Further, the comment stated that top grain leathers are noted for their exceptionally low tear strength and structural weakness. The comment also said that it could be argued that there is no application where splits could not visually and physically replace or substitute top grain leathers, but that the reverse would not apply. The commenter stated that for use on the products its client manufactures, appointment books and diaries, splits are preferable for their strength characteristics and their blemish-free surface. Since these products are enhanced by use of split leather, the comment states that it would not be unfair or deceptive to represent that the products are leather, but that it would detract from the marketing of the products to refer to them as anything other than leather.[20]

Rather than relying upon the performance characteristics of split leather and top grain leather, the Commission believes that consumer understanding and the messages conveyed to consumers should be the focus in deciding whether to permit use of the term ''leather'' to describe split leather. Footwear Distributors and Retailers of America commented that there is no reason to assume that consumers distinguish between top grain and split leather.[21] Another comment requested modification of the proposed Guides to accurately reflect consumer acceptance of split leather.[22] The Commission believes that it is reasonable to assume that consumers do not perceive a distinction between ''leather'' and ''split leather'' and that consumers do not assume that ''leather'' means only ''top grain leather.'' Indeed, the relevant definition of leather is the ''dressed or tanned hide of any animal, usually with the hair removed.''[23] If the Guides are modified to allow split leather to be called ''leather,'' manufacturers of top grain leather would be free to label their products as ''top grain leather'' if they so choose. It is likely that a number of top grain leather product manufacturers already label their products in this manner. If consumers are aware of any difference in the quality of various types of leather, the term ''top grain'' will likely convey more useful information to consumers than will the term ''split.''

Based on the European Union position on split leather and the representation that the Commission believes is made to consumers by use of the term ''leather,'' the Commission deletes from the Guides the provision stating that only top grain leather can be called leather without qualification. Furthermore, the provision requiring disclosure of the presence of split leather and other references to the term ''split leather'' are deleted.

2. Multi-Material Shoes

Footwear Distributors and Retailers of America suggested that the proposed Guides should be more flexible with regard to multi-material footwear.[24] The proposed Guides stated that if all or part of a shoe is non-leather with the appearance of leather, the general nature of the material or the fact that the material is not leather should be disclosed.[25] The proposed Guides also stated that a product which is made principally of leather but which has

[14] The provision concerning the scope of the Guides is modified in that the term ''footwear'' is substituted for the enumeration of footwear items.

[15] Under the European Union directive, leather which has a surface coating thicker than 0.15 mm cannot be called ''leather.'' Leather with a surface coating which does not exceed one third of the thickness of the material but is greater than 0.15 mm must be referred to as ''coated leather.'' The proposed Guides do not address coating materials because such materials were not addressed in the original Guides, and there is insufficient record evidence regarding practices in the United States upon which to base guidance about coatings.

[16] LIA, #8 at 4; FDRA, #12 at 3. FDRA restated this position in its second comment.

[17] FIA, #7 at 2. The comment stated that crocking is the transfer of color from the surface of a colored material to an adjacent area of the same material or to another surface, principally by rubbing. In its second comment, Footwear Industries of America again supported qualification of split leather because of differences in the performance and appearance of split leather and top grain leather.

[18] CL, #10 at 1.

[19] FFHSJ, #18 at 1.

[20] Alternatively, the comment requested a clarification of the scope of the Guides to make clear that the Guides do not apply to the company's products.

[21] FDRA2, #20 at 3.

[22] FFHSJ, #18 at 1.

[23] The American Heritage Dictionary, Houghton Mifflin Company, Third Edition (1992).

[24] FDRA2, #20 at 4.

[25] Under the proposed Guides as published for comment, the composition of heels, stiffenings, and ornamentation was not considered when making the determination of whether a shoe, boot, or slipper may be called ''leather.''

non-leather parts with the appearance of leather may be described as leather as long as there is a disclosure of the non-leather parts. Given the current design of footwear, it may have been necessary in order to comply with the proposed Guides to disclose the composition of a number of different parts of a shoe. Such a lengthy disclosure may have been cumbersome to manufacturers and confusing to consumers.

The EU Directive on Footwear states that labels shall provide information on only three parts of a shoe: the upper, the lining and sock, and the outersole.[26] The Commission believes that such a limitation is appropriate to prevent costly and cumbersome disclosures. Consequently, a footnote has been added to the Guides indicating that footwear is considered to be composed of these three parts.

Footwear Distributors and Retailers of America suggest allowing use of a more flexible disclosure if a footwear part is composed of both leather and non-leather materials. For example, if the majority of the upper is leather, the following term would be used: ''leather and manmade upper.'' If leather is not the majority of the material: ''upper of manmade and leather materials.'' Because such disclosures would inform consumers that the upper of a shoe is not entirely leather and would prevent deception, a footnote has been added to the Guides which states that, with regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to the predominance of materials. An example similar to the one mentioned above has also been added.

3. Disclosure Requirements

People for the Ethical Treatment of Animals stated that its members, because of their ethical concerns, need labels affixed to products which accurately identify the material from which the product is made. The organization suggests that all *leather* products be labeled ''Animals Suffered to Make This Product'' and that all non-leather products be labeled ''Cruelty-free Product.'' The aim of the Guides is to prevent misrepresentation of leather content. The disclosures provided in the proposed Guides accomplish this goal. The disclosures suggested by People for the Ethical Treatment of Animals are not appropriate in the context of the Guides.

4. Concealed Innersoles

The proposed Guides currently state that shoes with visible parts having the appearance of leather but containing non-leather concealed innersoles should bear a disclosure of the composition of the innersoles.[27] Initially, the Commission believed that insufficient evidence of consumer beliefs had been presented to warrant removal of this provision. On further consideration, however, the Commission now has decided that disclosure of the composition of concealed innersoles is not needed.

Comments from two trade associations addressed this issue. Footwear Industries of America objected to the Guides' not being limited to uppers and outersoles, the two main components of a shoe upon which the association believes consumers base their purchasing decisions.[28] The comment said that innersoles are typically covered with a sock lining or insole sock which conceals the innersole and separates it from the foot, so consumers are not deceived into thinking it is leather. Footwear Distributors and Retailers of America argued that the concealed innersole disclosure should be deleted given the absence of any empirical evidence that consumers care about concealed innersoles.[29] The comment also said that consumers should not have any expectations at all about a part of the shoe which is not seen.

Footwear Industries of America stated that leather innersoles do not guarantee better performance, and that leather is no longer being used in this manner.[30] The comment states that leather innersoles crack and break during flexing movements due to the effects of perspiration acids and humidity. The comment also estimates that less than 1% of the 1.6 billion pairs of shoes sold annually in the U.S. have a leather innersole, and that most are cellulose board. The association also provided information to indicate that cellulose board can outperform leather in a number of respects, including dimensional stability, porosity, and thermal conductivity.[31] The information provided also indicates that the material is lighter in weight than leather and has a lower Ph factor than leather.

As discussed above, with regard to footwear, the coverage of the Guides has been limited to the three main parts of footwear. Therefore, the provision regarding concealed innersoles has been deleted. A concealed innersole does not make any implied representation to consumers and, therefore, no disclosure of the content of concealed innersoles is necessary.[32]

5. Use of the Term ''Bonded Leather''

In drafting the proposed Guides, the Commission considered a number of comments concerning use of the term ''bonded leather,'' which generally refers to material made of leather fibers held together with a bonding agent. Although the original three Guides did not mention the term ''bonded leather,'' they addressed this type of material, which is also called ''ground leather,'' ''pulverized leather,'' or ''shredded leather.'' The Shoe Content Guides and the Ladies' Handbag Guides allowed either a disclosure stating that the material is simulated or imitation leather or that the material is ground, pulverized, or shredded leather. The Luggage Guides stated that an accurate representation as to the ground, pulverized or shredded leather content of the material could be made, but that if the material had the appearance of being leather a disclosure must be made in accordance with the imitation leather provision of the Luggage Guides. The example given in the Luggage Guides contains a disclosure that shredded leather fibers are contained in the material, but that rubber adhesive and vinyl are also contained in the material. The Luggage Guides provide that consumers should be made aware of the different components in this type of material. The history of this issue was considered in drafting the proposed Guides, which state that if the term ''bonded leather'' is used (or if similar terms such as ''ground leather,'' ''pulverized leather,'' or ''shredded leather'' are used), a disclosure of the percentage of leather fiber and of the

[26] The European Union Directive defines these three parts of a shoe as follows: (1) the upper is the outer face of the structural element which is attached to the outersole; (2) the lining and sock are the lining of the upper and the insole, constituting the inside of the footwear article; and (3) the outersole is the bottom part of the footwear article subjected to abrasive wear and attached to the upper.

According to the Directive, labels must disclose the material which constitutes at least 80% of the surface area of the upper, 80% of the surface area of the lining and sock, and at least 80% of the volume of the outersoles. The Guides have not been modified to conform with the European Union Directive with respect to the 80% figure.

[27] Concealed innersoles are the portion of a shoe hidden between the liner and the outersole of a shoe.

[28] FIA2, #19 at 1. Footwear Industries of America also made this argument in its first comment.

[29] FDRA2, # 20 at 3. In its first comment, the organization stated that the Guides should not apply to concealed innersoles because consumers expect that the concealed portions of footwear bottoms, particularly innersoles, are made of synthetic material.

[30] FIA2, #19 at 2.

[31] FIA5, #19 at 1.

[32] As indicated above, the European Union Directive does not apply to concealed innersoles.

percentage of non-leather substances contained in the product should be made.

One of the comments expressed support for the proposed Guides' treatment of this issue.[33] Another comment suggested that this material should be called ''reinforced bonded leather'' rather than simply ''bonded leather'' in order to put the public on notice that there are other ingredients in the material.[34] A comment regarding the Waist Belt Rule suggested that the term ''bonded leather'' should be permitted to be used unconditionally.[35] The Commission concludes, however, that use of the terms ''bonded leather'' or ''reinforced bonded leather'' without further information is likely to confuse consumers as to leather content, and the best way to avoid such confusion is to include the disclosures as provided by the Guides.

Another commenter supported using the term ''bonded leather'' but did not think the additional content information as provided by the Guides was the best solution.[36] Cromwell Leather believed that a qualifying word before the term ''leather'' (such as ''bonded'' or ''split'') will keep the Guides simple, yet effective, and suggests that ongoing education will increase consumer understanding of the qualifying terms. The comment stated that the proposed Guides' disclosure requirement for bonded leather will create additional costs and cause confusion because some manufacturers get bonded leather from more than one supplier. The company believes there should be a 75% leather fiber minimum for use of the term ''bonded leather'' (without further qualification). The comment states that there is widespread industry agreement on the 75% figure.

As discussed in response to the first set of comments, however, even if the 75% figure were an industry practice or standard, it would not prevent deception. In one of the original comments regarding the Waist Belt Rule, consumer survey evidence was provided in support of use of the term ''bonded leather.'' [37] The data provided indicates that some consumers may be misled by use of the term. Further, the term may be interpreted to mean that the material is of greater quality than leather,[38] or is strengthened or reinforced leather. Without the qualifying information contained in the Guides, the term ''bonded leather'' may not inform consumers that non-leather fibers are contained in the material.

The ecological benefits of using the term ''bonded leather'' (namely, encouraging the use of leather scrap or recycled leather fiber) are also addressed in the second set of comments. One of the comments urges the Commission to reconsider the decision not to require a minimum leather content for use of the term ''bonded leather'' because ecological benefits are subverted.[39] Another comment urging a minimum threshold for use of the term stated that permitting any amount of leather fibers to be called ''bonded leather'' may diminish the use of recycled leather fibers and reverse the ecological progress the industry has made.[40] Whether recycling goals are affected by use of the term ''bonded leather'' or not, consumers should be made aware of the contents of such material.

One of the second set of comments urged the Commission to require a minimum leather content for use of the term ''bonded leather'' since consumers may not read fine print.[41] The Guides already contain a provision regarding the form of disclosures which should prevent any ''fine print'' from being used to mislead consumers. This provision states that the disclosures affixed to products and made in advertising should be conspicuous and clear and should be in close conjunction with the representation necessitating the disclosure.

In summary, the Commission believes that consumers should be made aware of the contents of bonded leather and similar materials. The Guides' treatment of this issue accomplishes this objective. One change has been made to the ''bonded leather'' provision. The term ''reconstituted leather'' has been added to the section concerning use of the terms ground, pulverized, shredded, and bonded leather. Apparently, this term is often used interchangeably with ''bonded leather.''

6. Use of the Term ''Waterproof''

A number of comments expressed concern about the provision in the proposed Guides which relates to the term ''waterproof'' because the Guides provide for use of the term only if an item is impermeable to water.[42] The comments argue that a product can be waterproof without being totally impermeable to water. New technology waterproofs leather by chemically modifying the leather fibers. Use of this material in footwear allows air molecules to pass through while preventing larger water molecules from reaching the foot. Total impermeability is not desirable since the ability of leather to breathe is a form of permeability. Leather Industries of America proposed the following modification:

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.[43]

Due to changes in technology and consumer acceptance of the modern waterproofing methods, the waterproof provision has been modified as contained in Leather Industries of America's suggestion.

7. Deletion of Unnecessary Provisions

The proposed Guides stated that it is unfair or deceptive to misrepresent that a product is colored, finished, or dyed with aniline dye. One of the comments expressed concern about this provision.[44] Leather Industries of America stated that ''aniline leather'' is universally used in the industry in a non-chemical sense to describe leather that is finished without pigment coverage. The association believes that the term does not imply that the leather has been dyed with an aniline dye, only that the finish is clear and contains no pigment. Because the term ''aniline'' now refers to a clear finish which allows the surface to be seen, the Commission has removed the provision in the proposed Guides relating to aniline dye.

The same provision also deals with misrepresentations that a product is dyed, embossed, grained, processed, finished, or stitched in a certain manner. Such misrepresentations would fall within the general deception provision and do not need to be contained in a specific provision.

Although no comments were received regarding the ''fictitious animal'' provision in the proposed Guides, this provision has also been deleted. Any representation that a product is made from the skin or hide of an animal that

[33] FIA2, #19 at 1.

[34] EFI, #16 at 2.

[35] HI2, #24 at 1.

[36] CL2, #21 at 1.

[37] HI, #14, part 6.

[38] EK, #11 at 3 and letter dated February 3, 1964, to the Commission from counsel for the Tanners' Council of America at 10–11.

[39] LIA2, # 17 at 1.

[40] CL2, #21 at 2.

[41] LIA2, #17 at 1.

[42] LLGMA2, #24 at 1, LIA3, #17 at 1, LIA4, #17 at 1, FIA4, #19 at 1.

[43] LIA3, #17 at 1. Footwear Industries of America and Luggage and Leather Goods Manufacturers of America each submitted a somewhat similar proposal, without reference to the anticipated life of the product.

[44] LIA2 at 1.

does not exist would clearly fall within the general deception provision of the Guides.

III. Conclusion

A number of changes to the Guides have been made based upon the second set of comments. The final Guides incorporate the following modifications:

—The scope of the Guides has been modified to use the term ''footwear'' instead of a list of footwear items, and the term ''footwear'' is used as appropriate throughout the Guides.

—The provision stating that only top grain leather can be called leather without qualification is modified. The provision requiring disclosure of the presence of split leather and other references to the term ''split leather'' have been deleted.

—The provision regarding concealed innersoles has been deleted.

—With regard to footwear, the Guides have been modified to state that for purposes of the Guides, footwear is composed of three parts: the upper, the lining and sock, and the outersole. A footnote has been added which says that with regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to predominance of materials.

—The term ''reconstituted leather'' has been added to the provision dealing with use of the terms ground, pulverized, shredded, or bonded leather.

—The provision concerning use of the term ''waterproof'' has been modified to allow the term to be used if a product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

—The provision relating to misrepresentation that a product has been dyed with aniline dye and other specific misrepresentations has been deleted.

—The ''fictitious animal'' provision has been deleted as unnecessary.

List of Subjects in 16 CFR Part 24

Advertising, Clothing, Distribution, Footwear, Imitation-leather products, Labeling, Ladies' handbags, Leather and leather products industry, Luggage and related products, Shoes, Trade practices, Waist belts.

Accordingly, 16 CFR Part 24 is added to read as follows:

## PART 24—GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS

Sec.

24.0 Scope and purpose of guides.
24.1 Deception (general).
24.2 Deception as to composition.
24.3 Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' or ''scratch resistant.''

Authority: 15 U.S.C. 45, 46.

### § 24.0 Scope and purpose of guides.

(a) The Guides in this part apply to the manufacture, sale, distribution, marketing, or advertising of all kinds or types of leather or simulated-leather trunks, suitcases, traveling bags, sample cases, instrument cases, brief cases, ring binders, billfolds, wallets, key cases, coin purses, card cases, French purses, dressing cases, stud boxes, tie cases, jewel boxes, travel kits, gadget bags, camera bags, ladies' handbags, shoulder bags, purses, pocketbooks, footwear, belts (when not sold as part of a garment) and similar articles (hereinafter, ''industry products'').

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the manufacture, sale, distribution, marketing, and advertising of industry products listed in paragraph (a) of this section. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

### § 24.1 Deception (general).

It is unfair or deceptive to misrepresent, directly or by implication, the kind, grade, quality, quantity, material content, thickness, finish, serviceability, durability, price, origin, size, weight, ease of cleaning, construction, manufacture, processing, distribution, or any other material aspect of an industry product.

### § 24.2 Deception as to composition.

It is unfair or deceptive to misrepresent, directly or by implication, the composition of any industry product or part thereof. It is unfair or deceptive to use the unqualified term ''leather'' or other unqualified terms suggestive of leather to describe industry products unless the industry product so described is composed in all substantial parts of leather.[1] This section includes, but is not limited to, the following:

(a) *Imitation or simulated leather.* If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed. For example: Not leather; Imitation leather; Simulated leather; Vinyl; Vinyl coated fabric; or Plastic.

(b) *Embossed or processed leather.* The kind and type of leather from which an industry product is made should be disclosed when all or part of the product has been embossed, dyed, or otherwise processed so as to simulate the appearance of a different kind or type of leather. For example:

(1) An industry product made wholly of top grain cowhide that has been processed so as to imitate pigskin may be represented as being made of Top Grain Cowhide.

(2) Any additional representation concerning the simulated appearance of an industry product composed of leather should be immediately accompanied by a disclosure of the kind and type of leather in the product. For example: Top Grain Cowhide With Simulated Pigskin Grain.

(c) *Backing material.* (1) The backing of any material in an industry product with another kind of material should be disclosed when the backing is not apparent upon casual inspection of the product, or when a representation is made which, absent such disclosure, would be misleading as to the product's composition. For example: Top Grain Cowhide Backed With Vinyl.

(2) The composition of the different backing material should be disclosed if it is visible and consists of non-leather material with the appearance of leather, or leather processed so as to simulate a different kind of leather.

(d) *Misuse of trade names, etc.* A trade name, coined name, trademark, or other word or term, or any depiction or device should not be used if it misrepresents, directly or by implication, that an industry product is made in whole or in part from animal skin or hide, or that

[1] For purposes of these Guides, footwear is composed of three parts: the upper, the lining and sock, and the outersole. These three parts are defined as follows: (1) The upper is the outer face of the structural element which is attached to the outersole; (2) the lining and sock are the lining of the upper and the insole, constituting the inside of the footwear article; and (3) the outersole is the bottom part of the footwear article subjected to abrasive wear and attached to the upper.

material in an industry product is leather or other material. This includes, among other practices, the use of a stamp, tag, label, card, or other device in the shape of a tanned hide or skin or in the shape of a silhouette of an animal, in connection with any industry product that has the appearance of leather but that is not made wholly or in substantial part from animal skin or hide.

(e) *Misrepresentation that product is wholly of a particular composition.* A misrepresentation should not be made, directly or by implication, that an industry product is made wholly of a particular composition. A representation as to the composition of a particular part of a product should clearly indicate the part to which the representation applies.[2] Where a product is made principally of leather but has certain non-leather parts that appear to be leather, the product may be described as made of leather so long as accompanied by clear disclosure of the non-leather parts. For example:

(1) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as: Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(2) An industry product made throughout, except for hardware, of vinyl backed with cowhide may be described as: Vinyl Backed With Cowhide (See also disclosure provision concerning use of backing material in paragraph (c) of this section).

(3) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as: Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(f) *Ground, pulverized, shredded, reconstituted, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, reconstituted, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, reconstituted, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (a) of this section; or

(2) If the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather,'' ''reconstituted leather,'' or ''bonded leather'' are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.

(g) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

**§ 24.3 Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' and ''scratch resistant.''**

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

(b) Use the term ''Dustproof'' to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term ''Warpproof'' to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term ''Scuffproof,'' ''Scratchproof,'' or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term ''Scuff Resistant,'' ''Scratch Resistant,'' or other terms indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

By direction of the Commission.

Donald S. Clark,

*Secretary.*

[FR Doc. 96–25358 Filed 10–2–96; 8:45 am]

BILLING CODE 6750–01–P

[2] With regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to predominance of materials. For example, if the majority of the upper is composed of manmade material: Upper of manmade materials and leather.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 91C–0189]**

### Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester copolymers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored reaction products formed by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate monomers or with *N, N*-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate monomers to form contact lenses. This action is in response to a petition filed by Sola/Barnes-Hind.

**DATES:** Effective November 5, 1996, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by November 4, 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:** Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

In a notice published in the Federal Register of June 14, 1991 (56 FR 27518), FDA announced that a color additive petition (CAP 0C0226) had been filed by Sola/Barnes-Hind (now Pilkington Barnes Hind), 810 Kifer Rd., Sunnyvale, CA 94086–5200. The petition proposed that the color additive regulations be amended in 21 CFR part 73 to provide for the safe use of 1,4-bis[(2-methacryloxyethylamino)-9,10-anthraquinone to color contact lenses prepared with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate copolymer and *N, N*-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate copolymer. The petition was filed under section 706(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(d)(1)), presently section 721(d)(1) of the act (21 U.S.C. 379e(d)(1)). The agency has subsequently determined that 1,4-bis[(2-methacryloxyethylamino)-9,10-anthraquinone is more appropriately identified as 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester and that the color additives are the colored reaction products formed by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N, N*-dimethyl acrylamide, methyl methacrylate, and ethylene glycol dimethacrylate monomers.

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). The use of the reaction products of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N, N*-dimethyl acrylamide, methyl methacrylate, and ethylene glycol dimethacrylate monomers as color additives in manufacturing contact lenses is subject to this listing requirement. The color additives are formed into contact lenses in such a way that at least some of the color additives will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additives will be in direct contact with the body for a significant period of time. Consequently, the use of the color additives currently before the agency is subject to the statutory listing requirement.

III. Identity

The color additives are produced by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester (CAS Reg. No. 109561–07–1) either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N, N*-dimethyl acrylamide, methyl methacrylate, ethylene glycol dimethacrylate monomers. The resulting copolymeric product is formed into a contact lens.

IV. Safety Evaluation

The agency believes that because 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester has a significantly lower molecular weight than the subject copolymer, it would be the compound most likely to migrate out of the lens into the ocular fluid and would also be more readily absorbed into the body than the subject copolymer and would thus be expected to show a greater toxic effect. Therefore, the safety evaluation of the subject color additives focused on exposure to unreacted 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester.

FDA concludes, from the data submitted in the petition and from other relevant information, that the average daily exposure to 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester from these petitioned uses in contact lenses would be no greater than 0.61 nanograms per person per day (ng/p/d). The agency-calculated upper limit was based on two factors. First, the maximum use level anticipated by the petitioner is 140 parts per million (ppm) of the lens material or 11 micrograms (µg) of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester per contact lens (Ref. 1). Second, the agency made two assumptions: (1) The user will replace these lenses once each year with a new pair of identical lenses; and (2) one percent of the 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester will migrate from the lenses into the eyes over the 1-year period (Ref. 2). Because these assumptions are conservative estimates, exposure to 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester from these uses is likely to be less than 0.61 ng/p/d (Ref. 2).

To establish the safety of the subject additive, the petitioner conducted toxicity studies with 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester, colored lenses, and colored lens extracts. Studies submitted included 27 in vitro cytotoxicity studies: 4 by the inhibition of cell growth method (with lens extracts and 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester), 4 by the agar overlay method (with lens), and 19 by the direct-contact method using mouse fibroblast cells (with lens, lens extracts and neat 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester). Both the lenses and lens extracts were found to be noncytotoxic to mouse fibroblast cells. In addition, two guinea pig maximization studies (Magnusson and Kligman) with lens extracts, two 72-hour ocular irritation studies with lens extracts in rabbits, one intracutaneous skin reaction test with lens extracts in rabbits, two acute systemic toxicity tests with lens extracts in mice, and four ocular irritation studies with lenses in rabbits were submitted. The most relevant tests for a color that is bound covalently to a contact lens are those that compare colored to noncolored lenses in the rabbit ocular irritation tests. These studies demonstrated no evidence of ocular irritation or an allergic response in the test animals. The maximum nontoxic concentration for 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester was determined to be 140 µg/milliliter (mL) by the ocular irritation tests.

To relate the 140 µg/mL nontoxic level, established in the ocular irritation tests, to the 0.61 ng/p/d exposure from wearing the colored lenses, the agency calculated the maximum concentration level of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester in each eye that would result from the use of the contact lens. The agency estimated that the daily exposure to 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester in each eye would be 0.30 ng and that

this would be diluted by the average daily tear film of 1.2 mL produced in each eye. This concentration is equal to a maximum daily concentration in the tear flow of the eye of 0.25 ng/mL, and represents a more than a 55,000 fold safety factor for this proposed use of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester, when compared to the non-toxic level established in the ocular irritation test.

Based upon the available toxicity data, the small amount of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester used to form the color additive in the contact lenses, and the agency's exposure calculation for 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester, FDA finds that the reaction products formed by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N*, *N*-dimethyl acrylamide, methyl methacrylate, and ethylene glycol dimethacrylate monomers are safe for use as color additives in contact lenses. FDA further concludes that the safety margin is sufficiently large that no limitation is required beyond the usual limitation that reactants may be used in amounts not to exceed the minimum reasonably required to accomplish the intended technical effect. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of the reaction products formed by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N*, *N*-dimethyl acrylamide, methyl methacrylate, ethylene glycol dimethacrylate monomers to form colored contact lenses, and that the color additives are safe and suitable for their intended use.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), 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 (address above) by appointment with the information contact person under the ''For Further Information Contact'' section of this document. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. 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.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 4, 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. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

IX. References

The following references have 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 from the Chemistry Review Branch to the Indirect Additives Branch, ''CAP 0C0226 (MATS# 494, M2.3, 2.4, and 2.5): Sola Barnes Hind submissions dated 8–19–92, 10–5–92, and 1–25–93. BMAQ as a colorant in contact lenses,'' dated June 28, 1993.

2. Memorandum of meeting dated August 19, 1994.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.3100 is added to subpart D to read as follows:

### § 73.3100 1,4-Bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester copolymers.

(a) *Identity.* The color additives are 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester (CAS Reg. No. 109561–07–1) copolymerized either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with *N*, *N*-dimethyl acrylamide, methyl methacrylate, and ethylene glycol dimethacrylate monomers to form the contact lens material.

(b) *Uses and restrictions.* (1) The substances listed in paragraph (a) of this section may be used in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens made from the color additives.

(c) *Labeling.* The label of the color additives shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of these color additives is not necessary for the protection of the public health and therefore the color

additives are exempt from the certification requirements of section 721(c) of the act.

Dated: September 26, 1996.

William K. Hubbard,

*Associate Commissioner for Policy Coordination.*

[FR Doc. 96–25261 Filed 10–2–96; 8:45 am]

**BILLING CODE 4160–01–F**

## 21 CFR Part 178

**[Docket No. 95F–0175]**

## 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 expand the safe use of sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K.K.

**DATES:** Effective October 3, 1996; written objections and requests for a hearing by November 4, 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:** John R. Bryce, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of July 13, 1995 (60 FR 36149), FDA announced that a food additive petition (FAP 5B4458) had been filed by Asahi Denka Kogyo K.K., c/o Japan Technical Information Center, Inc., 775 South 23d St., Arlington, VA 22202. The petition proposed to amend § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) of the food additive regulations to provide for the safe use of sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food under conditions of use A and B as described in Table 2 of 21 CFR 176.170(c).

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, and the additive will achieve its intended technical effect; therefore the regulations in § 178.3295 should be amended as set forth below.

FDA's review of the subject petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til, et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study,

''* * * that the data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde'' (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathologic conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

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 § 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.

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.

Any person who will be adversely affected by this regulation may at any time on or before November 4, 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.

### References

The following references have 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. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, ''Formaldehyde: An Experimental Multipotential Carcinogen,'' *Toxicology and Industrial Health*, Vol. 5, No. 5:699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, ''Two-Year Drinking Water Study of Formaldehyde in Rats,'' *Food Chemical Toxicology*, Vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conference concerning ''Formaldehyde,'' Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

### List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 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 178.3295 is amended in the table by revising the entry for ''Sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl) phosphate'' to read as follows:

**§ 178.3295 Clarifying agents for polymers.**

* * * * *

| Substances | Limitations |
|---|---|
| * * * | * * * * |
| Sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl) phosphate (CAS Reg. No. 85209–91–2). | For use only:<br>1. As a clarifying agent at a level not exceeding 0.30 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene). The finished polymers contact foods only of types I, II, IV-B, VI-B, VII-B, and VIII as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use B through H, described in Table 2 of § 176.170(c), or foods of all types, limited to conditions of use C through H described in Table 2 of § 176.170(c).<br>2. As a clarifying agent at a level not exceeding 0.10 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, item 1.1. The finished polypropylene may be used in contact with foods of all types under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter. |

Dated: September 26, 1996.

William K. Hubbard,

*Associate Commissioner for Policy Coordination.*

[FR Doc. 96–25258 Filed 10–2–96; 8:45 am]

**BILLING CODE 4160–01–F**

## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Oxytetracycline Type A Medicated Articles

**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 Pfizer, Inc. The supplemental NADA provides revised labeling for Pfizer's pioneer, Type A, oxytetracycline-containing, medicated articles which brings the products into compliance with the findings of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) effectiveness evaluation and subsequent FDA conclusions. In addition, the regulations are further amended to reflect approval, based on FDA's DESI ''me-too'' policy, of one original NADA each filed by Pfizer and PennField Oil Co. for Type A medicated articles that are copies of the Pfizer pioneer products.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to its approved NADA 8–804 which covers the Type A medicated articles bearing the Terramycin® (oxytetracycline (OTC)) trade name on their labels. The articles contain OTC quaternary salt expressed in terms of an equivalent amount of OTC hydrochloride (HCl) (i.e., Terramycin® 10, 20, 50, 50D, 100, 100D, 100SS, and 200). Pfizer also filed original NADA 95–143 which covers the Type A medicated articles OXTC® 10, 30, 50, 50–S, 100, 100–S, 100MR, and 200. These articles contain OTC dihydrate base expressed in terms of an equivalent amount of OTC HCl. PennField Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed original NADA 138–938 which covers the Type A medicated articles Oxytetracycline 50, 100, and 100 MR (formulated for use in calf milk replacers or starter feeds). These articles also contain OTC quaternary salt expressed in terms of an equivalent amount of OTC HCl.

Pfizer Type A medicated articles covered by NADA 8–804 were the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 8622V). The findings were published in the Federal Register of May 5, 1970 (35 FR 7089). NAS/NRC evaluated the articles as probably effective when used for the control and treatment of specific diseases of livestock (swine, cattle, sheep, rabbits, and mink) and poultry (broiler chickens, laying chickens, and turkeys), and concluded that use may result in faster gains and improved feed efficiency under appropriate conditions. NAS/NRC stated that:

1. Labels and package inserts require extensive revision. There is inadequate documentation of claims, excessive claims are made, and bold conclusions are reached in the absence of sufficient controlled experimental evidence.

2. Claims for growth promotion or stimulation are not allowed and claims for faster gains and/or feed efficiency should be stated as ''may result in faster gains and/or improved feed efficiency under appropriate conditions.''

3. Each disease claim should be properly qualified as ''appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug) and if the disease cannot be so qualified the claim must be dropped.''

4. The label claims ''for prevention of'' or ''to prevent'' should be replaced with ''as an aid in the control of'' or ''to aid in the control of.''

5. The label claim pertaining to egg production and hatchability should be modified to read, ''May aid in maintaining egg production and

hatchability, under appropriate conditions, by controlling pathogenic organisms.''

6. The labels should carry a warning that treated animals under the conditions that prevail must actually consume sufficient medicated water, or medicated feed, to constitute a therapeutic dose. As a precaution, the labels should state what the desired oral dose is in terms of animal weight per day for each species to serve as a guide to effective use of the preparations in drinking water or feed.

7. The labels should declare the dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

The ''probably effective'' finding of NAS/NRC was subsequently reviewed by FDA, resulting in an upgrade to ''effective'' status for the control and treatment of bacterial diseases susceptible to OTC in poultry, cattle, swine, sheep, and bees. FDA also made the following conclusions:

1. The claims for hexamitiasis should be included under the susceptible host.

2. Appropriate claims regarding faster weight gains and improved feed efficiency should be stated as ''For increased rate of weight gain and improved feed efficiency (under appropriate conditions of use).''

Pfizer filed a supplement to NADA 8–804 that revised the labeling of its products to comply with the findings of the NAS/NRC review and FDA's conclusions concerning those findings. Pfizer's supplement to NADA 8–804 also provides for transfer to 8–804 of its proprietary claims previously approved, under NADA 38–439, for use of OTC in lobster, catfish, Pacific salmon, and salmonids. The supplemental NADA is approved as of March 14, 1996.

The Type A medicated articles covered by Pfizer's NADA 95–143 (containing OTC dihydrate base) and those covered by PennField's NADA 138–938 (containing OTC quaternary salt) have demonstrated comparability to Pfizer's pioneer products (NADA 8–804, Terramycin® Premixes containing OTC quaternary salt equivalent in activity to a concentration of OTC HCl declared in grams per pound of premix) which were subject to the NAS/NRC evaluation of May 5, 1970. Based on that comparability, original NADA's 95–143 and 138–938 are approved as of May 30, 1996, and March 15, 1996, respectively, under FDA's DESI ''me-too'' policy.

FDA has now completed the NAS/NRC DESI evaluation for OTC Type A articles. Accordingly, FDA is revising § 558.450 *Oxytetracycline* (21 CFR 558.450) to set out the NAS/NRC and FDA-approved conditions of use for OTC articles. FDA also has replaced the claims for OTC articles listed in § 558.15(g)(1) (21 CFR 558.15(g)(1)) with a cross-reference to § 558.450. This change makes the § 558.15(g)(1) reference to OTC Type A articles the same as that for chlortetracycline (CTC) which cross-refers to § 558.128 (21 CFR 558.128), the DESI-finalized claims for that product (see the Federal Register of July 9, 1996, 61 FR 35949).

The NAS/NRC DESI evaluation is concerned only with the drugs' effectiveness and safety to the treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites in food products derived from treated animals.

Products that comply with the NAS/NRC findings and FDA's conclusions regarding those findings are eligible for copying under the Generic Animal Drug and Patent Term Restoration Act (GADPTRA) (see the eighth in a series of policy letters issued to facilitate implementation of GADPTRA that published in the Federal Register of August 21, 1991 (56 FR 41561)). Accordingly, sponsors may now obtain approval of abbreviated new animal drug applications (ANADA's) for these OTC Type A medicated articles.

Also, the agency is revising § 558.515(d)(2) (21 CFR 558.515(d)(2)) to make the claim language for the robenidine/OTC combination consistent with the NAS/NRC DESI findings.

In the Federal Register of October 21, 1977 (42 FR 56264), the then Bureau of Veterinary Medicine issued a notice of opportunity for a hearing (NOOH) on a proposal to withdraw approval of certain NADA's listed in § 558.15, for most subtherapeutic uses of tetracycline (CTC and OTC) in animal feed. The NOOH was issued in response to scientific research suggesting that subtherapeutic use of such drugs has contributed to the pool of antibiotic-resistant pathogenic microorganisms in food animals. Furthermore, research indicated that the drug resistance could be transferred to pathogenic organisms in humans. The NOOH is still pending and approval of these supplements to finalize the DESI review process for OTC Type A medicated articles does not constitute a bar to subsequent action to withdraw approval on the grounds cited in the outstanding NOOH.

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 these applications 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)(ii) and (c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii) and (c)(2)(F)(iii)), these approvals for food-producing animals do not qualify for marketing exclusivity because the original and supplemental applications do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and 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 carefully considered the potential environmental effects of approving supplemental NADA 8–804. 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.

The agency has determined under 21 CFR 25.24(d)(1)(i) that approval of original NADA's 95–143 and 138–938 is the type of action that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

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

### § 558.15 [Amended]

2. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the

table, in paragraph (g)(1) to read as follows:

a. In the entry for ''Pfizer, Inc., PennField Oil Co., VPO, Inc., and Purina Mills, Inc.'', by removing '', VPO, Inc., and Purina Mills, Inc.'';

b. Under the ''Species'' column of this entry, by removing ''Chickens and turkeys.'' and adding in its place ''Sec. 558.450.'';

c. All of the subentries for Pfizer, Inc., PennField Oil Co., represented by ''Do.'' are removed;

d. The ''Pfizer, Inc.'' entry for oxytetracycline for sheep, including the three subentries represented by ''Do.'' are removed;

e. The ''Pfizer, Inc.'' entry for oxytetracycline for chickens, including the first subentry represented by ''Do.'' is removed.

3. Section 558.450 is revised to read as follows:

**§ 558.450 Oxytetracycline.**

(a) *Approvals.* Type A medicated articles:

(1) 10, 20, 30, 50, 100, and 200 grams per pound to 000069 in § 510.600(c) of this chapter.

(2) 50 and 100 grams per pound to 053389 in § 510.600(c) of this chapter.

(b) *Special considerations.* (1) In accordance with § 558.5 labeling shall bear the statement: ''FOR USE IN DRY ANIMAL FEED ONLY. NOT FOR USE IN LIQUID FEED SUPPLEMENTS.''

(2) The articles in paragraph (a)(1) of this section contain an amount of mono-alkyl ($C_8$–$C_{18}$) trimethylammonium oxytetracycline expressed in terms of an equivalent amount of oxytetracycline hydrochloride or an amount of oxytetracycline dihydrate base expressed in terms of an equivalent amount of oxytetracycline hydrochloride.

(3) The articles in paragraph (a)(2) of this section contain an amount of mono-alkyl ($C_8$–$C_{18}$) trimethylammonium oxytetracycline expressed in terms of an equivalent amount of oxytetracycline hydrochloride.

(c) *Related tolerances.* See § 556.500 of this chapter.

(d)(1) *Conditions of use.* It is used in feed as follows:

TABLE 1

| Oxytetracycline amount | Combination | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 10 to 20 grams per ton (g/ton) | | Sheep; increased rate of weight gain and improved feed efficiency. | | 000069, 053389 |
| (ii) 10 to 50 g/ton | | 1. Chickens; increased rate of weight gain and improved feed efficiency. | Do not feed to chickens producing eggs for human consumption. | do |
| | | 2. Growing turkeys; increased rate of weight and improved feed efficiency. | Do not feed to turkeys producing eggs for human consumption. | do |
| | | 3. Swine; increased rate of weight and improved feed efficiency. | | do |
| (iii) 100 g/ton | | Turkeys; control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline. | Feed continuously for 7 to 14 days (d); do not feed to turkeys producing eggs for human consumption. | do |
| (iv) 100 to 200 g/ton | | Chickens; control of infectious synovitis caused by *Mycoplasma synoviae*; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption; in low calcium feed, withdraw 3 d before slaughter. | do |
| | Nequinate 18.16 g/ton (0.002%) | Chickens; control of infectious synovitis caused by *M. synoviae*; control of fowl cholera caused by *P. multocida* susceptible to oxytetracycline; as an aid in the control of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti*, and *E. mivati.* | do | 000069 |
| (v) 200 g/ton | | Turkeys; control of infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption. | 000069, 053389 |
| (vi) 400 g/ton | | Chickens; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption; in low calcium feeds, withdraw 3 d before slaughter. | do |

TABLE 1—Continued

| Oxytetracycline amount | Combination | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| | Monensin 90 to 110 g/ton | Chickens; control of CRD and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to oxytetracycline; and as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati*, and *E. maxima*. | do | 000069 |
| | Nequinate 18.16 g/ton (0.002%) | Chickens; control of CRD and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to oxytetracycline; as an aid in prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti*, and *E. mivati*. | do | do |
| (vii) 500 g/ton | | Chickens; reduction of mortality due to air sacculitis (air-sac-infection) caused by *E. coli* susceptible to oxytetracycline. | Feed continuously for 5 d; do not feed to chickens producing eggs for human consumption; withdraw 24 hours before slaughter; in low calcium feeds withdraw 3 d before slaughter. | 000069, 053389 |
| | Monensin 90 to 110 g/ton | Chickens; reduction of mortality due to air sacculitis (air-sac-infection) caused by *E. coli* susceptible to oxytetracycline; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*. | do | 000069 |
| | Salinomycin 40 to 60 g/ton | Chickens; reduction of mortality due to air sacculitis (air-sac-infection) caused by *E. coli* susceptible to oxytetracycline; prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*. | do | 000069, 012799 |
| (viii) 0.05 to 0.1 milligram/pound (mg/lb) of body weight daily. | | Calves (up to 250 lb); for increased rate of weight gain and improved feed efficiency. | Feed continuously; in milk replacers or starter feed. | 000069, 053389 |
| (ix) 10 mg/lb of body weight daily. | | 1.Calves and beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; in feed or milk replacers; withdraw 5 d before slaughter. | do |
| | | 2. Calves (up to 250 lb); treatment of bacterial enteritis caused by *E. coli* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; in milk replacers or starter feed; withdraw 5 d before slaughter. | do |
| | | 3. Sheep; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; withdraw 5 d before slaughter. | do |

TABLE 1—Continued

| Oxytetracycline amount | Combination | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| | | 4. Swine; treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* susceptible to oxytetracycline and treatment of bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; withdraw 5 d before slaughter. | do |
| | | 5. Breeding swine; control and treatment of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to oxytetracycline. | Feed continuously for not more than 14 d; withdraw 5 d before slaughter. | do |
| (x) 25 mg/lb of body weight | | Turkeys; control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline. | Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption. | do |
| (xi) 25 mg/head/day | | Calves (250 to 400 lb); increased rate of weight gain and improved feed efficiency. | | do |
| (xii) 75 mg/head/day | | Growing cattle (over 400 lb); increased rate of weight gain; improved feed efficiency, and reduction of liver condemnation due to liver abscesses. | | do |
| (xiii) 0.5 to 2.0 g/head/day | | Cattle; prevention and treatment of the early stages of shipping fever complex. | Feed 3 to 5 d before and after arrival in feedlots. | do |
| (xiv) 200 mg/colony | | Honey bees; control of American foulbrood caused by *Bacillus larvae* and European foulbrood caused by *Streptococcus pluton* susceptible to oxytetracycline. | Remove at least 6 weeks prior to main honey flow. | do |

(2) It is used in fish feed as follows:

TABLE 2

| Oxytetracycline amount | Combination | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 250 mg/kilogram of fish/d (11.35 g/100 lb of fish/d). | | Pacific salmon for marking of skeletal tissue. | For salmon not over 30 g body weight; administer as sole ration for 4 consecutive days in feed containing oxytetracycline hydrochloride or mono-alkyl ($C_8$–$C_{18}$) trimethyl ammonium oxytetracycline; fish not to be liberated for at least 7 d following the last administration of medicated feed. | 000069 |
| (ii) 2.5 to 3.75 g/100 lb of fish/d. | | 1. Salmonids; control of ulcer disease caused by *Hemophilus piscium*, furunculosis caused by *Aeromonas salmonicida*, bacterial hemorrhagic septicemia caused by *A. liquefaciens*, and pseudomonas disease. | Administer as mono-alkyl ($C_8$–$C_{18}$) trimethyl ammonium oxytetracycline in mixed ration for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of medicated feed; do not administer when water temperature is below 9 °C (48.2 °F). | 000069 |

TABLE 2—Continued

| Oxytetracycline amount | Combination | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| | | 2. Catfish; control of bacterial hemorrhagic septicemia caused by *A. liquefaciens* and pseudomonas disease. | Administer as mono-alkyl ($C_8$–$C_{18}$) trimethyl ammonium oxytetracycline in mixed ration for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of medicated feed; do not administer when water temperature is below 16.7 °C (62 °F) | 000069 |
| (iii) 1 g/lb of medicated feed. | | Lobsters; control of gaffkemia caused by *Aerococcus viridans*. | Administer as sole ration for 5 consecutive days in feed containing monoalkyl ($C_8$–$C_{18}$) trimethyl ammonium oxytetracycline; withdraw medicated feed 30 d before harvesting lobsters. | 000069 |

(3) Oxytetracycline may be used in accordance with the provisions of this section in the combinations provided as follows:

(i) Robenidine hydrochloride in accordance with § 558.515.

(ii) Lasalocid as in § 558.311.

4. Section 558.515 is amended by revising paragraph (d)(2) to read as follows:

**§ 558.515 Robenidine hydrochloride.**

* * * * *

(d) * * *

(2) *For broiler chickens*—(i) *Amount per ton*. Robenidine hydrochloride, 30 grams (0.0033 percent) plus oxytetracycline, 400 grams.

(ii) *Indications for use*. As an aid in the prevention of coccidiosis caused by *Eimeria mivati, E. brunetti, E. tenella, E. acervulina, E. maxima, and E. necatrix*; control of CRD and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli* susceptible to oxytetracycline.

(iii) *Limitations*. Feed continuously for 7 to 14 days; do not feed to chickens producing eggs for human consumption; withdraw 5 days before slaughter; do not use in feeds containing bentonite; feed must be used within 50 days of manufacture; oxytetracycline as provided by No. 000069 of this chapter.

Dated: September 16, 1996.

Stephen F. Sundlof,

*Director, Center for Veterinary Medicine.*

[FR Doc. 96–25257 Filed 10–2–96; 8:45 am]

BILLING CODE 4160–01–F

## ARMS CONTROL AND DISARMAMENT AGENCY

### 22 CFR Part 603

### Privacy Act Policy and Procedures

**AGENCY:** Arms Control and Disarmament Agency.

**ACTION:** Final rule.

**SUMMARY:** The United States Arms Control and Disarmament Agency (ACDA) is revising and restating in their entirety its rules that govern the means by which individuals can examine and request correction of ACDA records containing personal information. Clarifying these rules will help the public interact better with ACDA and is part of ACDA's effort to update and streamline its regulations.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647–3596.

**SUPPLEMENTARY INFORMATION:** On June 13, 1996, ACDA published a notice of proposed rulemaking (61 FR 30009–30012) with a 36-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 22 CFR Part 603

Privacy Act.

Chapter VI of Title 22 of the Code of Federal Regulations is amended by revising part 603 to read as follows:

## PART 603—PRIVACY ACT POLICY AND PROCEDURES

Sec.
603.1 Purpose and scope.
603.2 Definitions.
603.3 Policy.
603.4 Requests for determination of existence of records.
603.5 Requests for disclosure to an individual of records pertaining to the individual.
603.6 Requests for amendment of records.
603.7 Appeals from denials of requests.
603.8 Exemptions.
603.9 New and amended systems of records.
603.10 Fees.

Authority: 5 U.S.C. 552a; 22 U.S.C. 2581; and 31 U.S.C. 9701.

### § 603.1 Purpose and scope.

This part 603 contains the regulations of the U.S. Arms Control and Disarmament Agency implementing the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. In addition to containing internal policies and procedures, these regulations set forth procedures whereby an individual can determine if a system of records maintained by the Agency contains records pertaining to the individual and can request disclosure and amendment of such records. These regulations also set forth the bases for denying amendment requests and the procedures for appealing such denials.

### § 603.2 Definitions.

As used in this part:

(a) *Act* means the Privacy Act of 1974, 5 U.S.C. 552a.

(b) *ACDA* and *Agency* mean the U.S. Arms Control and Disarmament Agency.

(c) *Privacy Act Officer* means the Agency official who receives and acts

upon inquiries, requests for access and requests for amendment.

(d) *Deputy Director* means the Deputy Director of the Agency.

(e) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(f) *Maintain* includes maintain, collect, use, or disseminate;

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the name of, or the identifying number, symbol, or other identification particularly assigned to, the individual, such as a finger or voice print or a photograph;

(h) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification particularly assigned to the individual;

(i) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13 U.S.C.; and

(j) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

**§ 603.3 Policy.**

(a) It is the policy of the Agency that only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute or by executive order of the President shall be maintained in an Agency record. No information about the political or religious beliefs and activities of an individual will be maintained within such records unless specifically authorized by statute or by the subject individual, or unless pertinent to and within the scope of a law enforcement activity.

(b) The Agency will not disclose any record that is contained in a system of records to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record is:

(1) To those officers and employees of the Agency who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, as amended (5 U.S.C. 552);

(3) For a routine use, notice of which has been published in accordance with the Act;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S.C.;

(5) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) Except for disclosures of information to Agency employees having need for the information in the official performance of their duties or required under the provisions of the Freedom of Information Act, an accurate accounting of each disclosure will be made and retained for five years after the disclosure or for the life of the record, whichever is longer. The accounting will include the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Each such disclosure, unless made to agencies engaged in law enforcement activities in accordance with paragraph (b)(7) of this section, will be made available to the individual upon request.

(d) To the greatest extent practicable, information that may result in an adverse determination about an individual shall be collected from that individual, and the individual will be informed of the purposes for which the information will be used and any rights, benefits, and obligations with respect to supplying the data.

(e) The Agency shall ensure that all records that are used by the Agency to make a determination about any individual are maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual. Whenever information about an individual contained in an Agency record is used or disclosed, the custodian of the system of records in which the record is located will make every effort to ensure that it is accurate, relevant, timely and complete.

(f) The Agency shall establish appropriate administrative, technical, and physical safeguards to ensure that records are disclosed only to those who are authorized to have access to them and to protect against any anticipated threats or hazards to their security or integrity that would result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(g) Agency records pertaining to an individual shall be made available to that individual to the greatest extent possible.

(h) No lists of names and addresses will be rented or sold unless such action is specifically authorized by law, provided that names and addresses otherwise permitted to be made public will not necessarily be withheld when requested.

(i) All requests for information under the Privacy Act received by the Agency will be acted upon as promptly as possible.

**§ 603.4 Requests for determination of existence of records.**

Any individual desiring to know whether any system of records maintained by the Agency contains a record pertaining to the individual shall send a written request to the Privacy Act Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. All

requests for determination of the existence of records should include sufficient information to identify the system of records, such as its name or Federal Register identifier number if known, in addition to such identifying information as the individual's name and date of birth.

**§ 603.5 Requests for disclosure to an individual of records pertaining to the individual.**

(a) An individual desiring access to or copies of records maintained by the Agency shall send a written request to the Privacy Act Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. All requests for disclosure to an individual of records pertaining to that individual should include sufficient information to identify the record or system of records such as its name or Federal Register identifier number if known, in addition to such identifying information as the individual's name and date of birth.

(b)(1) Except as provided in paragraph (b)(2) of this section:

(i) If the individual making a written request is not personally known to the Privacy Act Officer or to other Agency personnel processing the request, the written request must include satisfactory evidence that the requester is in fact the individual to whom the requested records pertain. For this purpose, the Agency normally will be satisfied by the receipt of the requester's statement of identity made under penalty of perjury.

(ii) If the individual making a request in person is not personally known to the Privacy Act Officer or to other Agency personnel processing the request, the requester must present two identification documents (at least one of which must bear the requester's picture) containing the individual's signature and other suitable evidence of identity. Examples of acceptable evidence are a driver's license, passport, employee identification card, or military identification card.

(2) Evidence that the requester is in fact the individual to whom the requested records pertain is not required for information that would be required to be made available to a third party under the Freedom of Information Act (5 U.S.C. 552).

(c)(1) Access to or copies of records requested pursuant to this section shall be furnished except as provided in paragraph (c)(3) of this section:

(i) To an individual making a request in person, upon verification of personal identity as required in paragraph (b) of this section, to that individual, and if the individual is accompanied by any other person, upon the individual's request, to that person, except that the Agency may require the individual to furnish a written statement authorizing disclosure of the individual's record in the presence of the accompanying person.

(ii) To an authorized representative or designee of an individual, if the individual has provided verification of personal identity as required in paragraph (b) of this section, and submits a signed, notarized statement authorizing and consenting to access or disclosure to the representative or designee.

(iii) To a physician authorized by a signed, notarized statement made by the individual making the request, in the event that the records requested are medical records of such a nature that the Privacy Act Officer has determined that the release of such medical information directly to the requester could have an adverse effect on the requester. The individual making the request must also provide verification of personal identity as required in paragraph (b) of this section.

(2) Access to records or copies of records requested shall be furnished as promptly as possible.

(3) Access to or copies of records requested pursuant to this section shall not be granted if:

(i) The individual making the request does not comply with the requirements for verification of personal identity as required in paragraph (b) of this section; or

(ii) The records are exempt from disclosure pursuant to § 603.8.

**§ 603.6 Requests for amendment of records.**

(a) An individual may request amendment of a record pertaining to that individual by sending a written request to the Privacy Act Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. The request should identify the record sought to be amended, specify the precise nature of the requested amendment, and state why the requester believes that the record is not accurate, relevant, timely or complete.

(b) Not later than ten (10) days after receipt of such request (excluding Saturdays, Sundays and legal holidays), the Privacy Act Officer shall promptly:

(1) Make any correction of any portion of the record pertaining to the individual which the Agency considers appropriate; and

(2) Inform the requester in writing of the action taken by the Agency, of the reason for refusing to comply with any portion of the request, and of the procedures established by the Agency to consider requests for review of such refusals.

(c) The Privacy Act Officer will refuse to amend a record if the information therein is deemed by the Agency:

(1) To be relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute or by executive order of the President; and

(2) To be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual; and

(3) Not to describe how the individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained.

(d) When the Privacy Act Officer agrees to amend a record, written notice that the record has been amended and the substance of the amendment will be sent to the last known address of all previous recipients of that record shown in Agency's Privacy Act Requests File.

**§ 603.7 Appeals from denials of requests.**

(a) An individual who disagrees with the refusal of the Privacy Act Officer to disclose or amend a record may request a review of such refusal within 30 days of receipt of notice of the refusal. Such request should be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451, and should include a copy of the written request that was refused, a copy of the denial complained of, and reasons for appeal from the denial.

(b) Review shall be made by the Deputy Director on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(c) Review will be completed and a final determination made not later than 30 days (excluding Saturdays, Sundays and legal holidays) from the date on which the request for such review is received. This 30-day limitation may be extended, at the discretion of the Agency for good cause shown. The requester will be notified in writing of the Agency's final determination.

(d) If, after completion of the review, the Deputy Director also refuses to disclose or amend the record as requested, the notice to the individual will advise the individual of the right to file with the agency a concise statement setting forth the reasons for disagreement with this refusal.

(e) When an individual has filed with the Agency a statement of disagreement following a refusal to amend the record as requested, the Agency will clearly note that portion of the record that is disputed and will send copies of the statement of disagreement to the last known address of all previous recipients of the disputed record shown in the Agency's Privacy Act Requests File.

**§ 603.8 Exemptions.**

(a) As authorized by the Act, the following categories of records are hereby exempted from the requirements of sections (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a, and will not be disclosed to the individuals to which they pertain:

(1) System of Records of ACDA–4—Statements by Principals during the Strategic Arms Limitation Talks, Mutual Balanced Force Reduction negotiations, and the Standing Consultative Committee. This system contains information classified pursuant to Executive Order 12958 that is exempt from disclosure by the Act (5 U.S.C. 552a(k)(1)) in that disclosure could damage national security.

(2) System of Records ACDA–3—Security Records. This system contains investigatory material compiled for law enforcement purposes which is exempt from disclosure by the Act (5 U.S.C. 552a(k)(2)): *Provided, however,* that if any individual is denied any right, privilege, or benefit to which the individual would otherwise be entitled by Federal law, or for which the individual would otherwise be eligible, as a result of the maintenance of such material, such material will be provided to such individual, except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) Systems of Records ACDA–3—Security Records. This system contains investigatory materials compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information which is exempt from disclosure by the Act (5 U.S.C. 552a(k)(5)), but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(b) Nothing in these regulations shall be construed to allow an individual access to:

(1) Any information compiled in reasonable anticipation of a civil action or proceeding; or

(2) Testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

**§ 603.9 New and amended systems of records.**

(a) The Agency shall provide adequate advance notice to Congress and to the Office of Management and Budget of any proposal to establish or alter any system of records. Such notice shall be in a form consistent with guidance on content, format and timing issued by the Office of Management and Budget.

(b) The Agency shall publish by August 31 of each year in the Federal Register a notice of the existence and character of each system of records maintained by the Agency. Such notice shall be consistent with guidance on format contained in the Act and issued by the General Services Administration. At least 30 days before any new or changed routine use of records contained within a system of records can be made, the Agency shall publish notice of such new or changed use in the Federal Register.

**§ 603.10 Fees.**

Fees to be charged in responding to requests under the Privacy Act shall be, to the extent permitted by paragraph (f)(5) of the Act, the rates established in title 22 CFR 602.20 for responding to requests under the Freedom of Information Act.

Dated: September 23, 1996.

Mary Elizabeth Hoinkes,

*General Counsel.*

[FR Doc. 96–25405 Filed 10–2–96; 8:45 am]

BILLING CODE 6820–32–M

## DEPARTMENT OF LABOR

## Office of Labor-Management Programs

## 29 CFR Part 270

**RIN 1294–AA15**

## Permanent Replacement of Lawfully Striking Employees by Federal Contractors

**AGENCY:** Office of Labor-Management Programs, Labor.

**ACTION:** Final rule; removal of regulations.

**SUMMARY:** This final rule removes the regulations found at 29 CFR Part 270. Those regulations implemented Executive Order 12954, which was signed by President Clinton on March 8, 1995 (60 FR 13023, March 10, 1995). Executive Order 12954 provided that federal contracting agencies may not contract with employers that permanently replace lawfully striking employees in some situations. The regulations are being removed as a result of a ruling by the Court of Appeals for the District of Columbia Circuit voiding Executive Order 12954.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, (202) 219–7373. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 8, 1995, President Clinton signed Executive Order 12954, ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts'' (60 FR 13023, March 10, 1995). The Order set forth the finding that economy and efficiency in procurement are generally advanced by contracting with employers that do not permanently replace lawfully striking employees, and provided that federal contracting agencies may not contract with employers that permanently replace lawfully striking employees in some situations.

The Secretary of Labor was assigned the authority and responsibility for administering the Order and for issuing implementing regulations. The Secretary delegated that authority and responsibility to the Assistant Secretary for the American Workplace on March 8, 1995 (60 FR 13602, March 13, 1995) and to Acting Deputy Assistant Secretary John Kotch on June 16, 1996 (61 FR 31164, June 19, 1996).

On March 29, 1995, proposed regulations implementing Executive Order 12954 were published in the Federal Register (60 FR 16354). A final rule was issued on May 25, 1995 (60 FR 27856).

On February 2, 1996, the Court of Appeals for the District of Columbia Circuit issued a decision voiding Executive Order 12954, *Chamber of Commerce of the United States, et al,* v. *Reich,* 74 F.3d 1322 (D.C. Cir. 1996). A rehearing was denied on May 10, 1996, 83 F.3d 442 (D.C. Cir. 1996). A petition for review on writ of certiorari was not filed with the Supreme Court. Consequently, the Department is removing the regulations implementing Executive Order 12954, 29 CFR Part 270.

Publication in Final

The Department has determined that the removal of these regulations need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The agency finds that good cause exists for dispensing with notice and public comment as unnecessary since Executive Order 12954, which gave rise to Part 270, has been held to be void by the Court of Appeals for the District of Columbia Circuit. The removal of the implementing regulations is thus exempt from notice and comment by virtue of section 553(b)(B) of the APA (5 U.S.C. 553(b)(B)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The Department has determined that good cause exists for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that Executive Order 12954, which gave rise to Part 270, has been held to be void by the Court of Appeals for the District of Columbia Circuit.

Executive Order 12866

This document removes regulations for which there is now no authority and, therefore, is not a regulation or a rule as defined in section 2(d) of Executive Order 12866, 58 FR 51735 (October 4, 1993).

Regulatory Flexibility Act

This rule was not preceded by a general notice of proposed rulemaking and is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601(2) and 604(a)).

Paperwork Reduction Act

This rule contains no information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a ''major rule'' requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule removing 29 CFR Part 270 is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately upon publication as stated previously in this notice.

Unfunded Mandates Reform Act

For purposes of Section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875, (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects in 29 CFR Part 270

Administrative practice and procedure; Government contracts; Federal contractors and subcontractors.

Accordingly, Chapter II of Title 29 of the Code of Federal Regulations is amended by removing Part 270.

Signed at Washington, DC, this 27th day of September, 1996.

John Kotch,

*Acting Deputy Assistant Secretary.*

[FR Doc. 96–25276 Filed 10–2–96; 8:45 am]

BILLING CODE 4510–86–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 120 and 128

**[CGD 91–012]**

**RIN 2115–AD75**

## Security for Passenger Vessels and Passenger Terminals

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of policy clarification.

**SUMMARY:** On July 18, 1996, an Interim Rule was published (61 FR 139) entitled ''Security for Passenger Vessels and Passenger Terminals''. Since that time the Coast Guard has discovered two areas in need of clarification to ensure that those affected by the Interim Rule can meet compliance dates. The areas of clarification are tonnage limitations and submission of terminal security plans.

**FOR FURTHER INFORMATION CONTACT:** CDR Dennis J. Haise, Office of Compliance (G–MOC), Room 1116, (202) 267–1934, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

Policy Clarification:

*Tonnage*

The tonnage measurement to be used in the application of this rule is U.S. registered tonnage, not International Tonnage Convention (ITC) measurements. Therefore, the rule applies to those vessels over 100 U.S. registered gross tons.

*Submission of Terminal Security Plans*

Terminal Security Plans should be submitted by the owner or operator of the vessel in the following situations:

a. When there is an agreement with the owner or operator of the passenger terminal that the owner or operator of the vessel will submit the required security plan.

b. When the owner or operator of the vessel has exclusive use of the pier and terminal building immediately adjacent to the pier and has complete control of that area.

c. When there is no terminal.

d. When passengers embark and or disembark and no baggage or stores are loaded or offloaded.

In situations c and d, an annex to the vessel's security plan may be used instead of a terminal security plan with the permission of the cognizant Coast Guard Captain of the Port.

Terminal Security Plans should be submitted by the owner or operator of

the passenger terminal in the following situations:

a. When there is an agreement with the owner or operator of the passenger vessel that the owner or operator of the terminal will submit the required security plan.

b. When the terminal is multi-user or used by more that one cruise line, and baggage and or stores are loaded or offloaded, and no security agreement exists

Dated: September 24, 1996.

G.N. Naccara,

*Captain, U.S. Coast Guard, Acting Chief, Marine Safety and Environmental Protection.*

[FR Doc. 96–25150 Filed 10–2–96; 8:45 am]

**BILLING CODE 4910–14–M**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA 091–4029a; FRL–5613–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Interim Final Determination of the Pennsylvania Enhanced I/M SIP Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** Elsewhere in today's Federal Register, EPA has published a rulemaking notice proposing conditional interim approval of the Commonwealth of Pennsylvania's enhanced motor vehicle inspection and maintenance (I/M) program under Section 348 of the National Highway System Designation Act of 1995 (NHSDA) and Section 110 of the Clean Air Act (CAA). Based on the proposed conditional interim approval, EPA is making an interim final determination by this action that the Commonwealth has corrected the deficiency prompting the original disapproval of the Pennsylvania enhanced I/M SIP revision. This action will defer the application of the offset sanction which would have been implemented on October 13, 1996 and defers the future application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's proposed conditional interim approval of the Commonwealth's submittal. EPA will publish a final rule taking into consideration any comments received on EPA's proposed action and this interim final action.

**DATES:** This interim rule is effective on October 3, 1996.

Comments must be received by November 4, 1996.

**ADDRESSES:** Comments should be sent to Marcia L. Spink, Associate Director, Air Programs, (3AT00), Air, Radiation and Toxics Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19103. The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn (215) 566–2176, at the EPA Region III address above or via e-mail at bunker.kelly@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In an April 13, 1995 letter EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced I/M SIP revision had been converted to a disapproval (60 FR 47084). The letter triggered the 18 month time clock for the mandatory application of sanctions under section 179(a) of the CAA. This 18 month sanction clock will expire on October 13, 1996 at which time 2:1 offset sanctions would be automatically imposed to new or modified sources seeking permits under section 173 of the CAA.

On March 22, 1996, the Commonwealth of Pennsylvania submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA. On June 27, 1996 and July 29, 1996, supplements to the March 22, 1996 SIP revision were officially submitted to EPA. In the Proposed Rules section of today's Federal Register, EPA has proposed conditional interim approval of the Pennsylvania enhanced I/M program. EPA had determined that it is more likely than not that the March 22, 1996 enhanced I/M SIP revision, as supplemented (hereinafter, the ''March 22, 1996 I/M SIP revision''), has cured the SIP deficiency triggering the sanctions clock for the duration of EPA's rulemaking process on this I/M SIP revision. This interim determination will not stop the sanctions clock but will defer the implementation of sanctions until either the conditional interim approval is converted to a disapproval, the interim approval lapses, the full SIP is approved or the full SIP is disapproved.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any comments on this action and any comments on EPA's proposed conditional interim approval of the March 22, 1996 I/M SIP revision, EPA determines that the March 22, 1996 I/M SIP revision is not approvable and this final action was inappropriate, EPA will take further action to disapprove the March 22, 1996 I/M SIP revision. If EPA's proposed conditional interim approval of the Pennsylvania I/M SIP revision is reversed, then sanctions would be applied as required under Section 179(a) of the CAA and 40 CFR Section 52.31.

### II. EPA Action

Based on the proposed conditional interim approval set forth in today's Federal Register, EPA believes that it is more likely than not that the Commonwealth has corrected the deficiency that prompted the original disapproval of the Pennsylvania enhanced I/M SIP for which the April 13, 1995 finding of failure to submit was issued.

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

### III. Administrative Requirements

Because EPA has preliminarily determined that the March 22, 1996 Pennsylvania I/M SIP revision is conditionally approvable, relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the March 22, 1996 I/M SIP revision and, through its proposed interim action, is indicating that it is more likely than not that the Commonwealth has corrected the disapproval that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

when the Commonwealth has most likely corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the Commonwealth has corrected the deficiency prior to the rulemaking approving the March 22, 1996 I/M SIP revision. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the March 22, 1996 I/M SIP revision. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

*Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, (RFA) 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to prior notice and comment rulemaking requirements. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Because this action is not subject to prior notice and comment requirements (see above), it is not subject to RFA. In any even, today's action temporarily relieves sources of an additional burden potentially placed on them by the sanction provisions of the Act. Therefore, the action will not have a significant impact on a substantial number of small entities.

*Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated 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. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) as added 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 interim final determination regarding the Pennsylvania I/M SIP is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 1996.

William T. Wisniewski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96–25396 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

---

**40 CFR Part 52**

**[AZ033–0007 FRL–5628–6]**

## Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; Carbon Monoxide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving contingency measures adopted pursuant to the Clean Air Act (CAA) and submitted to EPA by the State of Arizona as revisions to the Arizona State Implementation Plan (SIP) for the Maricopa (Phoenix) carbon monoxide (CO) nonattainment area. Based on the approval of these measures, EPA is withdrawing its federal contingency process for the Maricopa area and its proposed list of highway projects subject to delay.

**EFFECTIVE DATE:** December 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, A–2–1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

**SUPPLEMENTARY INFORMATION:**

I. Background

*A. Federal Contingency Process*

On February 11, 1991, EPA disapproved elements of the Arizona CO SIP and promulgated a limited federal implementation plan (FIP) for the Maricopa County (Phoenix) CO nonattainment area in response to an order of the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990).[1] For a discussion of *Delaney*, the SIP disapproval, and the FIP, see the notice of proposed rulemaking (NPRM) for the FIP, 55 FR 41204 (October 10, 1990) and the notice of final rulemaking (NFRM) for the FIP, 56 FR 5458 (February 11, 1991).

As required by the *Delaney* order, the FIP contained a two-part contingency process consistent with the Agency's 1982 ozone and CO SIP guidance regarding contingency procedures.[2] These two parts were a list of transportation projects that would be delayed while an inadequate plan was being revised and a procedure to adopt measures to compensate for unanticipated emission reduction shortfalls. The FIP contingency process is described in detail at 56 FR 5458, 5470–5472.

Implementation of the FIP contingency process was triggered by violations of the CO standard in Phoenix in December 1992. On June 28, 1993 (58 FR 5458), EPA published a notice of proposed rulemaking proposing to find that the implementation plan was inadequate

[1] While the FIP was promulgated after the enactment of the 1990 Clean Air Act Amendments, it was designed, pursuant to the *Delaney* Court's order, to comply with the CAA and EPA guidance as they existed prior to the 1990 Amendments.

[2] ''State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension. Final Policy.'' 46 FR 7182 at 7187, 7192 (January 22, 1981) (hereafter referred to as ''1982 guidance'').

and that additional control measures were necessary to attain and maintain the CO national ambient air quality standard (NAAQS) in the Maricopa area. In the same notice, EPA also proposed an updated list of highway projects subject to delay while the implementation plan was being revised. On August 9, 1993, EPA issued a SIP call under section 110(k)(5) of the CAA requiring that Arizona submit a new plan by July 19, 1994. Arizona submitted SIP revisions to EPA in November 1993, March 1994 and August 1995 that contained new control measures and a demonstration that the area would attain the CO NAAQS by December 31, 1995, the attainment deadline under the 1990 Clean Air Act Amendments for CO nonattainment areas classified as ''moderate'' such as Phoenix.[3] See CAA section 186(a). As a result, EPA took no final action on the June 28, 1993 proposal and is today withdrawing that proposal.

*B. CAA Contingency Requirements and EPA Guidance*

The Clean Air Act Amendments (CAAA) of 1990 completely revised the nonattainment provisions of the Act, part D of title I, repealing the generally applicable provisions of section 172 and adopting substantial new requirements and planning and attainment deadlines applicable to CO nonattainment SIPs. See sections 171–193. A number of these provisions are discussed in detail in section III of this document.

Among the new requirements in the 1990 CAAA is section 172(c)(9) which provides for contingency measures. Section 172(c)(9) requires that plans for nonattainment areas ''shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national ambient air quality standard by the attainment date applicable under this part [D]. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.''

EPA has issued several guidance documents related to the post-1990 requirements for CO SIPs. Among them is the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992) (hereafter ''General Preamble'') and the ''Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans,'' July 1992 (hereafter ''1992 TSD'').

For CO, the General Preamble addresses specifically only the contingency measures required under section 187(a)(3) of the Act for moderate areas with design values above 12.7 ppm (high moderate areas). See 57 FR 13498, 13532–13533. As a low moderate area, section 187(a)(3) did not apply to Phoenix. In connection with the discussion of requirements for moderate ozone areas, the General Preamble addresses generally the section 172(c)(9) requirements which are also applicable to low moderate CO nonattainment areas such as Phoenix. See 57 FR 13498, 13510–13511. In both discussions, EPA states that the contingency measure provisions of the 1990 Amendments supersede the contingency requirements contained in the 1982 guidance.

The 1992 TSD contains a discussion directly applicable to low moderate CO areas. See pages 5–6. This guidance explains that the trigger for implementation of the section 172(c)(9) measures is a finding by EPA that such an area failed to attain the CO NAAQS by the applicable attainment date and that states must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions upon such a finding.

In the 1992 TSD, EPA notes that section 172(c)(9) does not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. EPA suggests that one appropriate choice would be to provide for the implementation of sufficient reductions in vehicle miles traveled (VMT) or emission reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate the new requirements for a serious CO area. Thus, in suggesting a benchmark of one year's growth in VMT, EPA concluded that the purpose of the Act's contingency requirement is to maintain the actual attainment year emissions level while the serious area attainment demonstration is being developed.

II. Summary of Proposed Action

On April 9, 1996 (61 FR 15745), EPA proposed to approve two contingency measures submitted by the State of Arizona for the Phoenix CO nonattainment area. These measures are enhancements to the State's remote sensing program for vehicle emissions and a traffic diversion measure. Both measures are described in detail in the proposal. See 61 FR 15745 at 15746–15747 and 15749–15750. In the proposal, EPA also described in detail the SIP approval standards applicable to the State's contingency measure submittals. EPA proposed to conclude that the State's two contingency measures, when considered in conjunction with emission reductions expected to be achieved in 1996 and 1997 through the continued implementation of the State's federally approved Vehicle Emission Inspection program (enhanced I/M program), met the requirements of section 172(c)(9) and other applicable provisions of the CAA. The Agency's preliminary analysis reaching that conclusion is set forth at 61 FR 15747–15750.

Based on its approval of the State's contingency measures, EPA also proposed to withdraw the federal contingency process for the Maricopa area from the State's applicable implementation plan and to withdraw the list of highway projects subject to delay that was proposed on June 28, 1993 (58 FR 5458).

III. Response to Comments Received on Proposal

EPA received comments on its proposal from three groups: the Arizona Center for Law in the Public Interest (ACLPI), the Maricopa Association of Governments (MAG), and the Arizona Department of Environmental Quality (ADEQ). A summary of the ACLPI and MAG comments and EPA's responses to those comments follow. The comments submitted by ADEQ were not substantive and are therefore only addressed in the TSD.

*A. Comments by the Arizona Center for Law in the Public Interest, May 7, 1996*

*Comment:* ACLPI states that it is strongly opposed to EPA's proposed action and some of its reasons for this opposition are contained in its January 4, 1994 letter commenting on the EPA's December 12, 1993 proposal (58 FR 64530). ACLPI requests that its previous comments of January 4, 1994 be incorporated by reference into this

[3] At the time of the SIP submittals that are the subject of today's document, Phoenix was classified as moderate and, because its design value is under 12.7 ppm, was considered a low moderate area. EPA has recently found that the Phoenix area failed to attain the CO NAAQS by the statutory deadline. See 61 FR 39343 (July 29, 1996) As a consequence of this finding, the area has been reclassified to ''serious'' under section 186(b)(2). As a result, the area is now subject to the section 187(b) requirements for serious CO areas. These requirements include those applicable to CO areas with design values between 12.7 ppm and 16.4 ppm (high moderate areas) in section 187(a). For the purpose of today's action, however, the relevant CAA requirements are those that apply to low moderate CO nonattainment areas. The serious area requirements are referred to throughout this notice when they inform individual discussions.

rulemaking along with the docket for the December 12, 1993 proposal.

*Response:* EPA has incorporated ACLPI's January 4, 1994 comment letter into the docket for this rulemaking and, to the extent that the comments are germane to this rulemaking, has responded to them below. The vast majority of ACLPI's 1994 comments dealt with the specific merits of EPA's proposed substitution of the Maricopa Association of Governments (MAG) contingency process and the State's gasoline volatility control measure for the FIP's contingency process and highway delays. Because EPA is not acting in this rulemaking on either the MAG process or the volatility control measure, most of ACLPI's 1994 comments are not relevant to this action. ACLPI did comment at that time on the application of CAA section 193 to the FIP contingency process and has made almost identical comments on this action. EPA has responded to these comments below.

It should be noted that EPA has not finalized the December 12, 1993 proposal and has not done so for reasons unrelated to the comments received on the proposal. Because it is acting on an entirely different State submittal from the one it proposed to approve in December 1993, EPA does not believe that the rulemaking docket for that proposal, except for ACLPI's comment letter, is relevant to this document. Therefore, EPA has included in the docket for today's rulemaking only ACLPI's comment letter from the docket for the 1993 proposal.

*Comment:* ACLPI comments that EPA's proposed action violates the CAA's antibacksliding clause. Under section 193 of the CAA, no control requirement in effect, or required to be adopted by an order in effect before the date of enactment of the 1990 CAAA in any nonattainment area may be modified in any manner unless the modification insures equivalent or greater emission reductions. The contingency provisions of the existing CO FIP were ordered by the Ninth Circuit prior to enactment of the 1990 CAAA (*Delaney* v. *EPA*, 898 F.2d 687, entered March 1, 1990) and, therefore, according to ACLPI, cannot be modified without insuring equivalent or greater emission reductions. ACLPI asserts that the proposal does not assure equivalent or greater emission reductions and provides several grounds for this assertion.[4]

ACLPI also disagrees with the Agency's statement that section 193 does not apply to the FIP contingency provisions because those provisions constitute ''procedures'' rather than ''control requirements.'' ACLPI claims that the FIP provisions are not merely procedural but are also substantive because they mandate EPA adoption of specific control measures adequate to produce attainment and delay of road projects. The FIP contingency provisions have already been triggered.

Further, ACLPI does not agree that the control requirements preserved by section 193 are limited to measures that have previously been identified and defined in detail, or that the term ''control requirement'' excludes mandated procedures. ACLPI argues that no such limitation appears in the language of the statute and such limitation would sharply conflict with the statutory purpose-namely to prevent backsliding. ACLPI believes that EPA's construction also conflicts with the Agency's own policies and guidelines and with the Act itself, all of which require implementation plans to include both procedural and substantive provisions, and which treat both as enforceable control requirements.

*Response:* ACLPI made the same comments regarding the applicability of section 193 to the FIP in its January 4, 1994 comment letter. The following discussion is a response to both the 1994 and 1996 comments.

EPA addressed the relevancy of section 193 to its proposed action in the April 9, 1996 notice (61 FR 15748–49). The Agency concluded that the FIP contingency process does not constitute a ''control requirement'' within the meaning of section 193 of the Act (see footnote 10 for the text of section 193) and provided its reasoning. EPA elaborates here on its section 193 discussion in the proposal.

The contingency process contained in the Maricopa CO FIP was required by a March 1, 1990 order of the Ninth Circuit—before the enactment of the CAAA on November 15, 1990. Having concluded that Maricopa's pre-amendment CO plan did not contain contingency procedures that met EPA's 1982 guidance, the Ninth Circuit ordered EPA to promulgate a FIP that contained contingency procedures in accordance with that guidance. *Delaney*, at 695. The Court, however, did not order EPA to implement that process or to promulgate any specified control requirements in that plan. Indeed, the inclusion of any specific control requirements by EPA would have been inconsistent with the terms and intent of EPA's 1982 guidance on contingency procedures. EPA's 1982 guidance required a two-part contingency plan:

> ''The first part * * * [is] a list of planned transportation measures and projects that may adversely affect air quality and that will be delayed, while the SIP is being revised, if expected emission reductions or air quality improvements do not occur. The second part * * * consists of a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reductions. (45 FR 7187)

A list of highway projects that may be delayed and a description of actions that may occur at some later date are not control requirements. A list and a description have no air quality impacts and yield no emission reductions. Nor do they have any potential for either air quality impacts or emission reductions until and unless they are triggered by ''unanticipated shortfalls in emission reductions.'' Even triggered, the particular contingency process in the Maricopa FIP is not a control requirement within the meaning of section 193.

The FIP contingency process, promulgated in accordance with the Court's order, consists of an intricate series of actions by EPA potentially spanning a minimum of 14 to 16 months. The federal process may involve, among other things, various assessments and findings, air quality modeling, and the review and the potential adoption of additional control measures. The eventual length and scope of the process is dependent upon the outcome of the assessments and findings called for in the process and is, therefore, not predictable in advance. See 56 FR 5471–5472.

Likewise, the highway delay provision in the FIP contingency process involves the development of a new list of highway projects with potentially adverse air quality impacts and triggering of project delays only if certain findings are made as part of the overall contingency process. Since it is not known in advance what projects, if any, will be listed and whether any projects will be delayed, the scope of highway delays is also not predictable. Additionally, because the contingency process only requires the delay of highway project construction and not elimination of the projects altogether,

[4] In extensive comments on this issue, ACLPI argues that the SIP contingency measures approved today cannot supplant the FIP contingency process because they do not assure equivalent or greater emission reductions as required by section 193. Because EPA does not agree, as discussed below, with ACLPI's basic premise that the FIP contingency process is a control requirement within the meaning of section 193, for which equivalent emissions would otherwise be required prior to substitution, the Agency is not addressing ACLPI's equivalency arguments in today's notice.

the long-term direct impact on air quality and attainment—good or bad—is also extremely uncertain.[5]

While the term ''control requirement'' is not defined in the Act, it is generally viewed as a discrete regulation directed at a specific source of pollution; e.g., an emission limitation on a smoke stack at a power plant. By contrast, a contingency process, as outlined by EPA's 1982 guidance, is much broader and more far-reaching than a simple, quantifiable control limitation.[6]

It should also be noted that the use of the term ''control requirement'' in the Act is unique to section 193. Its closest parallel is the use of the term ''control measures'' in various provisions of the statute. The term ''control measures'' in these provisions clearly means direct, effective, enforceable controls on sources of air pollution (such as reasonably available control technologies or transportation control measures) and not procedures for the adoption of such controls.[7]

EPA also disagrees with ACLPI that the failure to include the FIP procedures or process within the meaning of section 193's ''control requirement'' conflicts with the statutory purpose of preventing backsliding by assuring that modifications will not occur without the substitution of equivalent or greater emission reductions. This argument would have some merit if section 193 were the sole savings clause in the Act. The Act, however, has other savings clauses, including section 110(n) which specifically applies to all plan elements, procedural or otherwise. Moreover, a procedure per se does not yield emission reductions. For example, the FIP contingency process is just as likely to conclude with no additional emission reductions.[8] Similarly, as discussed above, highway delays may result in no emission reductions.

EPA agrees with ACLPI that the Agency's own policies and guidelines require implementation plans to include both procedural and substantive provisions and that the Agency considers both as enforceable elements of SIPs. The fact that a particular provision is enforceable, however, does not automatically make it a control requirement. Under section 113(a), EPA can enforce ''any requirement or prohibition of an applicable implementation plan.'' There is no requirement that such provisions be considered to be ''control requirements'' in order to be enforceable.[9]

In summary, under a straightforward reading, the savings clause is best viewed as an anti-backsliding provision by which Congress intended to prevent the relaxation of actual, existing control requirements on specific pollution sources or controls required to be adopted for specific pollution sources while states are proceeding with their new planning obligations under the 1990 Amendments.

There is simply no evidence that Congress intended ''control requirement'' to encompass a process as complex and broad as the FIP contingency procedures. Indeed it is fundamental that the words of a statute are to be given their ordinary, plain meaning unless it is clear that some other meaning is intended. See *Columbia Pictures Indus., Inc.* v. *Professional Real Estate Investors, Inc.*, 866 F.2d 278, 280 n. 4 (9th Cir. 1989); *Arizona Elec. Power Coop., Inc.* v. *United States*, 816 F.2d 1366, 1375 (9th Cir. 1987), *cert. denied*, 488 U.S. 818 (1988). EPA's interpretation of the savings clause is in full accord with the plain language of section 193. Under the standard articulated in *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984), where Congress has spoken directly on an issue, that is the end of the matter.

Beyond the plain language, however, EPA's interpretation of section 193 is consistent with the structure of the 1990 Amendments as they relate to the new planning requirements for nonattainment areas and the failure of those areas to attain the NAAQS. Under the pre-1990 Act, nonattainment areas were not classified according to the severity of their air quality problems. An area found to have failed to attain by the applicable attainment deadline was subject only to a SIP call under pre-amended section 110. The pre-amended Act contained no provisions for contingency procedures or measures. Therefore, EPA added administratively in the 1982 guidance a SIP process that included, among other things, a delay of highway projects that could adversely affect air quality while the SIP was being revised in response to a SIP call.

In contrast, under the 1990 CAAA, a finding of failure to attain by the applicable attainment date for any area triggers the implementation of discrete contingency measures under new section 172(c)(9) and also results in the area being reclassified. The reclassification in turn results in a new attainment deadline and more stringent planning requirements to be submitted on a date certain. See e.g., sections 186(b)(2), 186(c) and 187(f). The eternal retention of the FIP contingency process (or its equivalent) in the applicable plan would forever overlay its outdated and inconsistent planning scenario on to the new statutory scheme.

The FIP contingency process was never grounded in a statutory requirement but was rather based on guidance designed to fill a perceived gap in the absence of a statutory requirement. In 1990, Congress remedied that omission by adding both section 172(c)(9) to fill that gap and a new scheme for additional planning for areas failing to attain the NAAQS. As discussed above and further below, EPA's pre-amendment contingency guidance is inconsistent with this new statutory scheme and thus became ineffective under section 193 upon enactment of the CAAA.[10] EPA affirmed

---

[5] ACLPI notes (repeating an EPA statement) that the highway delay provision provides an important coercive benefit in inducing the State to adopt control measures. However, if the primary impact of the highway delay provision is to leverage State controls, then the provision is best characterized, in this context, as a sanction and not as a control requirement.

[6] It is instructive to contrast the FIP contingency process, and EPA's 1982 guidance on which it is based, with the new contingency measure requirements in the 1990 CAAA. For example, section 172(c)(9) requires all nonattainment area plans to provide for the implementation of *specific measures* to be undertaken if the area fails to attain the NAAQS by the applicable attainment date. See also sections 187(a)(3) and 182(c)(9). The remainder of this discussion refers primarily to section 172(c)(9) because, as stated before, it is the only contingency measure requirement that applies to Maricopa.

[7] Wherever the statute mandates ''control measures'' it is clear that it is speaking in terms of discrete means or techniques of controlling emissions from particular sources. For instance, section 110(a)(2)(A) requires state implementation plans to include enforceable emission limitations ''and other control measures, means, or techniques * * *'' as are necessary to attain the national standards. All state plans for nonattainment areas must also provide ''for the implementation of all reasonably available control measures * * * (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology).'' Section 172(c)(1). See also section 172(c)(6).

[8] See, for example, the end of section (a) under *Determination of the Need for Additional Measures* (56 FR 5471):

> Should the Agency find that no additional measures are needed, the [Notice of Final Rulemaking] shall contain this finding and conclude the contingency process.

[9] See also section 118(a) of the CAA which requires compliance with all requirements whether substantive or procedural.

[10] Section 193 states:

> Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator as in effect before November 15, 1990 shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, *inconsistent with any provision of this chapter*, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or

this position in the General Preamble. See General Preamble at 57 FR 13498, 13511 and 13532. It is axiomatic that two parts of a single statutory section cannot be read to have opposite effects. Since the first sentence of section 193 renders ineffective the 1982 guidance for contingency processes, the second sentence cannot be read to retain a requirement that is intimately based on that 1982 guidance.

Both the plain language of section 193 and the new statutory scheme support EPA's interpretation that the FIP contingency process is not saved. If, however, there is any ambiguity in the savings clause, EPA's interpretation of section 193 is reasonable, consistent with the language and revised structure of the Act, and serves to advance the goals of the statute. Therefore, it is a permissible construction entitled to considerable deference. *Chevron,* 467 U.S. at 844.

*Comment:* ACLPI disagrees with EPA's suggestion that the contingency mandate in section 172(c)(9) supplants the FIP contingency provisions and EPA's pre-amendment contingency guidance. ACLPI asserts that there is nothing in the Act or its legislative history to suggest such a result and such a result would be contrary to sections 110(n), 193, and other provisions of the Act. Therefore, according to ACLPI, the section 172(c)(9) mandate is in addition to, and not in lieu of pre-existing control requirements. ACLPI concludes that in enacting the 1990 Amendments, Congress made clear that it intended to strengthen the Act, and preserve preexisting control requirements to ensure maximum progress toward clean air.

*Response:* As discussed previously, the Agency's 1982 contingency guidance was an effort by EPA to fill a gap in the statute as it existed prior to the 1990 CAAA. The pre-amended Act contained no requirement for contingency provisions in non-attainment area plans. In amending the Act in 1990 to explicitly include a requirement for specific contingency measures in section 172(c)(9), Congress clearly anticipated that EPA would update its nonattainment area guidance to reflect the new statutory scheme.[11] There is nothing in the language or structure of the 1990 Amendments or their legislative history to suggest that Congress intended to reaffirm EPA's 1982 guidance regarding appropriate contingency procedures. On the contrary, by providing explicit contingency measure requirements that differed from that guidance, if anything, it can be concluded that Congress intended to overrule the 1982 guidance in the 1990 Amendments.

Moreover, the amended Act and EPA's pre-amendment contingency guidance are in fact both duplicative and inconsistent and thus made ineffective by section 193 on enactment of the CAAA. See footnote 10. EPA's 1982 contingency guidance required the State to invoke a new planning process if the SIP was inadequate for attainment. In the 1990 Amendments, Congress established a different scheme for areas that failed to attain.[12] The new contingency measure provisions serve a different purpose than EPA's pre-amendment guidance in that they call for immediate implementation of already adopted control measures. Consistent with the new scheme for implementation of contingency measures and reclassification with new planning requirements for areas that fail to attain, EPA stated that its pre-amendment guidance had been superseded. See General Preamble at 13498, 13511, and 13532. Such statements are reasonable in light of the 1990 Amendments and was within EPA's discretion. See *Ober* v. *EPA*, 84 F.3d 304, 311–312 (9th Cir. 1996).

Furthermore, neither section 193 nor section 110(n) of the Act bars revisions to EPA's 1982 contingency guidance as ACLPI suggests. Both sections provide for revisions to EPA guidance and SIPs upon affirmative action by the Administrator.[13]

*Comment:* ACLPI also disagrees with EPA's proposed interpretation of section 172(c)(9) as requiring only such SIP contingency measures as necessary to offset one year's growth in vehicle miles traveled (VMT). ACLPI claims that the focus of section 172(c)(9), other provisions of 172, and section 110 is on timely attainment and achievement of reasonable further progress (RFP)—not on VMT offsets. Thus ACLPI states that contingency measures must be adequate to make up the entirety of any potential emission reduction shortfall. ACLPI further asserts that EPA's proposed approach would allow states to defer attainment and RFP. It also allegedly allows states to defer attainment to the deadline for the new classification, even if additional contingency measures could produce attainment much sooner.

*Response:* First, it should be noted that there is nothing in the plain language of section 172(c)(9) or any other provision of the Act to support ACLPI's contention that contingency measures must be adequate to make up the entirety of any potential emission reduction shortfall. Indeed, such an interpretation makes no sense when considered in the context of the new statutory scheme. Because section 172(c)(9) does not specify either the number or type of contingency measures required, EPA's reasonable interpretation of the required measures should receive deference. *Chevron,* 467 U.S. at 844.

As discussed before, section 172 and the pollutant-specific requirements in sections 181 through 189 establish a basic classification scheme and associated planning cycles. This scheme started with the original classifications of nonattainment areas following enactment. An area's initial classification established its attainment deadline and the initial elements of its plan. Sections 181, 186, and 188 all require EPA to review an area's air quality after the passage of its attainment date to determine if an area in fact attained by its deadline. If the Agency finds that an area has not attained, then the area is reclassified to the next higher classification by operation of law.

This reclassification triggers new planning requirements that in all cases lead to the development of new attainment and RFP demonstrations. The role of the section 172(c)(9) measures in this scheme is to assure areas do not lose ground during the period that they are developing these new plans. It is not the role of these

---

greater emission reductions of such air pollutant. (Emphasis added).

[11] Additional contingency provisions for certain moderate CO nonattainment areas are found in section 187(a)(3). See also contingency provisions in section 182(c)(9) for certain ozone nonattainment areas.

[12] EPA's 1982 policy stated that ''the contingency provision must be initiated when the EPA Administrator determines that a SIP is inadequate to attain NAAQS and additional emission reductions are necessary.'' 46 FR 7187. In the 1990 Amendments, Congress in section 186(b)(2)(A) required EPA to determine within 6 months of an area's attainment date whether the area has attained the CO standard and, should EPA find a failure to attain, the area is reclassified by operation of law to serious, triggering new planning requirements under section 187(f). Under section 172(c)(9), contingency measures are also triggered if an area fails to attain.

[13] Section 110(n)(1) states that ''[a]ny provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such implementation plan, except to the extent that a revision to such provision is *approved or promulgated by the Administrator* pursuant to this chapter.'' (Emphasis added). However, the FIP contingency provisions were not promulgated as a part of the Arizona applicable implementation plan until February 11, 1991, and therefore are clearly not subject to section 110(n)(1). Further, even if this section applied to the FIP contingency process, it would, by its terms, present no impediment to EPA's withdrawal of the FIP process. See footnote 10 for the text of section 193.

measures to replace or accelerate the development of the new plans. To require the section 172(c)(9) contingency measures to be adequate to make up the entirety of any potential emission reduction shortfall would in fact result in replacing the reclassification scheme in part D with just section 172(c)(9).[14] Such a result is clearly not what Congress intended. Thus it is the basic statutory structure, and not EPA's approach, that allows states to defer attainment to the deadline for the new classification.[15]

Regarding ACLPI's disagreement with EPA's use of one year's growth in VMT as a benchmark for the amount of emission reductions section 172(c)(9) measures should achieve,[16] it should be noted that EPA went beyond the suggested approach in the 1992 TSD. EPA showed in its proposal that the State's contingency measures coupled with continuing emission reductions from the State's enhanced inspection and maintenance program (as well as other measures whose effectiveness was built into the baseline) provided sufficient emission reductions to offset on-road mobile source emissions growth during the period of time that the Phoenix area would be developing its serious area attainment plan (i.e., from early 1996 until late 1997).

EPA agrees with ACLPI that the primary thrust of sections 110 and 172 of the Act is for timely attainment and achievement of RFP and not on VMT offsets. It, however, is an indisputable fact that the bulk of CO emissions in Phoenix (as in the vast majority of CO nonattainment areas) are from motor vehicles and the main culprit behind increases in overall CO levels is growth in vehicle usage. It is, therefore, reasonable to relate needed emission reductions from contingency measures to the factor that most influences emissions growth, that is vehicle miles traveled. Thus EPA's guidance on contingency measures in the General Preamble and the 1992 TSD is reasonable.

On the other hand, as discussed above, EPA does not agree with ACLPI that the purpose of section 172(c)(9) is to alone assure attainment of the standard or RFP. To read that purpose into section 172(c)(9) is to ignore the broader reclassification and new planning requirements scheme in part D of title I of the Act. For the foregoing reasons, EPA believes that its interpretation of section 172(c)(9) is reasonable and, as such, is entitled to considerable deference. *Chevron,* 467 U.S. at 844.

*Comment:* ACLPI also comments that the State is not eligible to base its contingency measures on EPA's VMT emission offset policy. According to the General Preamble, that policy applies where failure to timely attain or achieve RFP is due to ''exceedence of a VMT forecast'' and the State has made no claim or showing that its failure to timely attain or achieve RFP is due to exceedence of a VMT forecast. ACLPI cites 57 FR 13532 for this policy.

*Response:* The section of the General Preamble cited by ACLPI addresses the contingency requirement in section 187(a)(3) for high moderate CO nonattainment areas. Section 187(a)(3) requires CO nonattainment areas with design values of 12.7 ppm or higher (that is, high moderate areas) to provide for the implementation of specific measures to be undertaken if any estimate of VMT exceeds forecasts. Section 187(a)(3) is a companion requirement to section 187(a)(2)(A) which requires high moderate areas to forecast VMT for each year before the attainment year and annually update those forecasts. Because section 187(a)(3) contingency measures are triggered by higher than expected VMT growth, it is reasonable to link its contingency measure requirement to annual VMT growth. However, section 187(a)(3) and the cited section of the General Preamble concern contingency requirements applicable only to high moderate nonattainment areas whereas Phoenix is a low moderate area. As stated previously, neither the statute nor the General Preamble addresses how many contingency measures or emission reductions from them are necessary in low moderate CO areas. EPA's interpretation of the statute, which has been shown above to be reasonable, for these areas is only in the 1992 TSD.

*Comment:* ACLPI comments that just offsetting one year's growth in VMT does not even assure EPA's stated goal—namely, to prevent air quality from worsening while the SIP is being revised. ACLPI points out that on-road mobile sources in Phoenix contribute only about 70 percent of the total emission inventory; therefore, there is no assurance whatsoever that RFP will be maintained merely because VMT-related emission increases are offset.[17]

*Response:* The 70 percent figure for on-road mobile sources is the contribution of this source category to the 1990 base year annual daily CO season emissions inventory (found on page 3.3 of the MAG 1993 CO Plan for the Maricopa County Area, November 1993). EPA believes that the purpose of section 172(c)(9) for contingency measures is to prevent air quality from worsening while the SIP is being revised. EPA's calculations indicate that during this period total CO emissions will not increase and the State's contingency measures therefore are sufficient to accomplish that purpose. See the TSD for this rulemaking. As discussed below, EPA does not believe that section 172(c)(9) measures are required to assure RFP.

*Comment:* ACLPI requests the entirety of the MAG 1993 Carbon Monoxide Plan for the Maricopa County Area (November 1993) as well as the March 1994 Addendum to that Plan be incorporated by reference into the record for this rulemaking.

*Response:* EPA has not relied on substantial portions of the MAG 1993 CO Plan for its action in this rulemaking and declines to incorporate the entire plan into its rulemaking docket.[18] The March 1994 Addendum and relevant excerpts from the MAG 1993 CO Plan are already included in the docket for the proposal. EPA is also incorporating by reference the rulemaking docket for its proposed approval of the Phoenix area's CO inventory. This docket includes additional portions of the MAG 1993 CO Plan. EPA has included all applicable portions of the plan in the docket for today's rulemaking.

*Comment:* ACLPI comments that even if an offset of emissions from one year's VMT growth were sufficient to assure RFP in that year, it would not assure continued RFP during the entire period

[14] The fact that Congress did not intend section 172(c)(9) contingency measures to entirely make up any shortfall needed for attainment of the CO standard is made even clearer by section 187(g). Section 187(g) requires submittal, nine months after EPA determines that a serious CO nonattainment area failed to attain by December 31, 2000, of controls sufficient to demonstrate a five percent per year reduction in CO emission until attainment occurs. If section 172(c)(9) were intended to require immediate implementation of measures sufficient to correct any attainment shortfall, then section 187(g) would not be necessary.

[15] Note, however, that the attainment deadline for the new classification is not a fixed date providing a number of additional years while attainment is reached; rather the deadline is ''as expeditiously as practicable but not later than'' a fixed date. If practicable controls can bring an area into attainment prior to the fixed date, they must be implemented to achieve earlier attainment.

[16] See section I.B. of this notice.

[17] Although acknowledging that EPA's action is limited to CO, ACLPI also comments on the Agency's section 172(c)(9) policy as it relates to ozone. Because today's action concerns only CO contingency measures, these comments are not germane and need not be addressed here.

[18] Section 307(d)(3) requires the docket accompanying a proposed Agency action to include all data, information, and documents on which the proposed rule relies. Section 307(d)(4)(B)(i) requires the final docket to include all comments received on the proposed rulemaking, the transcript of any public hearings, as well as any documents which become available after the proposed has been published and which EPA determines are of central relevance to the rulemaking.

that the SIP is being revised. EPA is apparently planning to give the State 18 months to revise the SIP and the normal approval process will protract this SIP revision period even further.

*Response:* ACLPI misinterprets the RFP requirements of the CAA. Sections 172(c)(2) and 171(1) require ''such annual incremental reductions in emissions * * * for the purpose of *ensuring attainment of the applicable national ambient air quality standard by the applicable attainment date*'' (Emphasis added). Thus the moderate area plan for Phoenix was required to assure RFP through 1995, the moderate area attainment deadline under section 186(a)(1).[19] However, since the area has now been reclassified, additional RFP requirements apply to the serious area plan. In the interim, the section 172(c)(9) contingency measures will ensure that air quality does not deteriorate while the plan is being revised. There is nothing in the language of that section to suggest that the contingency measures are expected to assure RFP during this period.

EPA does not believe that EPA's approval process can be reasonably interpreted to ''protract the SIP revision process'' as ACLPI suggests. Revision of the SIP clearly relates to the State's actions to develop and submit rather than EPA's actions to approve or disapprove. Moreover, the vast majority of State control measures do not depend upon EPA's approval of them into the SIP to be implemented and effective.[20] Therefore, it is appropriate to consider the contingency period to run only until the date the State is required to submit its serious area plan with its accompanying control measures. As discussed above, EPA has concluded that there will be sufficient emission reductions during 1996 and 1997 to offset all emissions growth while the plan is being revised.

*Comment:* ACLPI comments that the Arizona's contingency measures also fail the Act's contingency requirements because there are no contingency measures for the contingency measures and if the first contingency measures do not achieve the emission reductions expected of them then there is no assurance that an offset of emissions from VMT growth will be achieved, even in the first year.

*Response:* It would be an absurd reading of the Act to conclude that contingency measures need their own contingency measures. The only reading of the Act for which such an interpretation would make any sense is the one that EPA has already rejected for the reasons explained above: that section 172(c)(9) requires sufficient measures to immediately make up any potential shortfall in attainment or RFP. As discussed earlier, the purpose of the section 172(c)(9) contingency measures is to assure that air quality does not worsen during the period a new plan is being developed. This new plan will necessarily evaluate the existing situation, including any failure of contingency measures to achieve emission reductions, and factor the effectiveness of existing controls into determining the additional controls necessary for attainment.

*Comment:* ACLPI comments that in proposing to find that the State's contingency measures will offset emissions from one year's VMT growth, EPA relies primarily on emission reductions from the State's enhanced I/M program. ACLPI asserts that this reliance is misplaced for several reasons. First, the enhanced I/M program is not a contingency measure, rather it is one of the primary strategies included in the SIP and the State has already claimed emission reductions from this strategy in the SIP attainment and maintenance demonstration. ACLPI claims that EPA cannot now convert the program to a contingency measure to create an offset of VMT emission increases.

*Response:* EPA did not claim that the Arizona's enhanced I/M program is a section 172(c)(9) contingency measure, just that it contributes to reducing emissions during the contingency (SIP revision) period. In establishing a benchmark of one year's growth in VMT for these measures, EPA intended that the status quo, as represented by the emissions level in the attainment deadline year, be maintained during this period. EPA believes that this result can be achieved by considering reductions from the section 172(c)(9) measures in combination with new reductions scheduled to occur in the area during the SIP revision period, as long as these offsetting reductions are from measures approved into the SIP and are in excess of reductions occurring in the attainment deadline year. As discussed above, the emission reductions from the enhanced remote sensing program, the traffic diversion measure, and the additional reductions from the I/M program in 1996 and 1997 more than meet this test.

While the State explicitly identified in the proposal emission reductions from its enhanced I/M program in determining that the contingency measures are adequate to maintain the area at or below 1995 levels during the contingency period, it need not have done so. In order to make this determination, the State calculated the baseline emissions level, i.e., the emissions level expected in the year after the attainment deadline prior to the implementation of the contingency measures. Rather than incorporating emission reductions from the enhanced I/M program into the baseline, the State chose to explicitly account for reductions from the program.[21] If the State had incorporated the emission reductions from the enhanced I/M program into the baseline emissions level, the determination that the contingency measures are adequate would have been the same. The difference between explicitly accounting for reductions from the program or implicitly including them in the emission baseline is simply the method of bookkeeping.

*Comment:* ACLPI comments that neither the state nor EPA has provided viable technical justifications for the emission reductions claimed from the enhanced I/M and enhanced remote sensing programs. There is no explanation of how the State arrived at the estimated effectiveness percentages for these programs. ACLPI asserts that under EPA guidelines and rules, as well as general principles of administrative law, EPA cannot credit these measures with emission reductions without a sound, thoroughly justified technical basis for the level of reductions being claimed. The State now has considerable experience with both remote sensing and enhanced I/M in 1995 and should be required to provide evidence of their actual performance as proof of their emission reduction potential.

*Response:* EPA does not believe the State must submit evidence of the actual performance of the enhanced I/M and remote sensing programs to support their estimated emission reduction potential. For both the enhanced I/M

[19] On August 9, 1993, EPA issued a SIP call under section 110(k)(5) of the CAA that required Arizona to submit a plan to EPA that demonstrated attainment of the CO NAAQS by December 31, 1995. As an area with a design value under 12.7 ppm, the State would not otherwise have been required to submit an attainment plan, including an RFP demonstration, for the Phoenix area. See section 187(a).

[20] Even the contingency measures that are the subject of this rulemaking did not require EPA's formal approval into the SIP in order to be triggered. EPA triggered their implementation when its finding that the Phoenix area failed to attain the CO standard became effective on August 28, 1996.

[21] In fact, there are emission reductions anticipated to occur after the attainment deadline year from numerous measures whose effects are assumed in the baseline emissions. These measures include federal tailpipe standards, oxygenated gasoline, basic I/M, RVP limitations, and transportation control measures.

and enhanced remote sensing programs, the State used EPA's MOBILE5A model to calculate emission reductions. The MOBILE5A inputs used to generate the reduction estimates for enhanced I/M and the methodology and assumptions used to estimate the effectiveness of the enhanced remote sensing program are also provided in the 1994 Addendum at pp. 3–191 and 3–201, respectively. EPA requires the use of its latest mobile sources emissions model (in this case,the MOBILE5A)to determine credits for I/M programs. See 40 CFR 51.351(a) and 51.352(a).[22] The MOBILE models have been the standard methodology for this purpose for more than a decade and EPA does not believe that it should or can require States to independently validate the accuracy of the model.

*Comment:* ACLPI comments that a related and equally serious flaw is the State's reliance on the air quality modeling in the 1994 Addendum that has not been reviewed and approved by EPA as part of the SIP review process. Stating that EPA has neither proposed to approve that modeling nor has it evaluated that modeling in the context of this rulemaking, ACLPI maintains that if EPA is going to rely on the State's CO modeling, it must first specifically propose approval of that modeling and allow public comment on it.

ACLPI also comments that the emission reductions from the control measures are not adequate. ACLPI states that the State contends that emission reductions from the contingency measures and enhanced I/M will be sufficient to offset increased emissions from VMT growth and bases this claim on its projections of on-road mobile source emissions and its estimates of emission reductions from contingency and enhanced I/M measures. ACLPI claims that aside from the lack of substantiation for the latter, the projections of mobile source emissions are not supported by EPA-approved emissions inventories and VMT projections. The State is relying on the emission inventory and VMT projections in the MAG 1993 CO Plan for Phoenix, but EPA has not yet even proposed approval of those components of the Plan. ACLPI further states that the Agency cannot simply assume that the State's inventory and VMT projections are accurate, particularly when the State's attainment projections (based on this inventory) have proven to be incorrect nor can EPA simply approve these items at this stage of the rulemaking. ACLPI concludes that because a current, accurate emissions inventory is a mandated component of the SIP, EPA must first propose approval or disapproval of the inventory and provide an opportunity for public comment.

*Response:* EPA has relied on the base year and 1995 projected year emission inventories in the 1993 CO plan and 1994 Addendum in this rulemaking and has recently proposed to approve the base year inventory as meeting the requirements of sections 172(c)(3) and 187(a)(1) and EPA's guidelines. Because it is closely related to the base year inventory, EPA has also fully evaluated the 1995 projected year inventory against applicable guidelines as part of its rulemaking on the base year inventory and has found that that inventory conforms to these guidelines. EPA's evaluation of the projected inventory can be found in the draft TSD available for public comment in the docket for the proposed emission inventory approval. Should EPA ultimately disapprove the base year inventory in response to public comments on its proposed approval or re-evaluate its finding on the projected inventory, the Agency will consider the effect, if any, of such an action on this rulemaking and revise it if appropriate.

EPA, however, has not relied on the air quality modeling in either the 1993 CO plan or the 1994 Addendum for this rulemaking. Since the adequacy of contingency measures is based on their effect on emission levels and not on ambient air quality levels, air quality modeling does not factor into the adequacy determination. While contingency measures are triggered by a failure to attain the NAAQS, that determination is based solely on *monitored* air quality and not on *modeled* air quality.

*Comment:* ACLPI noted that the Arizona legislature had recently repealed the funding for the State's I/M program. It also stated that the State had not identified the financial and manpower resources necessary to implement enhanced remote sensing, nor provide legal commitments to adequately fund and staff that measure. Under EPA guidelines and rules, as well as section 110 of the Act, EPA cannot approve, or credit the State with emission reductions for the measures without funding or commitments.

*Response:* On July 18, 1996 the Governor of Arizona signed Arizona Senate Bill 1002 (42nd Legislature, 1st Special Session). Section 51 of the bill provided $4.3 million to fund the State's Vehicle Emissions Inspection Program (including its enhanced remote sensing component)[23] through June 30, 1997. See section 51 of the bill. The bill also includes a statement of intent that the program become self-funding from July 1, 1997 on.[24] See section 52 of the bill. While there is no longer an explicit funding source identified for the program beyond the middle of 1997, EPA believes there are adequate grounds, based on past practice and the contribution of test fees to the administration of the program, to believe the program will continue operating at its current level without interruption. Arizona's I/M program has been in operation since 1976, is a key element of both the State's ozone and CO control strategies, and is a model for the rest of the Country.

EPA approved Arizona's basic and enhanced I/M program on May 8, 1995 (60 FR 22518). As part of that approval, EPA evaluated the program against the requirements in 40 CFR 51.354 which requires that the State demonstrate that appropriate administrative, budgetary, personnel, and equipment resources have been allocated to the program.[25] At that time, EPA concluded that the funding mechanism met EPA's requirements for I/M programs. Despite the recent turbulence in the funding for the program, EPA believes its evaluation is still correct. Should EPA in the future find that funding is not forthcoming for the program, EPA would issue a SIP call based on failure to implement the program under section 110(k)(5).

Finally EPA notes that under section 307(b)(1) of the CAA, petitions for review of the Agency's 1995 final action approving the basic and enhanced I/M program would need to have been properly filed within 60 days of such action. Comments relating to EPA's approval were required to have been raised during the comment period for that rulemaking. Therefore, ACLPI's comments regarding financial and

[22] Remote sensing programs are components and are means of increasing the effectiveness of I/M programs; therefore, emission reduction estimates for these programs are also calculated using MOBILE5a consistent with EPA guidance.

[23] There is a tendency to refer to the components of Arizona's Vehicle Emission Inspection Program (VEIP) as if they are separate and distinct programs. This is done primarily to identify the additional emission reduction benefits that each new component adds to the overall VEIP. Arizona VEIP is operated and funded as a single program with multiple components including enhanced I/M, basic I/M, diesel I/M, and remote sensing. See EPA's approval of Arizona's VEIP, 60 FR 22520 (May 8, 1995).

[24] It should be noted that the program is already partially funded by fees charged for vehicle emission inspections. The legislative appropriation covers the shortfall between the fees and the cost to run the program.

[25] The requirements in 40 CFR 51.354 define for I/M programs what states must submit to meet the section 110(a)(2)(E)(i) requirement that SIPs provide necessary assurances that adequate personnel, funding, and authority under state law are available to implement the program.

manpower resources of the I/M program are not timely.

*Comment:* ACLPI comments that yet another flaw is the State's use of 513 tpd as the 1995 baseline figure for on-road mobile source emissions. MAG's 1994 Addendum projected attainment in 1995 with a mobile source CO emission budget of 513 tpd. ACLPI notes that there were CO violations in 1995, so the 1995 design day emissions must have been higher than 513 tpd. Yet MAG has used this 513 tpd figure as the baseline for projecting actual emissions in 1995, 1996, and 1997. ACLPI concludes that because actual emissions were almost certainly higher than these projections, MAG's projections are flawed as well.

*Response:* The 513 tpd figure, like all emission inventory figures, is an estimate subject to an unavoidable degree of uncertainty. It was arrived at through a series of modeling steps including transportation and motor vehicle emissions modeling. See, in general, Chapter 5 of ''1990 Base Year Carbon Monoxide Emission Inventory for the Maricopa County, Arizona Nonattainment Area,'' (located in Appendix B, Exhibit 1 of the 1993 CO Plan). Each one of these models attempts to reproduce highly complex processes with comparatively limited data sets and thus introduces some natural range of error into the results.[26] Given that no absolute ton per day figure is likely to be entirely accurate, the real question is whether the use of the 513 tpd figure is acceptable for the purpose at hand.

As stated before, EPA's primary test for determining the adequacy of contingency measures is to assure emissions do not increase during the period the SIP is being revised. This is a comparative process: is the emission level at the end of the SIP revision period, considering the effect of the contingency measures, less than or equal to the emission level at the beginning of that period? Comparisons tend to mitigate errors between numbers that are derived in similar manners because the errors tend to cancel themselves out. Therefore, even though 513 tpd may not be the absolute attainment emission level for on-road motor vehicles in Maricopa, EPA believes it is acceptable for determining the adequacy of the contingency measures since it is used as the baseline for calculating both emissions with the contingency measures and emissions without such measures.

[26] For example, EPA has discussed the potential sources of errors in the MOBILE model and work underway to correct those errors in *Highway Vehicle Emission Estimates—II,* U.S. EPA, May 1995.

*Comment:* ACLPI also questions the State's projections regarding the rate of emissions growth from on-road mobile sources. The State predicts that VMT will increase at a rate of about 3.9 percent in 1995–96, and about 3.7 percent between 1996–97. Yet the State also predicts that, even without additional controls, on-road mobile sources will only increase at a rate of about 1.8 percent per year in 1995–96 and at a rate of 1.5 percent in 1996–97. ACLPI concludes that these figures indicate that the State is substantially understating the emissions growth likely from on-road mobile sources and therefore understating the emission reductions needed to offset that growth.

*Response:* Actually, the State is not predicting that ''without additional controls,'' on-road mobile sources will increase at a rate less than VMT growth. Implicit in the State's baseline inventory is the effect of ''additional controls,'' including the impact of the federal tailpipe standards (which reduces the composite vehicle fleet emission rate as newer cars replace older cars) and continuing reductions from the State's non-enhanced I/M program, oxygenated gasoline, RVP limits, and other required controls. All of these control programs serve to dampen the growth in CO emissions compared to growth in VMT. Therefore, the figures cited by ACLPI do not indicate that the State is substantially underestimating the emissions growth from on-road mobile sources. Historically, CO emission levels in Phoenix have not increased at the rate of VMT growth and, for many years, actually decreased as VMT has grown. Despite the fact that the Phoenix area has not yet attained the CO standard, it has experienced substantial reductions in ambient CO levels even in the face of its rapid population and VMT growth.[27]

*Comment:* ACLPI states that EPA's proposal to approve the State's CO SIP contingency measures without acting on the overall CO SIP itself is contrary to the Act. The SIP contains an attainment demonstration and other provisions proposed by the State to meet all of the SIP requirements for moderate CO areas and to address EPA's 1993 CO SIP call. ACLPI asserts that under applicable court precedent (*Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)), EPA cannot select out a few provisions of the plan for approval (i.e., the contingency measures) while deferring action on the attainment demonstration and all other provisions.

[27] See, for example, pages 2 and 3 in ''Conformity Analysis Appendices, Volume 2'' for the *MAG Long Range Transportation Plan, Summary and 1996 Update* and the *1997–2001 MAG Transportation Improvement Program* (MAG, July 1996) which juxtapose daily VMT figures for each year from 1979 to 1993 and the 8-hour CO concentrations and number of annual exceedences at the Indian School monitor from 1981 to 1993. The VMT figures double between 1981 and 1993 while CO concentrations drop by half and the number of exceedences decreases from more than 60 to less than 5 between the same years.

*Response*: The Ninth Circuit in *Abramowitz* reviewed the Agency's action to approve certain control measures in the California carbon monoxide and ozone SIPs and to withhold action on the attainment demonstrations in those plans. The Court concluded that EPA could not approve the control measures without requiring any demonstration that those measures would achieve attainment by the statutory deadline. The control measures at issue were adopted by the State as an integral part of the attainment and RFP demonstrations and were intended to be implemented before the passage of the applicable attainment date. Those control measures were not contingency measures whose implementation was to be triggered by the failure of an area to actually make RFP or attain, as is the case for the measures under consideration in this rulemaking.

In addition, the *Abramowitz* case was decided prior to the 1990 Amendments to the Act. As noted before, the pre-amended Act had no contingency provisions. Congress added specific contingency provisions in 1990, including the section 172(c)(9) requirement of interest here. This section refers to ''implementation of specific measures to be undertaken if the area *fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part.''* (Emphasis added)

These specific contingency measures are clearly outside the set of control measures that make up a State's attainment and RFP demonstrations required under sections 172(c) (1) and (2).[28] They are not triggered until or unless an area fails to make RFP or attain by the applicable attainment date. For the foregoing reasons, EPA does not

[28] The fact that contingency measures are a distinct and separate requirement from and unrelated to prospective attainment and RFP demonstrations is clearly demonstrated by the Act's planning requirements for low moderate CO nonattainment areas. While these areas are required to submit section 172(c)(9) contingency measures, they are specifically exempt from the requirement to submit an attainment (and by extension, an RFP) demonstration by section 187(a). Note that even where contingency measures and attainment demonstrations are required, section 172(b) authorizes EPA to set separate SIP submittal deadlines for them which shows these can (and sometimes must) be acted on separately.

believe the Court's finding in *Abramowitz* applies to this rulemaking.

It should also be noted that EPA routinely receives SIP submittals that include rules, regulations, and other elements responding to various SIP requirements such as I/M programs, new source review programs, and reasonably available control technology rules. EPA has traditionally acted on these elements independently.

*Comment:* ACLPI claims that approving contingency measures while deferring action on the attainment and other provisions of the 1993 CO SIP as amended stands the process on its head. ACLPI asserts that if the CO SIP is inadequate to produce timely attainment, or fails to meet other requirements of the Act, then EPA is obligated to disapprove the plan and require additional control measures as part of the plan. ACLPI concludes that EPA cannot evade this responsibility via the alleged artifice of treating essential measures as ''contingency'' measures and avoiding action on the attainment demonstration in the SIP itself.

*Response:* As discussed above, EPA believes that the section 172(c)(9) contingency measure requirement is separate and distinct from the attainment demonstration requirement and, thus, may be acted on independently. EPA agrees that if it finds that a SIP is inadequate to achieve timely attainment, then EPA is obligated to disapprove the plan and require additional control measures as necessary for timely attainment. However, in developing its new attainment demonstration, a state would not be compelled to choose its section 172(c)(9) contingency measures to contribute to that demonstration. While the Clean Air Act explicitly requires certain controls in SIP attainment demonstrations (e.g., oxygenated gasoline, I/M programs, RACT), it also allows states broad discretion to identify the exact controls that make up the remaining portion of such demonstrations.[29]

Under the circumstances posited by ACLPI, EPA could approve a state's contingency measures as meeting the requirements of section 172(c)(9) while at the same time disapproving the plan's attainment demonstration, assuming such an action were warranted. See section 110(k)(3). The state would then be required to develop and submit a new attainment demonstration. In so doing, the state could choose to include its pre-existing contingency measures as part of the attainment demonstration, in which case it would also be required to submit new contingency measures. On the other hand, the state would be free to choose entirely different measures as long as they resulted in expeditious attainment. In that event, the approved contingency measures would remain as such.

Therefore, acting on a state's chosen contingency measures prior to acting on the attainment demonstration does not ''stand the process on its head;'' it merely acknowledges the state's right under the Act to select what measures will and will not make up its control strategy and what measures will and will not make up its section 172(c)(9) contingency measures.

*Comment:* ACLPI states that the proposal violates section 110(l) of the Act because under that section, EPA cannot approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and RFP. Contrary to EPA's assertion, ACLPI claims that the Agency's proposed action would most definitely interfere with applicable requirements for attainment and RFP—namely, those set forth in the FIP and, because the FIP contingency provisions explicitly require adoption of federal measures to provide for attainment of the CO NAAQS, these provisions are most assuredly ''applicable requirements.'' ACLPI additionally asserts that EPA's action would interfere with those requirements by repealing them and that EPA's action further interferes with the Act's requirement that the state produce, and EPA approve or disapprove, a CO SIP that provides for attainment and RFP. ACLPI also comments that EPA's assertion that its approval of the State's contingency measures will not interfere with RFP because the measures are only triggered if there is a failure to make RFP is truly disingenuous. ACLPI objects to EPA's proposing to replace a FIP which mandates RFP and timely attainment with a plan that requires neither, and that will allegedly allow air quality to worsen.[30]

*Response*: EPA refers the reader to the discussion of the application of section 110(l) to today's action in its proposal. See 61 FR 15647. That analysis shows why the proposed action meets the requirements of section 110(l). That discussion is expanded here.

Section 110(l), added to the CAA in the 1990 Amendments, states that the ''Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.'' As addressed below, EPA believes that the purpose of this provision is to assure that in changing one substantive aspect of its SIP, a state does not simultaneously impair its compliance with another aspect of the SIP or with the statutory mandates applicable to the aspect under revision.

In making its arguments regarding section 110(l), ACLPI attempts to re-write the section to serve its own purposes. It is clear, however, from the plain language of section 110(l) that that provision is referring to noninterference with the requirements of the statute, and not to the requirements of a FIP as ACLPI contends. The term ''applicable implementation plan,'' which includes FIPs as well as SIPs, is specifically defined in the Act and used throughout title I. See section 302(q); see also, e.g., section 110(c) and (n). Therefore, had Congress intended section 110(l) to have the meaning ACLPI suggests, it could easily have included at the end of the section the clause ''or requirements of any applicable implementation plan.''

It is consistent with the Act as a whole for Congress to have limited section 110(l) to statutory rather than SIP requirements. States are at liberty to include such provisions as they see fit in their attainment demonstrations, provided attainment is demonstrated. They are also free to change those measures at any time, subject to certain savings clauses, provided expeditious attainment is still demonstrated. Congress did not in section 110(l) intend to override this general scheme by forbidding revisions (including revocations and replacements) of any SIP measure because it would by definition interfere with the pre-existing requirement of that very SIP measure. This analysis applies even more so to FIPs. In a FIP, EPA promulgates measures for a state which may be very different from the measures that the state would choose to implement in its own SIP. In keeping with the overriding statutory goal of federalism in the Act, when a state does adopt measures to replace FIP measures it should be able to select those measures it deems most suited to the state needs, provided they comply with the statutory requirements applicable to the element at issue. A state should not be subject forever to the

[29] See, for example, section 172(c)(6) which states: Such plan provisions shall include enforceable emission limitations, and *such other control measures, means or techniques * * * as may be necessary or appropriate to provide for attainment* of the [NAAQS] by the applicable attainment date * * *. (Emphasis added).

[30] Contrary to ACLPI's comments, the FIP contingency process does not mandate RFP. See the FIP contingency process at 56 FR 5472. Therefore the discussion below does not address this aspect of ACLPI's comments.

identical measures in the FIP, notwithstanding its initial failure to meet the statutory requirement giving rise to the FIP.

In contrast, ACLPI, without any textual support, attempts to turn section 110(l) into a savings clause. In so doing, ACLPI's interpretation would render the Act's actual savings clauses virtually meaningless. For example, the section 110(n) savings clause keeps in effect pre-amendment provisions of any approved or promulgated applicable implementation plan, including a FIP, except to the extent that EPA approves a revision.[31] Using ACLPI's interpretation of section 110(l), virtually any change to a pre-amendment SIP approved by EPA to conform to new 1990 statutory provisions would be prohibited. Clearly, Congress would not in one section of the statute effectively outlaw all SIP revisions to meet the new Act's many requirements wherever a prior SIP had addressed a similar requirement while allowing those revisions in another section.

One example should suffice to demonstrate the untenability of ACLPI's position: pre-amendment SIPs were required under pre-amended section 110(a)(2)(B) to provide for maintenance as well as attainment of the NAAQS. Under the 1990 Amendments, maintenance plans for nonattainment areas are only required in connection with a nonattainment area's redesignation to attainment. See sections 107(d)(3)(E) and 175A. Under ACLPI's interpretation, a state could never revise its SIP to eliminate or modify its pre-amendment maintenance plan because such an action would interfere with a requirement of the applicable implementation plan. Clearly this result is not what Congress intended in section 110(l).

Likewise, if ACLPI's all-encompassing interpretation of section 110(l) were to prevail, the section 193 control requirement savings provision would make no sense. For example, if any emission limitation for a specific source in a pre-amendment SIP (approved by EPA) were considered an ''applicable requirement'' within the meaning of section 110(l), then any change in such a limitation would constitute interference. If that were the case, there would be no point in Congress' requiring that modifications to such requirements assure equivalent or greater emission reductions. Obviously Congress intended to allow substitution of control measures provided emissions reductions were equivalent in such cases.

The section 110(l) admonishment that a SIP revision cannot ''interfere with any applicable requirement concerning attainment and reasonable further progress'' or with any other ''applicable requirement of the Act'' must be read within the broad context of the Act rather than the narrow context of the SIP. As ACLPI has pointed out, the primary purpose of the nonattainment provisions of the Act is to assure attainment of the NAAQS and RFP towards attainment. Congress in 1990 explicitly established provisions in pursuit of these goals including contingency measures, reclassification and additional planning requirements for attainment and RFP that are triggered by an area's failure to attain by its attainment deadline. For CO, these provisions lie in sections 172, 186, and 187. These statutory requirements have been discussed extensively above and the FIP contingency process, including the highway delay provision, serves essentially the same purpose.[32] Withdrawal of the FIP contingency process leaves these statutory provisions fully operable and, therefore, does not interfere with ''an applicable requirement concerning attainment and RFP;'' to wit, the area still remains under an applicable requirement to attain the standard and demonstrate RFP.

As stated previously, for low moderate CO areas, section 172(c)(9) establishes the only requirement for contingency measures. As discussed elsewhere in this notice, EPA has concluded that the State's submittals meet the requirements of section 172(c)(9). Neither the statute nor current EPA policy requires contingency procedures (as distinguished from actual contingency measures) in SIPs. As noted above, the 1982 SIP guidance, which required contingency procedures and under which the FIP was promulgated are inconsistent with the new statutory scheme and are no longer in effect. Therefore, withdrawal of the FIP contingency process, in conjunction with the approval of contingency measures consistent with the requirements of the CAA, does not conflict with current law or EPA policy regarding contingency requirements.

To summarize, EPA believes that ACLPI's contention that section 110(l) precludes EPA from approving the State's section 172(c)(9) contingency measures and withdrawing the FIP contingency process is supported neither by the plain language of section 110(l) nor by the structure of the 1990 Amendments.

Finally, even if EPA believed, which it does not, that section 110(l) encompasses purely procedural statutory requirements, EPA does not understand how its approval of the State's contingency measures and withdrawal of the FIP contingency process could be deemed to interfere with the Act's requirement that the State produce, and EPA approve or disapprove, a CO SIP that provides for attainment and RFP. EPA's action in this notice does not in any way affect the State's obligation under the Act to produce a CO SIP that provides for attainment and RFP, nor does it preclude in any way EPA's action on that or any other SIP the State has submitted or will submit.

*Comment:* ACLPI requests that its December 22, 1995 and March 29, 1996 notices of intent to sue EPA for failing to comply with the FIP contingency provisions be incorporated into the record of this matter.

*Response:* ACLPI's two notices have been incorporated into the docket as comments on EPA's action.

*Comment:* ACLPI states that rather than moving forward with adoption of additional measures to produce attainment, the Agency is proposing to ignore the bulk of the State's CO SIP and its SIP call and only act on the State's contingency procedures.

*Response:* Approval of the State's contingency measures does not indicate what future action EPA will or will not take on the State's 1993 CO plan, which was submitted in response to EPA's August 9, 1993 SIP call, nor does it preclude any future actions on that plan. EPA's SIP call did not require that the State submit section 172(c)(9) contingency measures. As discussed above, the section 179(c)(9) requirement for specific contingency measures is a separate and distinct provision of the Act that may be approved separately from other elements of the CO plan.

*Comment:* ACLPI claims that the extension and reclassification procedures in the 1990 Amendments assume that EPA will first review, and approve or disapprove moderate area CO SIPs before considering reclassification and attainment deadline extensions, and that EPA has flouted those requirements here.

[31] See footnote 13 for the text of section 110(n). As a savings clause, section 110(n) works in tandem with section 193, the Act's general savings clause. Pre-amendment SIP (or FIP) provisions remain in effect until a revision is approved by EPA, except that discrete controls on specific sources cannot be modified unless equivalent or greater emission reductions are assured.

[32] This is true except for RFP. As noted before, the FIP contingency process did not require RFP; therefore, in this regard, the FIP contingency process does not go as far as the new statutory scheme.

*Response:* EPA does not agree that reclassification of an area to serious under the Act requires prior review and approval or disapproval of a moderate area plan.[33] Once an attainment date has passed, EPA must determine, based solely on ambient air quality data, whether an area has failed to attain without regard to whether EPA has approved a plan for the area. Once the Agency makes this finding, the area is reclassified to serious by operation of law. See section 186(b)(2). As a result of its recent reclassification to serious, the Maricopa area is now required to submit a new serious area CO plan by February 28, 1998. See footnote 3. Because the Phoenix area experienced violations of the CO standard in 1995, it did not qualify for an extension of its attainment date; therefore, CAA requirements for extension of the attainment date are not relevant.

*B. Comments by the Maricopa Association of Governments, May 9, 1996*

*Comment:* MAG made three technical comments correcting certain references in the proposal:

- Page 15747, second column, first partial paragraph: The appropriate reference is ''See 1993 CO Plan Addendum, Appendix, Exhibit 4, memo re: Re-calculation of Carbon Monoxide Emission Reductions for the Committed Measures.''
- Page 15750, first column, first full paragraph, third sentence: The phrase ''1996 and 1997'' is inconsistent with the data provided and should be replaced with ''1995 through 1997.''
- Page 15750, first column, second full paragraph, third sentence: The phrase ''1996 and 1997'' is inconsistent with the data provided and should be replaced with ''1995 through 1997.''

*Response:* EPA notes the first correction.

EPA states in the proposal that ''data indicat[e] that emission increases of 17 tpd from VMT growth are expected to occur in 1996 and 1997.'' EPA arrived at this number by subtracting the expected CO 1997 emissions level (without post 1995 I/M 240), 530 tpd, from the expected CO 1995 emission level (without post 1995 I/M 240), 513 tpd. Both the 530 tpd figure and the 513 tpd figure are calculated for December 1997 and 1995, respectively. EPA's statement in the proposal is, therefore, correct: an emission increase of 17 tpd is expected in the two year period (characterized as 1996 and 1997 in the proposal) from December 1995 through December 1997. The same reasoning applies to MAG's third correction.

III. Final Actions

EPA is approving into the Arizona SIP for the Phoenix CO nonattainment area the State's enhanced remote sensing program and traffic diversion measure as meeting the requirements of sections 110 and 172(c)(9) of the CAA.

Based on the approval of the State's contingency measures, EPA is withdrawing the federal contingency process for the Phoenix CO nonattainment area. Specifically, the Agency is deleting the phrase ''After December 31, 1991 for the Maricopa CO nonattainment area or'' from the contingency provisions at 56 FR 5470, column 2 (February 11, 1991). This deletion leaves the federal contingency process in place for the Pima County CO nonattainment area. EPA also is withdrawing the list of highway projects potentially subject to delay that was proposed on June 28, 1993 during the partial implementation of the FIP contingency process at that time. 58 FR 34547.

EPA is taking these actions because, with its final approval of the State's section 172(c)(9) measures, the federal process will become unnecessary for attainment and maintenance of the CO NAAQS in the Phoenix area. To leave the federal process in place would complicate air quality planning within Maricopa County and would be unnecessarily redundant. In addition, giving preference to the State's measures is consistent with the Clean Air Act's intent that states have primary responsibility for the control of air pollution within their borders. See CAA sections 101(a)(3) and 107(a).

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

IV. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the Clean Air Act, do not create any new requirements but simply approve requirements that the State is already imposing. Similarly, withdrawal of the FIP contingency process does not impose any new requirements. Therefore, because the federal SIP approval and FIP withdrawal does not impose any new requirements, the Administrator certifies that they do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 2 U.S.C. 1501–1571, signed into law on March 22, 1995, 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, EPA must select the most cost-effective and least burdensome alternative that achieves that objectives 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 or uniquely impacted by this rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimate costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

[33] Note that for low moderate areas the only plan submittals required by the CAA are section 172(c)(9) contingency measures and a section 187(a) emissions inventory. Therefore Congress could not have intended that EPA act on attainment plans for these areas before considering an attainment deadline extension or reclassification.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Similarly, EPA's withdrawal of the FIP contingency process will not impose any new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. This federal action approves pre-existing requirements under State or local law, imposes no new Federal requirements, and withdraws other federal requirements applicable only to EPA. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) added 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 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: September 26, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set forth in this preamble, 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

### Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(83) and (c)(85) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(83) Plan revisions were submitted on December 11, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) State Transportation Board of Arizona.

(*1*) Resolution to Implement a Measure in the Maricopa Association of Governments 1992 Carbon Monoxide Contingency Plan, adopted on November 20, 1992.

(85) Plan revisions were submitted on April 4, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) House Bill 2001, Section 27: ARS 49–542.01(E) approved by the Governor on November 12, 1993.

[FR Doc. 96–25400 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 413

**[BPD–805–F]**

**RIN 0938–AG68**

## Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in a Swing-Bed Hospital

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations governing the methodology for payment of routine extended care services furnished in a swing-bed hospital. Medicare payment for these services is determined based on the average rate per patient day paid by Medicare for these same services provided in freestanding skilled nursing facilities (SNFs) in the region in which the hospital is located. The reasonable cost for these services is the higher of the reasonable cost rates in effect for the current calendar year or for the previous calendar year. In addition, this final rule revises the regulations concerning the method used to allocate hospital general routine inpatient service costs for purposes of determining payments to swing-bed hospitals. These changes are necessary to conform the regulations to section 1883 of the Social Security Act (the Act), and section 4008(j) of the Omnibus Budget Reconciliation Act of 1990.

**EFFECTIVE DATE:** These regulations are effective on November 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** John Davis (410) 786–0008.

**SUPPLEMENTARY INFORMATION:**

I. Background

Before the enactment of the Omnibus Budget Reconciliation Act of 1980 (Public Law 96–499), small rural hospitals had difficulty in establishing separately identifiable units for Medicare and Medicaid long-term care because of limitations in their physical plant and accounting capabilities. These hospitals often had an excess of hospital beds, while their communities had a scarcity of long-term care beds in Medicare and Medicaid participating facilities. To alleviate this problem, Congress enacted section 904 of Public Law 96–499, known as the ''swing-bed provision,'' which authorized a cost-efficient means of providing nursing home care in rural communities. This provision added sections 1883 and 1913 of the Social Security Act (the Act), under which certain rural hospitals with fewer than 50 beds could use their inpatient facilities to furnish long-term care services to Medicare and Medicaid patients. These hospitals were paid at rates that were deemed appropriate for those services and were generally lower than hospital rates. Medicare payment for routine SNF services was made at the average Statewide Medicaid rate for the previous calendar year. Payment for ancillary services was made based on reasonable cost.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203) was enacted. Section 4005(b) of OBRA 1987 amended section 1883(b)(1) of the Act to provide for an expansion of the existing Medicare swing-bed program to include rural hospitals with more than 49 but fewer than 100 beds, effective for swing-bed agreements entered into after March 31, 1988. Although rural hospitals having more than 49 beds but fewer than 100 beds can be swing-bed hospitals, they are subject to additional payment limitations that do not apply to the smaller swing-bed hospitals.

Also, sections 4201(a)(3), 4204, 4211(h)(9), and 4214 of OBRA 1987 provide that effective with services furnished on or after October 1, 1990, the terms ''skilled nursing facilities'' (SNFs) and ''intermediate care facilities'' (ICFs) are no longer to be used for the purpose of certifying a facility for the Medicaid program. Instead, they are replaced by the term ''nursing facility'' (NF). Thus, for purposes of the Medicaid program, facilities are no longer certified as ICFs but instead are certified only as NFs, and can provide services as defined in section 1919(a)(1) of the Act. Effective October 1, 1990, these long-term care services furnished by swing-bed hospitals to Medicaid and to other non-Medicare patients have been referred to as NF-type services.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508) was enacted. Section 4008(j) of OBRA 1990 amended section 1883(a)(2)(B)(ii)(II) of the Act to provide for a new methodology to pay for routine SNF services provided in a swing-bed hospital. Effective for services furnished on or after October 1, 1990, Medicare payment for routine SNF services in a swing-bed hospital is based on the average rate per patient day paid by Medicare for routine services provided in freestanding SNFs in the region in which the hospital is located. The rates are calculated using the regions as defined in section 1886(d)(2)(D) of the Act.

Section 4008(j)(2) of OBRA 1990 also provides for a ''hold-harmless harmless'' provision. Under this provision, if the reasonable cost of routine SNF services furnished by a hospital during a calendar year is less than the reasonable cost of these services determined for the prior calendar year, payment is to be based on the reasonable cost determination for the prior calendar year.

## II. Provisions of the Proposed Rule

On April 22, 1996, we published a proposed rule in the Federal Register (61 FR 17677), in which we included the following provisions.

### *New Payment Rate Methodology*

We proposed to implement in regulations a revised methodology for Medicare payment of routine SNF services provided in a swing-bed hospital. Under the proposed rule, Medicare payment to a swing-bed hospital for routine SNF services would be based on the average rate per patient day paid by Medicare for routine SNF services provided in a freestanding SNF in the region in which the hospital is located. These rates would be determined prospectively based on the most current SNF settled cost reporting data available (increased in a compounded manner, using the increase applicable to the SNF routine cost limits, up to and including the calendar year for which the rates are in effect). Rates would be calculated using the regions as defined in section 1886(d)(2)(D) of the Act (that is, one of the nine census divisions established by the Bureau of the Census). Payment for ancillary services furnished as SNF services in swing-bed hospitals would continue to be paid on a reasonable cost basis.

We published the rates applicable to calendar years 1990 through 1994 (see below), which had been published in section 2231 of the Provider Reimbursement Manual (HCFA Pub. 15–1). We stated our intent to continue to publish annual updates in that manual.

We described the methodology for calculating the Medicare swing-bed rates, and provided the rates for services furnished on or after October 1, 1990, and before December 31, 1990, as well as for services furnished in calendar years 1991, 1992, 1993, 1994, and 1995.

In accordance with section 4008(j)(2) of OBRA 1990, we also proposed a hold-harmless provision for Medicare swing-bed payments. As noted above, this provision would allow for payment of the higher of the payment rate in effect for the current calendar year or the payment rate received by the swing-bed hospital for the prior calendar year.

### *Development of Medicare Swing Bed Rates Effective for Services Furnished on or after October 1, 1990 and before January 1, 1995*

—Data—In developing the Medicare payment rates for swing-bed care, we used the actual freestanding SNF inpatient routine service payments obtained from settled Medicare cost reports. For fiscal years 1990–1993, cost reports used were for periods ending on or after June 30, 1989 and through May 31, 1990; for 1994, cost reports used were for periods ending on or after September 30, 1990 through August 31, 1991; and for 1995, cost reports used were for periods ending on or after October 31, 1992 through September 30, 1993. The data consist of routine service payments that were adjusted for utilization review, primary payor amounts, and application of lower of cost or charges. For proprietary providers, the return on equity portion of the swing-bed rate was adjusted to include only the routine portion (that is, the return on equity component related to ancillary services costs was removed).

HCFA adjusts these data, using the SNF market basket index (the annual percent increase in SNF expenditures, considering inflation plus an allowance for new technology) to inflate costs from the cost reporting periods in the data base to the midpoint of the applicable year to which the rates apply.

—Group Means—HCFA calculated the means of adjusted routine service payments and the routine portion of return on equity for each census region as shown in Tables A through D.

(We noted that effective October 1, 1993, section 13503(c) of the Omnibus Budget Reconciliation Act of 1993 amended sections 1861(v)(1)(B) and 1878(f)(2) of the Act to eliminate return on equity capital for SNF services furnished in a proprietary hospital. The return on equity capital component was not added to the routine payment rate for the months of October, November, and December of 1993 (Table D) nor for any subsequent years.)

TABLE A.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER OCTOBER 1, 1990 AND BEFORE DECEMBER 31, 1990

| Region | Routine payment | Return on equity [1] |
|---|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $86.51 | $1.42 |
| 2. Middle Atlantic (PA, NJ, NY) | 86.39 | 1.27 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 75.28 | 1.48 |
| 4. East North Central (IL, IN, MI, OH, WI) | 75.03 | 1.18 |
| 5. East South Central (AL, KY, MS, TN) | 65.79 | 1.21 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 74.09 | 1.34 |
| 7. West South Central (AR, LA, OK, TX) | 67.85 | 1.87 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 81.32 | 1.47 |
| 9. Pacific (AK, CA, HI, OR, WA) | 86.73 | 1.07 |

[1] The return of equity component is included only in the rate paid to proprietary hospitals.

TABLE B.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1991 AND BEFORE DECEMBER 31, 1991

| Region | Routine payment | Return on equity [2] |
|---|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $90.92 | $1.42 |
| 2. Middle Atlantic (PA, NJ, NY) | 90.73 | 1.27 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 79.03 | 1.28 |
| 4. East North Central (IL, IN, MI, OH, WI) | 78.78 | 1.18 |
| 5. East South Central (AL, KY, MS, TN) | 69.14 | 1.21 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 77.83 | 1.34 |
| 7. West South Central (AR, LA, OK, TX) | 71.22 | 1.87 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 85.34 | 1.47 |
| 9. Pacific (AK, CA, HI, OR, WA) | 91.10 | 1.07 |

[2] The reutrn on equity component is included in the rate paid to propriety hospitals.

TABLE C.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1992 AND BEFORE DECEMBER 31, 1992

| Region | Routine payment | Return on equity [3] |
|---|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $95.10 | $1.42 |
| 2. Middle Atlantic (PA, NJ, NY) | 94.91 | 1.27 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 82.67 | 1.48 |
| 4. East North Central (IL, IN, MI, OH, WI) | 82.40 | 1.18 |
| 5. East South Central (AL, KY, MS, TN) | 72.32 | 1.21 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 81.41 | 1.34 |
| 7. West South Central (AR, LA, OK, TX) | 74.50 | 1.87 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 89.27 | 1.47 |
| 9. Pacific (AK, CA, HI, OR, WA) | 95.29 | 1.07 |

[3] The return on equity component is included only in the rate paid to proprietary hospitals.

TABLE D.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1993 AND BEFORE DECEMBER 31, 1993

| Region | Routine payment | Return on equity [4] |
|---|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $100.05 | $1.42 |
| 2. Middle Atlantic (PA, NJ, NY) | 99.84 | 1.27 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 86.97 | 1.48 |
| 4. East North Central (IL, IN, MI, OH, WI) | 86.69 | 1.18 |
| 5. East South Central (AL, KY, MS, TN) | 76.08 | 1.21 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 85.64 | 1.34 |
| 7. West South Central (AR, LA, OK, TX) | 78.37 | 1.87 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 93.91 | 1.47 |
| 9. Pacific (AK, CA, HI, OR, WA) | 100.24 | 1.07 |

[4] The return on equity component should be included in the rate paid to proprietary hospitals only for the months of January through September of this calendar year.

TABLE E.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1994 AND BEFORE DECEMBER 31, 1994

| Region | Routine payment |
|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $108.48 |
| 2. Middle Atlantic (PA, NJ, NY) | 104.33 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 89.47 |
| 4. East North Central (IL, IN, MI, OH, WI) | 88.76 |
| 5. East South Central (AL, KY, MS, TN) | 79.44 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 83.84 |
| 7. West South Central (AR, LA, OK, TX) | 84.97 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 100.11 |
| 9. Pacific (AK, CA, HI, OR, WA) | 104.58 |

TABLE F.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1995 AND BEFORE DECEMBER 31, 1995

| Region | Routine payment |
|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $121.71 |
| 2. Middle Atlantic (PA, NJ, NY) | 117.28 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 105.22 |
| 4. East North Central (IL, IN, MI, OH, WI) | 105.73 |
| 5. East South Central (AL, KY, MS, TN) | 94.61 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 99.75 |
| 7. West South Central (AR, LA, OK, TX) | 99.63 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 117.21 |
| 9. Pacific (AK, CA, HI, OR, WA) | 125.80 |

TABLE G.—MEDICARE SWING BED RATES—FOR SERVICES FURNISHED ON OR AFTER JANUARY 1, 1996 AND BEFORE DECEMBER 31, 1996

| Region | Routine payment |
|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | $126.65 |
| 2. Middle Atlantic (PA, NJ, NY) | 121.74 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 109.04 |
| 4. East North Central (IL, IN, MI, OH, WI) | 109.51 |
| 5. East South Central (AL, KY, MS, TN) | 99.11 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 103.38 |
| 7. West South Central (AR, LA, OK, TX) | 102.89 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 121.31 |
| 9. Pacific (AK, CA, HI, OR, WA) | 130.62 |

*The Carve-Out Method*

In a swing-bed hospital, acute care services and long-term care services are furnished interchangeably. To determine payment for inpatient hospital services in a swing-bed hospital, section 1883(e) of the Act provides that the costs attributable to routine long-term care (SNF-type and ICF-type) services for all classes of patients are to be subtracted (''carved out'') from the total allowable inpatient cost for general inpatient routine services. The resulting amount represents the general inpatient routine costs applicable to hospital routine care. Once amounts attributable to SNF-type and ICF-type services have been carved out, the average per diem cost of general routine hospital services for swing-bed hospitals not subject to the prospective payment system is then determined by dividing the remaining amount by the total number of inpatient general routine hospital days (excluding SNF days and ICF days). This method was chosen to avoid imposing a burdensome cost finding process to allocate general routine service costs between hospital and long-term care.

Swing-bed hospitals subject to the prospective payment system (PPS) are paid for SNF-type services in the same manner as any other swing-bed hospital. The carve-out method would be used primarily to determine proper payment of pass-through costs. The prospective payment rates based on diagnosis related groups (DRGs) for inpatient hospital services under PPS are unaffected by the carve-out method.

As stated above, with the enactment of OBRA 1987, effective October 1, 1990, the distinction between SNFs and ICFs was eliminated under the Medicaid program and the two types of facility were combined under the term ''nursing facility'' (NF). This presented a problem in attempting to determine the amount of the carve-out. Since Medicaid payment is now determined based on a NF rate, the carve-out method could not be used as previously defined.

The proposed rule revised § 413.53(a)(2) to set forth our current policy regarding the carve-out method (presently explained in section 2230.5B of the Provider Reimbursement Manual) for SNF and NF services furnished on or after October 1, 1990. Under the revised carve-out method, the reasonable cost of hospital routine services is determined

by subtracting the reasonable costs attributable to routine SNF-type and NF-type services from total inpatient routine service costs. For swing-bed SNF days covered by Medicare, the amount subtracted, or carved out, is based on the regional Medicare swing-bed SNF rate. If, under the hold-harmless provision explained above, a swing-bed hospital is paid based on the swing-bed SNF rate that was in effect during the prior calendar year, that higher rate would also be used for purposes of calculating the reasonable cost of routine Medicare SNF days, to be subtracted from total routine costs under the carve-out method. For all non-Medicare swing-bed days, the amount subtracted is based on the average statewide rate paid for routine services in NFs under the State Medicaid plan during the prior calendar year, adjusted to approximate the average NF rate for the current calendar year. (The NF rate is used for non-Medicare covered swing-bed days because such services may encompass services that were formerly known as ICF and SNF-type services.)

*Definitions*

As discussed above, effective for services furnished on or after October 1, 1990, the terms SNFs and ICFs were no longer to be used for the purpose of certifying a facility for the Medicaid program, in accordance with the provisions of OBRA 1987. Instead, they were replaced by the term ''nursing facility'' (NF). Effective October 1, 1990, extended care services furnished by swing-bed hospitals to Medicaid and to other non-Medicare patients have been referred to as NF-type services.

To reflect the above provisions, we are making changes to the definitions in § 413.53(b) by (1) Revising the definition of ''average cost per diem for general routine services''; (2) removing the definition of ''ICF-type services;'' (3) adding a definition of ''nursing facility (NF)-type services;'' and (4) revising the definition of ''SNF-type services.''

## III. Analysis of and Responses to Public Comments

In response to the April 22, 1996 proposed rule, we received one item of correspondence from the American Health Care Association. The Association essentially supports the proposed rule in that it modifies the regulations to conform with policies that have been in existence since 1990, and that are contained in the Provider Reimbursement Manual. However, the commenter points out that rural hospitals with more than 49 beds but less than 100 beds are subject to an additional payment limitation. The Medicare payment for SNF services by the hospital may not be made for more than five days (excluding weekends and holidays), after a bed in a SNF becomes available in the geographic region, unless the patient's physician certifies within the five-day period that the transfer is not medically appropriate. The commenter is concerned that hospitals are not strictly adhering to the five-day rule.

*Response:* We are not currently aware of any hospital that is violating the five-day rule. However, the hospital is subject to a periodic certification survey. It is during this survey that a sampling of the records for swing-bed patients is examined to ensure that the five-day rule is being followed correctly. Violators would endanger their continued certification as a swing-bed facility.

In addition to this periodic certification survey, if someone is aware that a hospital is violating the five-day rule, he or she can contact the State Department of Licensure and Certification and request that a complaint survey be done. A complaint survey is done within a matter of weeks or months, which is much faster than the three to six years that a periodic one takes.

## IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule. The rates applicable to calendar year 1996 were not published in the proposed rule, but have been published in the Provider Reimbursement Manual. For the convenience of the reader, we are including them as Table G above in this final rule. Subsequent updates will be provided in the Provider Reimbursement Manual.

## V. Impact Statement

For final rules such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory flexibility analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban ares, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

In accordance with the provisions of section 1883 of the Act, as amended by section 4008(j) of OBRA 1990, this final rule revises the regulations to incorporate a new methodology for payment of routine extended care services provided in a swing-bed hospital. As the statute specifies, Medicare payment for these services is determined based on the average rate per patient day paid by Medicare for these same services provided in freestanding skilled nursing facilities (SNFs) in the region in which the hospital is located, during the most recent year for which cost reporting data are available. This final rule also provides that the reasonable cost for these services is the higher of the reasonable cost rates in effect for the current calendar year or for the previous calendar year.

In addition to the changes mandated by section 4008(j) of OBRA 1990 regarding payment for routine extended care services, we are changing to the out method of determining routine inpatient hospital costs of swing-bed hospitals. As discussed above, with the enactment of OBRA 1987, the distinction between SNFs and ICFs was eliminated under the Medicaid program. Thus, the carve-out out method as described in § 413.53(a)(2) for computing costs associated with routine SNF and ICF-type services cannot be used. This final rule codifies in regulations existing policy concerning the carve-out out method as set forth in section 2230.5B of the Provider Reimbursement Manual.

As noted above, the major provisions of this final rule are required by section 1883 of the Act, as amended by section 4008(j) of OBRA 1990. Thus, a majority of the costs associated with these final rules are the result of legislation, and this rule, in and of itself, has little or no independent effect or burden. Although we are unable to provide a quantifiable estimate of impact, we note that the only discretionary aspect of this rule is to set forth in regulations our current policy concerning the carve-out out method. Codifying this existing policy would have no economic impact.

Thus, we have determined, and we certify, that this final rule does not have a significant impact on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

This is not a major rule as defined by U.S.C. 804(2).

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

### Subpart D—Apportionment

2. Section 413.53 is amended by revising paragraph (a)(1)(ii)(C) and (a)(2); under paragraph (b), definition of ''average cost per diem for general routine services'', paragraph (2) is revised; the definition of ''ICF-type services'' is removed; a new definition of ''nursing facility (NF) type services'' is added; and the definition of ''SNF-type services'' is revised, to read as follows:

#### § 413.53 Determination of cost of services to beneficiaries.

(a) Principle. * * *

(1) *Departmental method*

* * * * *

(ii) *Exception: Indirect cost of private rooms.* For cost reporting periods starting on or after October 1, 1982, except with respect to a hospital receiving payment under part 412 of this chapter (relating to the prospective payment system), the additional cost of furnishing services in private room accommodations is apportioned to Medicare only if these accommodations are furnished to program beneficiaries, and are medically necessary. To determine routine service cost applicable to beneficiaries—

* * * * *

(C) Effective October 1, 1990, do not include private rooms furnished for SNF-type and NF-type services under the swing-bed provision in the number of days in paragraphs (a)(1)(ii)(A) and (B) of this section.

(2) *Carve-out out method*—(i) The carve-out out method is used to allocate hospital inpatient general routine service costs in a participating swing-bed hospital, as defined in § 413.114(b). Under this method, effective for services furnished on or after October 1, 1990, the reasonable costs attributable to the inpatient routine SNF-type and NF-type services furnished to all classes of patients are subtracted from total inpatient routine service costs before computing the average cost per diem for inpatient routine hospital care.

(ii) The cost per diem attributable to the routine SNF-type services covered by Medicare is based on the regional Medicare swing-bed SNF rate in effect for a given calendar year, as described in § 413.114(c). The Medicare SNF rate applies only to days covered and paid as Medicare days. When Medicare coverage runs out, the Medicare rate no longer applies.

(iii) The cost per diem attributable to all non-Medicare swing-bed days is based on the average statewide Medicaid NF rate for the prior calendar year, adjusted to approximate the average NF rate for the current calendar year.

(iv) The sum of total Medicare SNF-type days multiplied by the cost per diem attributable to Medicare SNF-type services and the total NF-type days multiplied by the cost per diem attributable to all non-Medicare days is subtracted from total inpatient general routine service costs. The cost per diem for inpatient routine hospital care is computed based on the remaining inpatient routine service costs.

* * * * *

(b) *Definitions.* As used in this section—

* * * * *

*Average cost per diem for general routine services* means the following:

* * * * *

(2) For swing-bed hospitals, the amount computed by—(i) Subtracting the routine costs associated with Medicare SNF-type days and non-Medicare NF-type days from the total allowable inpatient cost for routine services (excluding the cost of services provided in intensive care units, coronary care units, and other intensive care type inpatient hospital units and nursery costs); and

(ii) Dividing the remainder (excluding the total private room cost differential) by the total number of inpatient hospital days of care (excluding Medicare SNF-type days and non-Medicare NF-type days of care, days of care in intensive care units, coronary care units, and other intensive care type inpatient hospital units; and newborn days; but including total private room days).

* * * * *

*Nursing facility (NF)-type services,* formerly known as ICF and SNF-type services, are routine services furnished by a swing-bed hospital to Medicaid and other non-Medicare patients. Under the Medicaid program, effective October 1, 1990, facilities are no longer certified as SNFs or ICFs but instead are certified only as NFs and can provide services as defined in section 1919(a)(1) of the Act.

* * * * *

*Skilled nursing facility (SNF)-type services* are routine services furnished by a swing-bed hospital that would constitute extended care services if furnished by an SNF. SNF-type services include routine SNF services furnished in the distinct part SNF of a hospital complex that is combined with the hospital general routine service area cost center under § 413.24(d)(5). Effective October 1, 1990, only Medicare covered services are included in the definition of SNF-type services.

* * * * *

### Subpart F—Specific Categories of Costs

3. In § 413.114, paragraphs (c)(1) and (2) are removed, paragraph (c)(3) is redesignated as paragraph (c)(2), and a new paragraph (c)(1) is added to read as follows:

#### § 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

* * * * *

(c) *Principle.* The reasonable cost of posthospital SNF care furnished by a swing-bed hospital is determined as follows:

(1) The reasonable cost of routine SNF services is based on the average Medicare rate per patient day for routine services provided in freestanding SNFs in the region where the swing-bed hospital is located. The rates are calculated using the regions as defined in section 1886(d)(2)(D) of the Social Security Act. The rates are based on the most recent year for which settled cost reporting period data are available, increased in a compounded manner, using the increase applicable to the SNF routine cost limits, up to and including the calendar year for which the rates are in effect. If the current Medicare swing-bed rate for routine extended care services furnished by a swing-bed

hospital during a calendar year is less than the rate for the prior calendar year, payment is made based on the prior calendar year's rate.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance;) Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 3, 1996.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

[FR Doc. 96–25282 Filed 10–2–96; 8:45 am]

**BILLING CODE 4120–01–P**

# Proposed Rules

Federal Register
Vol. 61, No. 193
Thursday, October 3, 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 TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–ANE–13]**

**RIN 2120–AA64**

## Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. TPE331 series turboprop engines equipped with Woodward fuel controls. This proposal would require revising the applicable Emergency Procedures or Abnormal Procedures Section of the applicable FAA-approved Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH) to include a paragraph relating to a non-responsive power lever. In addition, this proposal would require replacing or reworking orifice fittings and restrictors, which would constitute terminating action to the requirement to revise the applicable AFM. This proposal is prompted by reports of occasional icing of the inlet Pt2 sensor, which can produce an erroneous (high) pressure signal to the fuel control, causing little or no response to power lever movement. The actions specified by the proposed AD are intended to prevent a non-responsive power lever and lack of control of engine power.

**DATES:** Comments must be received by December 2, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–13, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. 96–ANE–13 in the subject line of the comment. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–13.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–13, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of ''no response to power lever movement'' after extended high altitude operation (20,000 feet or higher) with outside air temperature (OAT) below freezing, in clear air (no visible moisture), and engine anti-icing ''OFF''. An investigation has revealed that these incidents resulted from the inlet temperature and pressure (Pt2) sensor becoming blocked by ice caused by very small amounts of moisture accumulated in the sensor. Ice blockage of this sensor can produce an erroneous (high) pressure signal to the fuel control and thus create a fixed fuel flow irrespective of the position of the power lever. Occasional icing of the Pt2 sensor is currently not addressed the applicable FAA-approved Aircraft Flight Manual (AFM) or Pilot's Operating Handbook (POH). Icing of the Pt2 sensor may affect one or both engines simultaneously. This condition, if not corrected, could result in a non-responsive power lever and lack of control of engine power.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Operating Information Letter No. 331–13, dated April 27, 1995, that recommends actions intended to supplement the applicable FAA-approved AFM or POH; Service Bulletin (SB) No. TPE331–73–0236, dated July 28, 1995, that describes procedures for replacing the inlet temperature and pressure sensor orifice fittings; and SB No. TPE331–73–0235, dated July 28, 1995, that describes procedures for replacing the inlet temperature and pressure sensor orifice fittings and reworking the inlet sensor Ps3 restrictors.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Abnormal

Procedures or Emergency Procedures Section of the applicable FAA-approved AFM or POH to include a paragraph relating to a non-responsive power lever. In addition, this proposal would require replacing orifice fittings and reworking restrictors, which would constitute terminating action to the requirement to revise the applicable AFM or POH. The actions would be required to be accomplished in accordance with the service documents described previously.

There are approximately 9,438 engines of the affected design in the worldwide fleet. The FAA estimates that 4,700 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that 2,760 engines would need modification in accordance with SB No. TPE331–73–0236, dated July 28, 1995, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $80 per engine.

In addition, the FAA estimates that 1,240 engines would need modification in accordance with SB No. TPE331–73–0235, dated July 28, 1995, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $80 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $874,400.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

AlliedSignal Inc.: Docket No. 96–ANE–13.

*Applicability:* AlliedSignal Inc. TPE331–3, –5, –6, –10, –11, –12 series turboprop engines equipped with Woodward fuel controls, installed on but not limited to the following aircraft: Ayres S2R–G5, S2R–G6, and S2R–G10; Beech Model B100; Construcciones Aeronauticas, S.A. (CASA) C–212 series; Dornier 228 series; Fairchild SA226 and SA227 series; Jetstream 3101 and 3201 series; Mitsubishi MU–2B series (MU–2 series); Short Brothers plc Model SC–7 Skyvan Series 3; Twin Commander Aircraft Corp. 680, 690 and 695 series.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a non-responsive power lever and lack of control of engine power, accomplish the following:

(a) Within 30 days after the effective date of this AD, for aircraft equipped with engine inlet ice protection, revise the applicable Emergency Procedures or Abnormal Procedures Section of the applicable FAA-approved Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH) to include the following paragraph relating to a non-responsive power lever. This may be accomplished by inserting a copy of this AD in the AFM or POH:

''NON-RESPONSIVE POWER LEVER: If a lack of response to the power lever is observed, turn ON the ignition and engine anti-ice for both engines. After the condition has cleared and normal operation is observed, which occurs in approximately three minutes, anti-ice and ignition can be turned OFF.''

(b) Within 120 days after the effective date of this AD, or at next removal of the Pt2 sensor, whichever occurs first, replace or rework orifice fittings and restrictors in accordance with the Accomplishment Instructions of AlliedSignal Aerospace Service Bulletin (SB), No. TPE331–73–0235, dated July 28, 1995. Replacing the orifice fittings and reworking the inlet sensor Ps3 restrictor constitutes terminating action to the AFM or POH revision requirement stated in paragraph (a) of this AD.

(c) Within 120 days after the effective date of this AD, or at next removal of the Pt2 sensor, whichever occurs first, replace the orifice fittings in accordance with the Accomplishment Instructions of AlliedSignal Aerospace SB No. TPE331–73–0236, dated July 28, 1995. Replacing orifice fittings constitutes terminating action to the AFM or POH revision requirement stated in paragraph (a) of this AD.

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

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

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 19, 1996.

James C. Jones,

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

[FR Doc. 96–25170 Filed 10–2–96; 8:45 am]

**BILLING CODE 4910–13–U**

---

## 14 CFR Part 39

**[Docket No. 93–CE–45–AD]**

**RIN 2120–AA64**

## Airworthiness Directives, de Havilland DHC–6 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive

(AD) that would apply to de Havilland DHC–6 series airplanes that do not have a certain wing strut modification (Modification 6/1581) incorporated. The proposed action would require inspecting the wing struts for cracks or damage (chafing, etc.), replacing wings struts that are found damaged beyond certain limits or are found cracked, and incorporating Modification No. 6/1581 to prevent future chafing damage. Several reports of wing strut damage caused by the upper fairing rubbing against the wing strut prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the wing struts, which could result in loss of control of the airplane.

**DATES:** Commens must be received on or before December 5, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 93–CE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on de Havilland DHC–6 series airplanes. Transport Canada reports that the upper fairing has rubbed against the wing struts on several of the above referenced airplanes, which has resulted in wing strut damage.

Explanation of the Relevant Service Information

De Havilland has issued Service Bulletin (SB) No. 6/342, dated February 23, 1976, which specifies procedures for (1) inspecting the wing struts for cracks and damage (chafing, etc.); and (2) incorporating Modification No. 6/1581 to prevent further chafing damage. Modification No. 6/1581 consists of installing a preformed nylon shield around the area of each wing strut at the upper end closest to the wing. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD CF–91–30, dated August 8, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

Evaluation of all Applicable Information

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design that do not have Modification 6/1581 incorporated, the proposed AD would require inspecting the wing struts for cracks or damage (chafing, etc.), replacing wing struts that are found damaged beyond certain limits or are found cracked, and incorporating Modification No. 6/1581 to prevent future chafing damage. Accomplishment of the proposed inspection and modification would be required in accordance with de Havilland SB No. 6/342, dated February 23, 1976.

FAA's Aging Commuter Aircraft Policy

This action is consistent with the FAA/s aging commuter airplane policy. This policy simply states that reliance on repetitive inspection of critical areas on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to incorporating Modification No. 6/1581 on de Havilland DHC–6 series airplanes would be relying on repetitive inspection to detect damaged wing struts.

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $106,470. This figure is based upon the assumption that no affected airplane owner/operator has incorporated Modification No. 6/1581.

De Havilland has informed the FAA that enough parts have been distributed to equip approximately 11 of the affected airplanes. Assuming that each set of parts is incorporated on an effected airplane, the cost impact upon U.S. operators/owners would be reduced by $6,930 from $106,470 to $99,540.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

de Havilland: Docket No. 93–CE–45–AD.

*Applicability:* Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category, that do not have Modification No. 6/1581 incorporated.

Note 1: Modification No. 6/1581 consists of installing a preformed nylon shield around the area of each wing strut at the upper end closet to the wing.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already accomplished.

To prevent failure of the wing struts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the wing struts, part number (P/N) C6W1005, for cracks or damage (chafing, etc.) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/342, dated February 23, 1976.

(1) If damage is found on a wing strut that exceeds 0.025-inch in depth, exceeds a total length of 5 inches, or where any two places of damage are separated by less than 10 inches of undamaged surface over the length of the strut, prior to further flight, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(2) If any crack is found, prior to further flight, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(3) If damage is found on a wing strut that exceeds 0.010-inch in depth, but does not exceed 0.25-inch in depth, does not exceed a total length of 5 inches, and where any two places of damage are separate by a minimum of 10 inches undamaged surface over the length of the strut, within 500 hours TIS after the inspection specified in paragraph (a) of this AD, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(b) Within the next 600 hours TIS after the effective date of this AD, incorporate Modification No. 6/1581 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/342, dated February 23, 1976.

(1) Incorporating Modification No. 6/1581 eliminates the repetitive inspection requirement of this Ad.

(2) Incorporating Modification No. 6/1581 may be accomplished at any time prior to 600 hours TIS after the effective date of this AD, at which time it must be incorporated.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 26, 1996.

James E. Jackson,

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–25304 Filed 10–2–96; 8:45 am]

**BILLING CODE 4910–13–M**

---

**14 CFR Part 39**

**[Docket No. 96–NM–78–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This proposal would require a one-time visual inspection of the manual extension gearbox assembly of the main landing gear (MLG) to detect whether certain gearbox housings have been installed; repetitive dye penetrant inspections of these housings to determine whether cracking has occurred; and ultimately, replacement of these housings with correct housings. This proposal is prompted by a report indicating that a manual gearbox assembly which contained an incorrect housing was installed on a Model 727 series airplane. The actions specified by the proposed AD are intended to prevent the installation of manual extension gearbox assemblies with incorrect housings. This condition, if not corrected, could reduce the structural integrity of the manual extension gearbox assembly, and ultimately result in an inability to lock the MLG in a down position during landing.

**DATES:** Comments must be received by November 12, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gnehm, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1426; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report indicating that the manual extension gearbox assembly for the main landing gear (MLG) on a Model 727 series airplane had been replaced with a modified gearbox assembly that did not comply with Airworthiness Directive (AD) 79–04–01 R3, amendment 39–4000 (45 FR 84014, December 22, 1980). Among other things, that AD requires replacement of the left and right gearbox housing assemblies having Boeing part number (P/N) 65–27485–1 and P/N 65–27485–2 with improved assemblies having P/N 65–27485–11 and P/N 65–27485–12, respectively; the replacement must be accomplished in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979. That AD was prompted by reports of corrosion cracking found in the vertical support attaching lugs of the MLG manual extension-gearbox housings. The requirements of the AD are intended to prevent such cracking from resulting in loss of support for the manual extension gearbox and the consequent inability to manually lock the MLG in the down position.

A subsequent inspection of the incident airplane's maintenance documents showed that the gearbox assembly installed on the airplane had been repaired in accordance with Boeing Overhaul Manual 32–35–01 (''Landing Gear Manual Extension Gearbox Assembly''). Although that manual stated that the text of Boeing Service Bulletin 727–32–279 had been incorporated into it, the manual, in fact, did not contain information from the service bulletin which would have ensured that gearbox assemblies installed on Model 727 series airplanes contained the housings required by AD 79–04–01 R3. (The manual has since been revised to incorporate that information.) Consequently, one of the housings in the modified gearbox assembly did not comply with the requirements of the AD.

Based on this incident, and the fact that the manufacturer's overhaul manual contained incomplete information for a period of time, the FAA has reason to conclude that there currently may be other Model 727 series airplanes in service that are operating with incorrect gearbox housings/housing assemblies installed. Furthermore, some of these housings may be cracked.

This condition, if not corrected, can reduce the structural integrity of the manual system for extending the MLG, and ultimately could result in the inability of the flight crew to lock the MLG in the down position during landing.

Explanation of Relevant Service Information

The FAA previously reviewed and approved Boeing Service Bulletin 727–32–279, dated June 22, 1979, which describes procedures for inspecting the manual extension gearbox assembly of the MLG, and modifying the assembly by replacing the left and right housings with improved housings. The service bulletin also describes procedures for conducting dye penetrant inspections of the housings to detect cracks.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection of the manual extension gearbox assembly of the MLG to detect whether this assembly contains the correct left and right gearbox housings/housing assemblies. (A housing assembly is composed of a housing and a NAS75–3–007 bushing.) The incorrect housings/housing assemblies are indicated as Boeing Part Numbers (P/N):

| Housing | Housing assembly |
|---|---|
| 65–27485–3 | 65–27485–1 |
| 65–27485–4 | 65–27485–2 |
| 65–27485–9 | 65–27485–7 |
| 65–27485–10 | 65–27485–8 |

If any incorrect housing/housing assembly is detected by the visual inspection, the proposed AD would require a dye penetrant inspection of the incorrect housing to detect cracking. Any cracked housing would be required to be replaced immediately. The proposal would allow an uncracked, incorrect housing/housing assembly to be reinstalled, provided that another dye penetrant inspection of this housing is accomplished 9 months later; thereafter, the housing would be required to be replaced with a housing that meets the requirements of AD 79–04–01 R3 within 18 months after the initial dye penetrant inspection.

All proposed actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between Proposed AD and Service Information

Boeing Service Bulletin 727–32–279 provides for a housing subjected to dye

penetrant inspection to continue to be used if cracking is found and the cracking is within certain parameters. However, the proposed AD would prohibit the continued use of a housing that contains any cracking.

The service bulletin also provides for repetitive dye penetrant inspections to be performed every 3,000 landings. However, the proposed AD would require these inspections to be performed within 9 months after the initial dye penetrant inspection. In establishing this 9-month inspection cycle, the FAA considered that:

1. The cause of cracking was stress corrosion (which is unrelated to the number of landings);

2. Aging of the housings increases the potential for cracking, and

3. The housings are part of a back-up system which is used only when the primary system fails.

Based on these considerations, the FAA determined that the proposed 9-month cycle for dye penetrant inspections is appropriate.

Further, in establishing the compliance time for the ultimate replacement of uncracked, incorrect housings, the FAA considered not only the safety implications, but also the availability of an ample number of correct housings that may be necessary for the affected fleet.

Cost Impact

There are approximately 1,560 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,054 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed visual inspection on U.S. operators is estimated to be $126,480, or $120 per airplane.

Should a dye penetrant inspection need to be performed, the FAA estimates that each inspection would take approximately 20 work hours per airplane, and the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed dye penetrant inspection on U.S. operators is estimated to be $1,200 per airplane, per inspection.

Should parts have to be replaced, the FAA estimates that it would take approximately 16 work hours per airplane to accomplish the replacement, and the average labor rate is $60 per work hour. Replacement parts would cost approximately $4,000 per housing. Based on these figures, the cost impact of replacement of parts on U.S. operators is estimated to be $4,960 per airplane if one housing is to be replaced, and $8,960 if both housings are to be replaced.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

Boeing: Docket 96–NM–78–AD.

*Applicability:* All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the installation of manual extension gearbox assemblies that do not contain required gearbox housings/housing assemblies, and ultimately could result in the inability of the flight crew to lock the main landing gear (MLG) in the down position during landing, accomplish the following:

(a) Within 6 months after the effective date of this AD, visually inspect the manual extension gearbox assembly of the MLG, in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979, to determine whether left and right gearbox housings/housing assemblies having Boeing part numbers listed in Table 1 of this AD are installed.

Note 2: If the part number is not visible, a conductivity test may be performed to determine the type of housing material. Incorrect housings are made of 7079–T6 aluminum; correct housings are made of 7075–T73 aluminum.

TABLE 1.—BOEING PART NUMBERS OF INCORRECT HOUSINGS AND HOUSING ASSEMBLIES

| Housings | Housing assemblies |
|---|---|
| 65–27485–3 | 65–27485–1 |
| 65–27485–4 | 65–27485–2 |
| 65–27485–9 | 65–27485–7 |
| 65–27485–10 | 65–27485–8 |

(b) If none of the incorrect housings/housing assemblies are installed, no further action is required by this AD.

(c) If any of the incorrect housings/housing assemblies are installed, prior to further flight, perform a dye penetrant inspection to detect cracking of the housing, in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979.

(1) If no cracking is detected during the dye penetrant inspection, the incorrect housing/housing assembly may be reinstalled. Thereafter, the actions specified in paragraphs (c)(1)(i) and (c)(1)(ii) must be accomplished.

(i) After reinstallation, repeat the dye penetrant inspection at intervals not to exceed 9 months.

(ii) Within 18 months after the initial dye penetrant inspection required by this

paragraph is accomplished, replace the housings/housing assemblies with parts having an applicable Boeing part number listed in Table 2 of this AD, in accordance with the service bulletin. This replacement constitutes terminating action for the repetitive dye penetrant inspection required by this paragraph and, thereafter, no further action is required by this AD.

(2) If any cracking is detected during the dye penetrant inspection, prior to further flight, replace the housings/housing assemblies with parts having an applicable Boeing part number listed in Table 2 of this AD, in accordance with the service bulletin. This replacement constitutes terminating action for the repetitive dye penetrant inspection required by this AD and, thereafter, no further action is required.

Note 3: This AD prohibits the reinstallation (or installation) of any housing that is cracked, even though the service bulletin provides instructions for reinstallation of a cracked, incorrect housing in certain circumstances.

TABLE 2.—BOEING PART NUMBERS OF CORRECT REPLACEMENT HOUSINGS AND HOUSING ASSEMBLIES

| Housings | Housing assemblies |
|---|---|
| 65–27485–13 | 65–27485–11 |
| 65–27485–14 | 65–27485–12 |
| 65–27485–19 | 65–27485–17 |
| 65–27485–20 | 65–27485–18 |

Note 4: Although not listed in the service bulletin or in AD 79–04–01 R3 (amendment 39–4000), housings/housing assemblies having part numbers 65–27485–19/65–27485–17 and 65–27485–20/65–27485–18 are fully interchangeable with those having part numbers 65–27485–13/65–27485–11 and 65–27485–14/65–27485–12.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 1996.

James V. Devany,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–25306 Filed 10–02–96; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

**[Docket No. 96–NM–67–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require replacing certain aileron/rudder trim control modules with a new module that contains an improved rudder trim switch to reduce internal friction. This proposal is prompted by reports of sticking conditions in the rudder trim switch. The actions specified by the proposed AD are intended to prevent such sticking, which could result in uncommanded movement of the rudder and consequent deviation of the airplane from its set course.

**DATES:** Comments must be received by November 12, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Hania Younis, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2764; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–67–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports of sticking conditions in the rudder trim switch on electric aileron/rudder trim control module P8–43 on certain Model 737 series airplanes. One such report involved an airplane that was climbing, under manual control, through an altitude of 6,700 feet. The airplane began to yaw slightly to the left and the flight crew felt some force on the rudder pedals; although the rudder trim switch knob was centered, the rudder trim indicator showed that the rudder was set at an angle of 16 degrees left of where it was supposed to be.

If the trim switch sticks, it may be prevented from returning to the center position. If this happens, the rudder trim actuator may continue to move the rudder at a slow rate, up to the trim limit. This rate of movement is very slow, however, at approximately 1/2° per second, which should provide ample time for the flight crew to detect and correct the movement before it creates a situation of concern. In most cases, these types of incidents can be stopped if the pilot merely puts the switch into the center position

manually. In all incidents of this type, the rudder movement can by stopped by use of the rudder pedals within the normal limits for yaw control.

Sticking conditions in the rudder trim switch if not corrected, however, could result in uncommanded movement of the rudder, and consequent deviation of the airplane from its set course.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996, which describes procedures for replacing aileron/rudder trim control module P8–43 with a new module that contains an improved switch. This improved module minimizes internal friction that has caused the sticking conditions.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing the aileron/rudder trim control module P8–43 with a new improved module. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 1,159 Boeing Model 737–300, -400, and -500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 537 airplanes of U.S. registry would be affected by this proposed AD. Replacement of the module would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,063 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $667,491, or $1,243 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

Boeing: Docket 96–NM–67–AD.

*Applicability:* Model 737–300, -400, and -500 series airplanes; as listed in Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996; certified in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent sticking conditions in the rudder trim switch, which could result in uncommanded movement of the rudder and consequent deviation of the airplane from its set course, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace the aileron/rudder trim control module P8–43 having part number (P/N) 69–73703–5 or 69–73703–6 with a new aileron/rudder trim control module having P/N 69–73703–8, in accordance with Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 1996.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–25307 Filed 10–2–96; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 330

**[Docket No. 96N–0277]**

**RIN 0910–AA01**

## Eligibility Criteria for Considering Additional Conditions in the Over-the-Counter Drug Monograph System; Request for Information and Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is considering proposing to amend its regulations to include criteria under which certain additional over-the-counter (OTC) drug active ingredients, indications, dosage forms, dosage strengths, routes of administration, and active ingredient combinations (hereafter referred to as ''conditions'') may become eligible for inclusion in the OTC drug monograph

system. The proposed criteria would address how OTC marketing experience in the United States or abroad could be used to meet the statutory definition of marketing ''to a material extent'' and ''for a material time'' to qualify a specific OTC drug condition for consideration under the OTC drug monograph system. Under the approach being considered, once an OTC drug condition qualified for consideration in an OTC drug monograph it would be evaluated for general recognition of safety and effectiveness in accordance with the FDA regulations. The decision on whether to propose such regulations will be based, in part, on information and comments submitted in response to this advance notice of proposed rulemaking. The agency is open to approaches other than those identified in this document. FDA is specifically soliciting a broad range of comments to help it decide whether and how to propose amending its regulations to include eligibility criteria for considering additional conditions in the OTC drug monograph system.

**DATES:** Written comments by January 2, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. History*

#### 1. Historical Development of the OTC Drug Monograph System

Since the passage of the Federal Food, Drug, and Cosmetic Act (the act) in 1938, submission of a new drug application (NDA) has been required before marketing a new drug. Under the 1938 act, an applicant who submitted an NDA for approval had to show that a drug product was safe for human use. The 1962 amendments to the act added the requirement that the drug be effective, as well as safe, for its intended uses.

Not all drugs are considered ''new drugs'' for which premarket approval is required. A drug is not a new drug if: (1) It is generally recognized as safe and effective under the conditions of use for which it is labeled and (2) it has been used to a material extent and for a material time under those conditions (see section 201(p) of the act (21 U.S.C. 321(p))).

To ensure that all drugs marketed in the United States met the act's requirements for efficacy imposed under the 1962 amendments, the agency undertook a review of all the drugs approved for marketing before 1962 on the basis of safety only, i.e., all products approved between 1938 and 1962. In 1966, FDA contracted with the National Academy of Sciences-National Research Council (NAS–NRC) for a review of these drugs, which were covered by ''safety'' NDA's. Thirty panels of experts examined the efficacy, by class or therapeutic category, of all drugs covered by these approved ''safety'' NDA's. The panels considered factual information from scientific literature, reports from manufacturers containing the best evidence in support of their drug efficacy claims, and information provided by FDA and other sources. The NAS–NRC panels related their conclusions to FDA, and the agency reviewed their evaluations by a procedure known as the Drug Efficacy Study Implementation (DESI) program and made efficacy determinations for the drug products.

Of the approximately 3,900 drugs that NAS–NRC reviewed, about 400 were OTC drugs. These OTC drugs were handled under the DESI program, and FDA classified some of these drugs as lacking sufficient evidence of safety and/or effectiveness and ordered their removal from the market (see § 330.12 (21 CFR 330.12)). In most cases, when deferral of implementation led to no significant risk to the public health, conclusions regarding the OTC drugs' safety and efficacy were deferred to a separate OTC drug review that FDA initiated in 1972.

In the Federal Register of May 11, 1972 (37 FR 9464), FDA established the OTC drug monograph system (currently in part 330) (21 CFR part 330). The system was established to evaluate the safety and efficacy of all OTC drug products marketed in the United States before May 11, 1972, that were not covered by NDA's, and all OTC drug products covered by ''safety'' NDA's that were marketed in the United States before the enactment of the 1962 drug amendments to the act. The OTC drug review was set up to evaluate OTC drugs by designated categories or classes (e.g., antacids, skin protectants), rather than on a product-by-product basis, and to develop ''conditions'' under which classes of OTC drugs are generally recognized as safe and effective and not misbranded.

FDA publishes these conditions in the Federal Register in the form of OTC drug monographs, which consist primarily of active ingredients, combinations of active ingredients, labeling, and other general requirements. Final monographs for OTC drugs that are generally recognized as safe and effective and not misbranded are codified in part 330. Manufacturers desiring to market a monographed condition need not seek clearance from FDA before marketing.

#### 2. Statutory Requirements Relating to a Drug's Eligibility Under the OTC Drug Monograph System

Only drugs that are not new drugs may be covered by a monograph. As stated above, to market a new drug, an NDA must be submitted to and approved by FDA before marketing. The term ''new drug'' is defined, under section 201(p) of the act (21 U.S.C. 321(p)), as:

> (1) Any drug * * * the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, * * * or
>
> (2) Any drug * * * the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

The courts have interpreted section 201(p) of the act to mean that to avoid new drug preapproval requirements, the drug product must be generally recognized as safe and effective and must have been used to a material extent and for a material time under the labeled conditions of use. (See, e.g., *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631 (1973); *Premo Pharmaceutical Laboratories, Inc.* v. *United States*, 629 F.2d 795, 801–802 (2d Cir. 1980).) To satisfy the requirements of section 201(p)(2) of the act for a particular drug, both the time and the extent of marketing of the drug must be shown to be material. In addition, as discussed in section I.A.3. of this document, the agency has interpreted the use required by section 201(p)(2) to mean use in the United States.

#### 3. Application of the Statutory Requirements for Determining Eligibility in the OTC Drug Monograph System

As stated above, FDA considered in its review all active ingredients in OTC drug products that were on the U.S. market as of May 11, 1972, when the

review began, regardless of specific marketing history.

The agency has recognized that the ''newness'' of an OTC drug product can occur for several reasons. The newness may arise by reason, among other reasons, of the drug product's new ingredient, indication, dosage form, dosage strength, route of administration, or combination of active ingredients. (See 21 CFR 310.3(h).)

Periodically, questions would arise about whether certain conditions of use introduced after May 11, 1972, caused the products to be ''new'' drugs requiring marketing approval under NDA's, or whether the products could be eligible for consideration in the OTC drug monograph system. The agency determined the eligibility of these conditions individually on the basis of whether they had been marketed to a material extent and for a material time. Examples of the agency's past material extent and material time eligibility determinations are discussed below.

The agency has taken the position that the marketing of an OTC drug in a foreign country, but never in the United States, does not satisfy the requirement of marketing to a material extent and for a material time. In the Federal Register of December 12, 1980 (45 FR 82014), the agency concluded that menfegol, a vaginal contraceptive active ingredient marketed abroad for a number of years as an OTC drug product, was a new drug within the meaning of section 201(p) of the act because it had never been marketed as a drug in the United States. Likewise, in the Federal Register of November 16, 1988 (53 FR 46204 at 46248), the agency stated that it considered a lysine salt of aspirin, an internal analgesic active ingredient, to be a new drug within the meaning of section 201(p) of the act. This ingredient had been marketed OTC abroad but had never been marketed as a drug in the United States.

The agency also has declared new dosage strengths to be ineligible for the OTC drug review. In 1984, FDA denied a citizen petition requesting that the agency reopen the administrative record for the rulemakings for OTC internal analgesic and menstrual drug products to consider a new dosage strength of ibuprofen (200 milligrams (mg)) (Ref. 1). The agency denied the petition, stating that the 200 mg dosage strength had not been used to a material extent and for a material time in the United States and, therefore, was considered a ''new drug'' that could not be lawfully marketed in the United States without an approved NDA.

In the Federal Register of July 19, 1983 (48 FR 32872 at 32873), the agency stated that a labeled indication that had never previously appeared on any marketed OTC drug product was not eligible for consideration in the OTC drug monograph system. The agency determined that products claiming ''to minimize or prevent inebriation'' had not been marketed to a material extent and for a material time in the United States and declared that all products with sobriety aid indications were new drugs within the meaning of section 201(p) of the act.

Similarly, FDA concluded that an ingredient that had not previously been marketed in the United States for a specific indication is not eligible for consideration in the OTC drug monograph system. In the Federal Register of October 13, 1983 (48 FR 46694 at 46695), the agency stated that potassium sorbate had not been marketed to a material extent and for a material time in the United States as a vaginal drug product active ingredient and, therefore, was considered a new drug within the meaning of section 201(p) of the act for such use.

More recently the agency has found that avobenzone, a sunscreen ingredient, is eligible for review in the OTC drug monograph system (61 FR 48645, September 16, 1996). Avobenzone has been continuously marketed OTC in the United States under NDA's for approximately 8 years and subject to the NDA adverse events reporting requirements. Over 5 million units of avobenzone-containing products have been sold in the United States.

In applying the material extent and material time provision of section 201(p)(2) of the act to determine whether certain conditions were eligible for consideration in the OTC drug monograph system, FDA has also applied a ''substantially indistinguishable'' standard. This standard was first articulated in a September 23, 1977, letter to a drug manufacturer concerning its submission regarding the ingredient potassium nitrate for use as an OTC tooth desensitizing agent (Ref. 3). The letter stated that an ingredient may meet the act's marketing provision of section 201(p)(2) of the act without having been marketed under the precise conditions of use sought, provided the ingredient had been marketed to a material extent and for a material time under other conditions of use that, although different, are ''substantially indistinguishable'' in all respects relevant to the drug's safety and effectiveness. Specifically, the conditions of use would have to be similar enough that experts could reliably conclude that knowledge about the safety and effectiveness of a drug derived from experience with its use under one set of conditions could be applied to the evaluation of the safety and effectiveness of its use under the conditions for which approval was being sought.

*B. Petitions and Comments*

The agency has received one comment and nine citizen petitions (Refs. 4 through 13) requesting that it accept foreign marketing data to demonstrate that specific conditions of use have been marketed to a material extent and for a material time and, on that basis, to consider these conditions in the OTC drug review. If the agency were to change its current policy and accept such data, this would allow such conditions to be considered in the OTC drug monograph system.

This advance notice of proposed rulemaking addresses the primary issue raised in these petitions regarding acceptance of foreign marketing experience to demonstrate that OTC drug conditions have been marketed to a material extent and for a material time. The agency will provide separate responses to the petitions at a later date.

## II. Criteria Under Consideration for Demonstrating Marketing to a Material Extent and for a Material Time

Currently, the OTC drug regulations in part 330 do not define: (1) Eligibility requirements for consideration in the monograph system or (2) what constitutes marketing to a material extent or for a material time. However, FDA's policy has been not to consider foreign marketing experience for purposes of determining whether a drug has been marketed to a material extent or for a material time. The agency is considering a proposed rule containing criteria for defining material extent and material time under which an OTC condition with or without U.S. marketing experience could be considered in the OTC drug monograph system. As previously indicated, FDA defines a condition as any active ingredient, indication, dosage form, dosage strength, route of administration, active ingredient combination, or any combination of these conditions.

In developing these criteria, FDA is considering three basic issues: (1) Nature of use, (2) time used (material time), and (3) extent of distribution (material extent).

These issues are discussed below and the agency is seeking comment on each.

*A. Nature of Use*

When determining if a foreign OTC drug product condition has been marketed to a material extent and for a material time, FDA is particularly concerned about certain variables presented by foreign marketing experience. In the Federal Register of February 22, 1985 (50 FR 7452), the agency amended its regulations pertaining to foreign clinical studies in § 314.106 (21 CFR 314.106) to provide specifically for the acceptance of foreign data in NDA's. In doing so, the agency acknowledged the high quality of drug testing from a number of foreign research institutions, but recognized that foreign data present three unique issues not associated with domestic data: (1) Medical, genetic, and cultural differences between countries; (2) lack of FDA's familiarity with foreign clinical investigators and facilities; and (3) FDA's inability to conduct on–site verification of many foreign studies (see 50 FR 7452 at 7483). To address these concerns, the agency specified three criteria in § 314.106 that must be met before the agency can approve an NDA based solely upon foreign data: (1) The foreign data must be applicable to the U.S. population and U.S. medical practice; (2) the studies must be performed by clinical investigators of recognized competence; and (3) the data can be considered valid without the need for on-site inspection by FDA or, if FDA considered such an inspection necessary, FDA would be able to validate the data through on-site inspection or other means. 21 CFR 312.120 contains additional acceptance criteria for foreign clinical studies not conducted under an IND.

The agency recognizes that foreign marketing experience, like foreign clinical data, presents several unique issues not associated with U.S. marketing data: (1) Medical, genetic, or cultural differences between a foreign country's population and the U.S. population may affect the way OTC drug products are used and, in turn, the medical outcomes; (2) the diversity in the way drug products are marketed in foreign countries (e.g., prescription, OTC general sales, behind the counter, sold by a pharmacist (third class of drugs)) may make it difficult to demonstrate suitability for OTC sale in the United States; and (3) many foreign countries' marketing approval processes and adverse event reporting requirements would make it difficult to determine whether adverse reactions to the OTC drug product have been experienced. Therefore, in establishing what constitutes use for a material time and to a material extent, FDA must determine whether to impose any limitations on types of marketing experience it would consider relevant to whether the drug should be marketed OTC in the United States under a monograph system. The following discussion focuses these issues on limitations related to: (1) Where the drug is marketed and its relevance to the U.S. population; (2) the type of adverse reporting system that exists in the countries in which the drug has been marketed and the nature of any adverse event reports associated with the drug; and (3) the nature of that marketing experience, such as whether the drug has been marketed by prescription, OTC, or as a third class of drugs that can be sold only by a pharmacist. This marketing experience would also be based on consistent active ingredients and product formulations that do not require critical manufacturing controls and/or involve complex bioavailability questions.

1. Where the Drug is Marketed

Because of the concerns discussed above, one petition suggested that the agency limit its consideration of OTC marketing experience to the export countries identified in section 802(b)(4)(A) of the act (21 U.S.C. 382(b)(4)(A)), as added by the Drug Export Amendments Act of 1986 (Pub. L. 99–960). Section 802(b)(4)(B) of the 1986 amendments listed four requirements related to the approval of drugs in foreign countries. These requirements were similar to requirements in the United States. Congress declared that 21 countries met these requirements and were listed in section 802(b)(4)(A) of the act for purposes of allowing them to receive for general marketing the export of certain unapproved new drugs from the United States. In April 1996, Congress amended section 802 of the act (Pub. L. 104–134) to, among other things, add additional countries to the list, allow the Secretary of Health and Human Services to add additional countries that meet certain requirements described in new section 802(b)(1)(B) of the act (formerly section 802(b)(4)(A)), and allow the export of certain unapproved drugs from the United States to any country if the drug complies with the laws of that country and has valid marketing authorization by the appropriate authority in one of the listed countries, and certain other conditions are met, as described in the new sections 802(f) and 802(g).

Although the listed countries may have similar statutory or regulatory requirements to those of the United States, other countries may also have acceptable marketing and approval processes. The agency requests specific comment on whether OTC marketing experience should be considered solely from countries listed or designated under the new section 802(b)(1) of the act or whether experience that meets certain broader criteria should be considered.

2. Adverse Event Reporting

For the agency to rely on adverse event information in assessing the safety of the condition in OTC marketing and use, the adverse event information would have to be collected in a country with a drug marketing approval process and postmarketing surveillance system that identifies serious and/or important adverse events associated with the condition's use.

To assist in making the determination regarding whether a condition has met the requirements of marketing for a material extent and for a material time, the agency is considering requiring submission of the following information: (1) A description of each country's system for identifying adverse events, especially those found in OTC marketing experience, including method of collection if applicable; (2) all serious and important adverse event reports from every country where the condition has been or is currently marketed (whether prescription or OTC); and (3) a list of all countries in which the condition has been withdrawn or in which marketing has been restricted for reasons related to safety or effectiveness, or for any other reason, and a description of these reasons.

The agency believes that prescription as well as OTC adverse event reports for the condition should be required to be included in an eligibility data submission because data on prescription adverse events may provide useful information for evaluating the safety of the condition for U.S. OTC drug use. The agency also believes that information regarding adverse events associated with other doses (higher or lower) or different indications associated with the condition marketed as a prescription drug product would be useful for determining the safety of the condition for OTC use. This information could result, for example, in different labeling or a different dosing regimen or could even suggest that the marketing of the condition under an OTC drug monograph would be inappropriate.

3. Nature of Marketing Experience

Because the criteria under consideration are to determine eligibility for consideration in the OTC monograph review, FDA must consider

whether marketing experience as a prescription drug will be considered or whether to limit the marketing experience to OTC marketing experience. FDA is considering limiting eligibility to those conditions (as defined previously) that: (1) Have been marketed for direct OTC purchase by consumers; and (2) are not limited to prescription use in the United States.

Under existing procedures in 21 CFR 310.200, conditions may attain OTC status in one of two ways:

*a. As a new drug.* A proposal may be initiated by the Commissioner of Food and Drugs if it is determined that agency requirements are not necessary for the protection of the public health, or by any interested person through the filing of a petition, NDA, or supplemental NDA. A drug switched to OTC status under these provisions remains a ''new drug'' unless it meets each of the necessary conditions under section 201(p)(1) and (p)(2) of the act for a drug not to be regarded as a new drug.

*b. As a monograph drug.* Through the OTC drug monograph system by either: (1) Recommendations made by an OTC advisory review panel or committee, (2) requests from interested parties (usually in the form of a data submission), or (3) initiated by the agency in an OTC drug monograph.

When the OTC drug review began, it was designed to address OTC marketing conditions that were already on the market in the United States. The agency permitted the OTC advisory panels to consider prescription to OTC switches and recommend OTC use for prescription drugs whose safety and efficacy for OTC use they believed had been demonstrated in the U.S. population through prior marketing experience.

Since the completion of the first phase of the OTC drug review (i.e., the OTC advisory review panels' evaluations and publication of their reports), the majority of drug manufacturers have elected to pursue switches from prescription to OTC status under the new drug procedures. The agency considers this mechanism appropriate because the data provided by an NDA, including adverse event reports, manufacturing controls, and bioavailability data where applicable, provide useful information during the transition from prescription to OTC marketing status. In addition, the mandatory reporting of adverse events under an NDA is important to the agency to monitor safe and effective OTC use once a switch has occurred.

Currently, no adverse event reporting requirements exist for drugs in the OTC drug monograph system. In a future issue of the Federal Register, the agency intends to propose to establish an adverse event reporting system for OTC monograph drugs. However, at this time, the agency believes that the transition from prescription to OTC status is best accomplished by first requiring an OTC drug product to be marketed under an NDA. After a switch occurs under an NDA and sufficient marketing experience is obtained or an adverse event reporting system is in place for OTC monograph drugs, FDA would be willing to include switched drugs in an OTC drug monograph. If and when an adverse event reporting system for OTC monograph drugs is established, this system would better support the use of OTC drug monographs for future prescription to OTC switches that do not require critical manufacturing controls for safe and effective use.

At this time, the agency does not believe that the criteria for determining material time and material extent should apply to drugs marketed by prescription in a foreign country but not marketed in the United States. Some drugs that are marketed by prescription in a foreign country were considered for approval in the United States but not approved because FDA believed that their safety and efficacy had not been proven. Furthermore, the agency believes that it is not appropriate for a drug that has characteristics that have been determined to require a prescription in a foreign country to enter directly into the OTC market in the United States when the U.S. population has no experience with the drug either on a prescription or OTC basis. The agency considers it essential that any prescription drug have some U.S. marketing experience before its OTC marketing is permitted in this country. Further, the agency believes that the criteria being considered in this document should not be applicable to establish use to a material time and to a material extent if the drug has no direct-to-consumer OTC marketing experience in any country.

OTC drugs whose marketing history shows that they were marketed in the United States without appropriate authorization would not be eligible for consideration in the OTC drug review based on the new material time and extent eligibility criteria. To treat such drugs otherwise would reward those who chose not to comply with the law.

These criteria would not apply to sustained-release products, which remain new drugs under 21 CFR 200.31 because of the difficulties associated with developing a standardized monograph that would cover the wide variety of sustained release formulations. These products almost always involve complex bioavailability/bioequivalence questions.

The agency recognizes that some of the countries listed in 802(b)(1)(A) of the act (e.g., Australia, Canada, New Zealand, and the United Kingdom) have a third class of OTC drug products that can be sold only by a pharmacist. When consumers purchase OTC drugs in this class, there is intervention by a health professional and an opportunity for professional consultation. The agency would not consider this type of OTC marketing to be similar to the broad OTC marketing in the United States, where products are marketed in many various outlets, often with no opportunity for professional consultation. The agency seeks specific comment on whether marketing in a foreign country as a third class of drugs sold by a pharmacist should be considered when evaluating whether a drug has been marketed for a material time and to a material extent.

### *B. Time Used (Material Time)*

The agency is considering proposing that this OTC marketing be for a minimum of 5 years to satisfy the material time requirements of the act. In determining how many years should constitute marketing for a material time, the agency's principal concern is that the condition be marketed for a sufficient time to detect serious and/or important adverse events. The agency believes that a minimum 5-year timeframe should be required to provide an appropriate margin of safety to ensure that adverse event reporting is sufficient to detect almost all types of serious and/or important adverse events if sufficient volume of sales and postmarketing surveillance in this timeframe can be documented (see section II. C. of this document).

If the condition has not been marketed previously in the United States, the agency believes that the specific condition should be marketed for this 5-year minimum time period in a population demonstrated to be representative of the U.S. population (e.g., by race, gender, ethnicity, and other pertinent factors) that would be exposed to the OTC drug if it were marketed in the United States under an OTC drug monograph. Foreign marketing exposure (i.e., diversity within the user population) would have to be described sufficiently to ensure that the condition can be reasonably extrapolated to the U.S. population. Any cultural or geographic differences in the way drugs are used in the foreign country and in the United States would

be required to be explained. The agency seeks specific comment on how the representation of the population could be established.

*C. Extent of Distribution (Material Extent)*

The agency believes that there should be some flexibility when assessing the extent of marketing for an OTC drug product condition. Because the agency intends to consider numerous factors in determining whether the condition has been marketed to a material extent, the agency does not believe that this determination should be based solely on the sale of a certain established number of dosage units, as one petition suggested. The agency also believes that the extent of the condition's use should be sufficient to detect serious and/or important adverse events, including rare events, to demonstrate a favorable adverse event profile. The agency is considering using the following factors to evaluate whether the extent of use of a condition is sufficient to detect serious and/or important adverse events: (1) Number of dosage units sold; (2) number and types of adverse event reports, and the requirements of the reporting system; (3) risks and consequences associated with the therapeutic category and indication; (4) use pattern (frequency: Occasional, acute, chronic); (5) potential toxicity (including dosage form and route of administration); and (6) history of use (i.e., use indications and exposures, including their toxicities)

III. Implementation

*A. Two-Step Application Process*

The agency is considering proposing that sponsors first demonstrate that a condition meets the basic eligibility requirements of marketing to a material extent and for a material time, in the appropriate format, before the agency accepts any data in support of the condition's general recognition of safety and effectiveness. Upon evaluation of the eligibility data, the agency would notify the sponsor of its determination. If the condition were found to be eligible, the sponsor could then submit its data to demonstrate safety and effectiveness in accordance with part 330.

The agency believes that sponsors should not incur unnecessary costs for developing safety and effectiveness data for a condition of use that may not meet the basic eligibility requirements of marketing to a material extent and for a material time. In addition, the agency does not want to expend scarce resources evaluating safety and effectiveness data for a condition if it does not meet the basic eligibility criteria.

The agency notes that the advisory review panels mentioned in § 330.10(a)(1) no longer exist. Therefore, safety and effectiveness data would be reviewed on an individual basis, with the assistance of the agency's current Nonprescription Drugs Advisory Committee and other Drug Advisory Committees when deemed appropriate. If the agency determined that the data were sufficient to establish that the condition was generally recognized as safe and effective, it would then propose in the Federal Register to include the condition in an appropriate OTC drug monograph.

*B. Compendial Monograph*

FDA believes there is a need for publicly available chemical standards to ensure that all OTC drug products contain ingredients that are chemically equivalent to those described in an OTC monograph. To ensure that OTC drugs remain safe and effective for their intended uses, the agency believes that any ingredient included in an OTC drug monograph should also be recognized in an official compendium (e.g., the *U.S. Pharmacopeia*) setting forth its standards of identity, strength, quality, and purity. On this basis, the agency is considering proposing that no final monograph be issued and no interim marketing be allowed until there is an official compendial monograph that is consistent with the marketed ingredients used to establish general recognition of safety and effectiveness.

*C. Marketing Policy*

All new drugs and drugs marketed under an OTC monograph must be demonstrated to be safe and effective before they may be marketed in the United States. Although conditions evaluated under the OTC drug review were permitted to remain on the market during the review process in view of their long history of use in this country, the agency believes that allowing the marketing of a new condition before the agency has evaluated its safety and effectiveness would subject the public to unnecessary risk. Therefore, the agency is considering permitting a new condition to be marketed only after the Commissioner tentatively determines that the condition is generally recognized as safe and effective and publishes this conclusion in the Federal Register as a proposal for comment. Marketing could only occur after the comments are reviewed and an appropriate notice allowing such marketing is published in the Federal Register or after inclusion of the condition in the appropriate OTC drug final monograph.

Any interim marketing that might be allowed, pending issuance of a final rule, would be subject to the risk that the Commissioner could adopt a different position in the final rule that would require relabeling, recall, or other regulatory action. The agency seeks specific comment on this marketing policy.

IV. Analysis of Impacts

The agency also seeks specific comment regarding any substantial or significant economic benefit or impact that this rulemaking would have on manufacturers or consumers of OTC drug products. Comments regarding the benefit or impact of this rulemaking on such manufacturers or consumers should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will assess the economic impact of this rulemaking in the preamble to the proposed rule.

V. Requests for Comments

Interested persons may, on or before January 2, 1997 submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Three copies of all 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have 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) Comment No. PDN2, Docket No. 77N–0094, Dockets Management Branch.

(2) Letter from Thomas Scarlett, Associate Chief Counsel for Enforcement, Bureau of Drugs, FDA, to Harris O. Cutler, Richardson-Merrell, Inc., September 23, 1977.

(3) Comment No. CP1, Docket No. 78N–0038, Dockets Management Branch.

(4) Comment No. CP2, Docket No. 78N–0038, Dockets Management Branch.

(5) Comment No. CP3, Docket No. 78N–0038, Dockets Management Branch.

(6) Comment No. CP4, Docket No. 78N–0038, Dockets Management Branch.

(7) Comment No. C105, Docket No. 78N–0038, Dockets Management Branch.

(8) Comment No. CP1, Docket No. 81N–0033, Dockets Management Branch.

(9) Comment No. CP1, Docket No. 92P–0309, Dockets Management Branch.
(10) Comment No. CP1, Docket No. 94P–0215, Dockets Management Branch.
(11) Comment No. CP2, Docket No. 94P–0215, Dockets Management Branch.
(12) Comment No. CP1, Docket No. 95P–0145, Dockets Management Branch.

This advanced notice of proposed rulemaking is issued under sections 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371) and under the authority of the Commissioner of Food and Drugs.

Dated: September 26, 1996.

William K. Hubbard,

*Associate Commissioner for Policy Coordination.*

[FR Doc. 96–25259 Filed 10–2–96; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 913

**[SPATS No. IL–095–FOR]**

## Illinois Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; withdrawal of proposed amendment.

**SUMMARY:** OSM is announcing the withdrawal of a proposed amendment to the Illinois regulatory program (hereinafter the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerned addition of a definition for the term ''Generally accepted accounting principles'' to title 62 of the Illinois Administrative Code (IAC) regulations pertaining to self-bonding. Illinois is withdrawing the amendment at its own initiative.

**FOR FURTHER INFORMATION CONTACT:** Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

**SUPPLEMENTARY INFORMATION:** By letter dated July 16, 1996 (Administrative Record No. IL–1804), Illinois submitted a proposed amendment to its program pursuant to SMCRA. The amendment concerned addition of a definition for the term ''Generally accepted accounting principles'' at 62 IAC 1800.23(a). Illinois submitted the proposed amendment at its own initiative.

On July 30, 1996, OSM announced receipt of and solicited public comment on the proposed amendment in the Federal Register (61 FR 39612). The public comment period ended on August 29, 1996.

On September 20, 1996 (Administrative Record No. IL–1811), Illinois requested that the proposed amendment be withdrawn. Illinois has decided not to add this definition to its regulations at this time. Therefore, the proposed amendment announced in the July 30, 1996, Federal Register is withdrawn.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 25, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 96–25340 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–05–M**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CO–001–002; CO–001–003 and CO–001–004; FRL–5628–8]**

## Clean Air Act Approval and Promulgation of $PM_{10}$ Implementation Plan for Denver, CO, and the Denver Mobile Source Emissions Budgets for $PM_{10}$ and $NO_X$

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA proposes approval of the state implementation plan (SIP) revision submitted by Colorado on March 30, 1995, to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$) in the Denver area, including: Control measures; technical analysis (*e.g.*, emission inventory, and attainment) and other Clean Air Act (Act) SIP requirements. The SIP revision was submitted to satisfy certain Federal requirements for an approvable moderate nonattainment area $PM_{10}$ SIP for Denver and, among other things, contains enforceable control measures.

EPA also proposes to approve the $PM_{10}$ and $NO_X$ mobile source emissions budgets for Denver that were submitted by the Governor on July 18, 1995 and April 22, 1996, respectively.

**DATES:** Comments on the actions proposed in this document must be received in writing by December 2, 1996.

**ADDRESSES:** Comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Label the comments as comments addressing the Denver $PM_{10}$, $PM_{10}$ emissions budget or $NO_X$ emissions budget SIPs.

Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

**FOR FURTHER INFORMATION CONTACT:** Callie Videtich, Air Program, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80220–2405 or by phone at (303) 312–6434.

**SUPPLEMENTARY INFORMATION:**

I. Background

The Denver, Colorado area was designated nonattainment for $PM_{10}$ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); and 40 CFR 81.306 (specifying $PM_{10}$ nonattainment designation for the Denver metropolitan area). The air quality planning requirements for moderate $PM_{10}$ nonattainment areas are set out in Part D, Subparts 1 and 4, of Title I of the Act.[2]

The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate $PM_{10}$ nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion

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

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to $PM_{10}$ nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Colorado moderate $PM_{10}$ SIP for the Denver nonattainment area, EPA is applying its interpretations considering the specific factual issues presented.

Those States containing initial moderate $PM_{10}$ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following plan provisions by November 15, 1991:

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

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

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

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

Some provisions were due at a later date. States with initial moderate $PM_{10}$ nonattainment areas were required to submit a new source review (NSR) permit program for the construction and operation of new and modified major stationary sources of $PM_{10}$ by June 30, 1992 (see section 189(a)). On January 14, 1993, the State submitted regulation revisions for the construction of new and modified major stationary sources. On August 18, 1994, EPA partially approved the State's NSR program for the Denver $PM_{10}$ nonattainment area because the State had not yet submitted NSR provisions for sources of $PM_{10}$ precursors (i.e., $NO_X$ and $SO_2$) in the Denver area (see 59 FR 42300). On August 25, 1994, Colorado submitted additional NSR provisions for precursor emissions. EPA will be acting on that SIP submittal in a separate notice.

States were also required to submit contingency measures for $PM_{10}$ moderate nonattainment areas by November 15, 1993. The contingency measures for the Denver $PM_{10}$ nonattainment area were initially submitted by the Governor on December 9, 1993. However, those measures were later incorporated into the revised March 30, 1995 $PM_{10}$ SIP. Therefore, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA is taking action on the contingency measures SIP submittal in a separate rulemaking action.

On June 7, 1993, the Governor submitted a SIP for Denver to EPA which was intended to satisfy those elements due November 15, 1991. On December 20, 1993, EPA proposed to conditionally approve that SIP and also proposed to approve the SIP's control measures for their limited purpose of strengthening the Colorado SIP (58 FR 66326). On July 25, 1994, EPA granted limited approval of the control measures for the limited purpose of strengthening the SIP (59 FR 37698).

During review of the technical information supporting the June 1993 SIP, EPA examined information which raised concern about the accuracy of the SIP's attainment demonstration. The SIP's technical support documentation suggested that the contribution from $PM_{10}$ ''precursors'' (*i.e.*, nitrogen oxides and sulfur dioxides) in the base year winter season may have been underestimated. Since the attainment demonstration provided with that SIP predicted a value of 149.9 µg/m3 over 24 hours, virtually any increase in precursor $PM_{10}$ levels would result in predicted violations of the 24-hour standard.

In the December 20, 1993, proposed rulemaking action, EPA requested public comment on it's proposal to grant conditional approval of the SIP in light of the precursor issue. EPA reviewed the information submitted during the public comment period and concluded that precursors were underestimated by 5.4 µg/m3. Based upon this finding, EPA delayed taking final action on the proposed conditional approval to allow the State an opportunity to develop additional controls to offset this increase. On March 30, 1995, the Governor submitted a SIP revision intended to provide controls to offset the increase in precursor emissions and provide credible attainment and maintenance demonstrations. On July 18, 1995, and April 22, 1996 the Governor submitted additional revisions to the SIP which establish mobile source emissions budgets for $PM_{10}$ and $NO_X$. The conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). EPA is taking three actions with this document.

1. EPA is proposing to approve the revised Denver $PM_{10}$ SIP, as adopted by the Colorado Air Quality Control Commission (AQCC) October 20, 1994 with an amendment on December 15, 1994, and submitted by the Governor of Colorado on March 30, 1995. This submittal contains, among other things, several control measures, regulation and permit revisions and attainment and three-year maintenance demonstrations. The State's submittal demonstrates attainment of the $PM_{10}$ NAAQS by December 31, 1994[3], with continued maintenance of the standard through December 31, 1997.

2. EPA is proposing to approve the Denver $PM_{10}$ mobile source emissions budget contained in the SIP revision adopted by the AQCC on February 16, 1995, and submitted by the Governor on July 18, 1995.

3. EPA is proposing to approve the Denver $NO_X$ mobile source emissions budget adopted by the AQCC on June 15, 1995, and submitted by the Governor on April 22, 1996.

## II. This Action

### *A. Analysis of March 30, 1995 Denver $PM_{10}$ SIP Submission*

#### 1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public

[3] The Clean Air Act calls for attainment as expeditiously as practicable but no later than December 31, 1994. Section 188(c)(1). The State's submittal sometimes refers to December 31, 1994 as the attainment date and at other times implies 1995 as the attainment date. EPA interprets that when the State refers to attainment by 1995 it means attainment by January 1, 1995. EPA is proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates and the fact that, at times, the State refers to the attainment date as December 31, 1994. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State is projecting attainment in the Denver Metropolitan nonattainment area.

hearing.[4] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

After providing reasonable notice, the AQCC held a public hearing on October 20, 1994, to entertain public comment on the implementation plan for Denver. The plan was adopted following the public hearing. The plan was further amended after a properly noticed public hearing of the AQCC on December 15, 1994. On March 30, 1995, the Governor signed and submitted the SIP revision to EPA. The SIP was deemed complete by operation of law six months following submission of the plan by the Governor.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.[5] The emissions inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area (see, *e.g.,* section 110(a)(2)(K)). Because the submission of such inventories is a necessary adjunct of an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the SIP revision containing the demonstration (see 57 FR 13539).

Colorado submitted an emissions inventory for base year 1989 (based on actual emissions) and an emissions inventory for attainment year 1995[6] (based on allowable emissions). The winter 1989 and 1995 inventories are intended to represent all sources of primary $PM_{10}$, as well as all sources of the $PM_{10}$ precursors (nitrogen oxides and sulfur dioxide ($NO_X$ and $SO_2$)). The precursor emissions are important because filter analyses performed in conjunction with chemical mass balance modeling indicated that a significant portion (35%) of the $PM_{10}$ monitored consisted of secondary ammonium sulfate and nitrate.

The wintertime 1989 base year inventory identified re-entrained road dust (44%), wood burning (18%) and street sanding (8.5%) as the principal contributors to primary $PM_{10}$. Other primary $PM_{10}$ sources include unpaved road dust contributing 12.5% and point sources contributing 4% of the total primary $PM_{10}$ inventory.

The secondary emissions, 35% of total $PM_{10}$, are divided between $NO_X$ and $SO_2$. For wintertime 1989 base year $NO_X$, stationary sources contribute 40% of the total $NO_X$ emissions with vehicle exhaust at 41% and natural gas from residential and commercial usages at 11%. The prime sources of $SO_2$ include stationary sources with 92% of the total $SO_2$ emissions and vehicle exhaust with 5%.

The wintertime 1995 attainment year inventory identified re-entrained road dust (47%), wood burning (6%) and street sanding (7%) as the principal contributors to primary $PM_{10}$. Other primary $PM_{10}$ sources include unpaved road dust contributing 12% and point sources contributing 9% of the total primary $PM_{10}$ inventory.

The secondary emissions, 35% of total $PM_{10}$, are divided between $NO_X$ and $SO_2$. For the wintertime 1995 attainment year $NO_X$, stationary sources contribute 44% of the total $NO_X$ emissions with vehicle exhaust at 38% and natural gas from residential and commercial usages at 10%. The prime sources of $SO_2$ include stationary sources with 97% of the total $SO_2$ emissions and vehicle exhaust with 1%.

EPA is proposing to approve the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for the Denver area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the act. For further details see the Technical Support Document (TSD) prepared for this action which is available for public review at the address indicated at the beginning of this notice.

3. RACM (Including RACT)

As noted, initial moderate $PM_{10}$ nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of RACM (including RACT) (see 57 FR 13539–13545 and 13560–13561).

On July 25, 1994, EPA took final rulemaking action to approve controls found in the June 7, 1993 Denver $PM_{10}$ SIP submittal. That action approved controls for their limited ability to strengthen the SIP under sections 110(k)(3) and 301(a) of the Act. In that rulemaking action, EPA found that the control measures appeared to satisfy the specific requirements to implement RACM/RACT. However, due to the State's need to fulfill a commitment to revise two stationary source permits and due to the question of whether the attainment demonstration was reasonable in light of questions regarding precursor contributions to the attainment demonstration, EPA did not take definitive action to find that the measures met the RACM/RACT requirements. Following the June 1993 submittal, the State fulfilled the commitment, and EPA determined that the precursor contribution to the $PM_{10}$ levels was underestimated.

The March 30, 1995 SIP submittal contains an evaluation of the emissions reduction programs found in the June 1993 submittal, and enhancements to those programs needed to demonstrate attainment and maintenance. These enhancements were needed due to the underestimation of the precursor contribution in the June 1993 demonstration. EPA is now able to make RACM/RACT determinations for the control programs contained in the March 1995 SIP submittal.

The March 30, 1995 SIP revision identifies four source categories as major contributors to the $PM_{10}$ nonattainment problem in Denver. The following Table identifies the source categories and their respective control measures implemented across the nonattainment area, as well as measures exclusive to the Central Business District (CBD). Generally, the CBD is where exceedances of the standard have occurred and, therefore, is an important focus for the implementation of some of the control measures.

When comparing the 1989 base year actual emissions inventory to the 1995 attainment year allowable emissions inventory for the entire nonattainment area there is actually an increase in $PM_{10}$ emissions. This is due to the fact that the suburban area of Denver has grown over the past several years. Nevertheless, the State demonstrates timely attainment area-wide even with these emissions increases.

[4] In addition, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[5] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline.

[6] See footnote 3.

To show timely attainment of the standard, woodburning controls, street sanding/sweeping controls and reductions in stationary source emissions had to be developed. As a result of these controls, as well as the other control strategies (described further in the TSD), the CBD shows a total 9.45% reduction (269.7 tons/year) from base year 1989 (actuals) to the 1995 attainment year (allowables), and demonstrates timely attainment of the standard.

DENVER $PM_{10}$ SIP CONTROL STRATEGIES

| Source category | Control strategy |
|---|---|
| Residential Wood Burning (Area-wide controls) .... | 1. High pollution day wood burning restriction program and revisions.<br>2. Requirements that new or remodeled construction use a new cleaner wood burning approach.<br>3. Voluntary conversion program from existing wood burning to cleaner burning technology.<br>4. New stove/fireplace insert certification.<br>5. Prohibit resale of used, uncertified stoves. |
| Street Sanding and Sweeping of Paved Streets (Area-wide and CBD controls). | 1. Material specifications for street sanding material.<br>2. Local management plans.<br>3. Enhanced street sanding and sweeping in Central Denver and the I–25 Corridor.<br>4. City/County of Denver and CDOT reduce amount of street sanding material in the Denver CBD and central Denver by 50% from base year 1989. |
| Stationary Sources (Area-wide controls) ..... | 1. Emission limits at Purina Mills.<br>2. Emission limits at Electron Corporation.<br>3. Regulation limits for precursor emissions at Cherokee, Arapahoe and Valmont power plants.<br>4. Emission limits for $NO_X$ and $SO_2$ at Coors Glass and Coors Brewery.[7]<br>5. Emission limits at Conoco Refining.<br>6. Restrictions on oil use. |
| Mobile Sources (Area-wide controls) ..... | 1. Light duty vehicle, light duty truck $NO_X$ standards.<br>2. Urban bus particulate standards.<br>3. Diesel fuel sulfur limits.<br>4. Regulation #11 Enhanced I/M.<br>5. Regulation #12 Diesel I/M.<br>6. Regulation #13 Oxy Fuels.<br>7. MAC light rail line.<br>8. Express bus service from Denver to new Denver International Airport.<br>9. CommuterCheck program.<br>10. ECOPass.<br>11. CU Student bus pass. |

[7] Emission limits for Coors Glass increase, while the limits for Coors Brewery decrease. While EPA believes these revisions to the emissions limits are acceptable for meeting RACM/RACT requirements, EPA's proposed action herein regarding these limits does not in any manner relieve these companies of the obligation to comply with any nonattainment NSR permitting requirements that might apply to such changes in emissions limits.

A more detailed discussion of the individual source contributions and their associated control measures (including available control technology) can be found in the TSD. EPA has reviewed the State's documentation and proposes to conclude that it adequately justifies the control measures that will be implemented. Therefore, by this document, EPA is proposing to approve the Denver $PM_{10}$ plan submitted by the Governor on March 30, 1995, as meeting the RACM (including RACT) requirement.

4. Demonstration

As noted, the initial moderate $PM_{10}$ nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994, is impracticable. Colorado conducted an attainment demonstration using dispersion modeling for primary $PM_{10}$ and proportional rollback modeling analysis for secondary particulate concentrations for the Denver area. This demonstration indicates that the NAAQS for $PM_{10}$ will be attained in Denver by December 31, 1994, at a modeled concentration of 147.8 $\mu g/m^3$ and will be maintained in future years. The 24-hour $PM_{10}$ NAAQS is 150 $\mu g/m^3$, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6).

There have never been exceedances of the annual average $PM_{10}$ standard in the Denver metro area; therefore, an attainment analysis of the annual standard was not performed. Finally, EPA believes that the controls adopted to protect the 24-hour standard are sufficient to maintain the annual standard. The control strategy used to achieve the 24-hour standard is summarized in the section above titled ''RACM (including RACT).'' For a more detailed description of the attainment demonstration and the control strategy, see the TSD accompanying this document.

5. $PM_{10}$ Precursors

The control requirements which are applicable to major stationary sources of $PM_{10}$, also apply to major stationary sources of $PM_{10}$ precursors unless EPA determines such sources do not contribute significantly to $PM_{10}$ levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (57 FR 13539–13540 and 13541–13542).

An analysis of air quality and emissions data for the Denver

nonattainment area demonstrates that exceedances of the $PM_{10}$ NAAQS are attributable both to direct particulate matter emissions from wood burning, street sanding/sweeping, mobile sources, and stationary sources, and to mobile and stationary source precursor emissions. Further, the dispersion and chemical mass balance modeling for base year 1989 identified precursor emissions of $NO_X$ and $SO_2$ as contributing 35% to the ambient $PM_{10}$ concentration. Consequently, major stationary sources of these precursors are required to comply with all control requirements of the $PM_{10}$ nonattainment area plan which apply to major stationary sources of $PM_{10}$ (i.e, RACT for moderate areas and NSR permitting control requirements).

As indicated above, EPA proposes to approve the State's submittal as meeting RACM (including RACT). EPA's proposed approval of RACT extends to those control requirements applicable to the major stationary sources of $PM_{10}$ precursors. Specifically, EPA proposes to find that the emission limits and restrictions on oil use are reasonable and approvable because they provide for timely attainment of the $PM_{10}$ NAAQS. Additionally, these measures will help ensure maintenance of the NAAQS.

On August 25, 1994, Colorado submitted NSR provisions for precursors in the Denver nonattainment area. EPA is acting on that SIP submittal in a separate notice. Further discussion of the data and analyses addressing the contribution of precursor sources in this area is contained in the TSD accompanying this document.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The $PM_{10}$ nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994 (see sections 171(1) and 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In considering the quantitative milestones and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the $PM_{10}$ NAAQS by December 31, 1994 (see section 171(1) of the Act). EPA is proposing to approve the $PM_{10}$ SIP for the Denver nonattainment area as demonstrating attainment by December 31, 1994. EPA is also proposing to approve the submittal as satisfying the initial quantitative milestone requirement[8] and proposes to find that the emissions reductions projected meet RFP.

Further, the State has demonstrated that continued maintenance of the standard will be achieved through implementation of the control measures found in the SIP. The State's roll-forward analysis indicated that the highest predicted concentration is 149.9 $\mu g/m^3$. Concentrations over 150 $\mu g/m^3$ violate the NAAQS.

The assurance that the initial milestone and reasonable further progress will be achieved is based upon the State implementing the particular control measures contained in the SIP which are addressed in section II. A. 3. ''RACM (including RACT)'' of this document. Consequently, EPA is approving these control measures as meeting RACM (including RACT) and thus is also proposing to approve the SIP as meeting the initial milestone and reasonable further progress requirements.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) signed by J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. In addition to the specific authority cited under descriptions of the control measures, the State's Attorney General has provided an opinion citing the authorities contained in the Colorado Air Pollution Prevention and Control Act which provide the State with the authority to enforce state air regulations against local entities, and enforce local air pollution requirements when local entities fail to do so. This is consistent with section 110(a)(2)(E) of the Act.

The Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the AQCC, as provided for in C.R.S. 25–7–111. In addition, C.R.S. 25–7–115 provides that the APCD shall enforce compliance with the emission control regulations of the AQCC, the requirements of the SIP, and the requirements of any permit. Civil penalties of up to $15,000 per day per violation are provided for in C.R.S. 25–7–122 for any person in violation of these requirements, and criminal penalties are provided for in C.R.S. 25–7–122.1. Thus, the APCD has adequate enforcement capabilities to ensure compliance with the Denver $PM_{10}$ SIP and the State-wide regulations.

The particular control measures contained in the SIP apply to the types of activities identified earlier and in the following discussion, including: residential wood burning; street sanding/sweeping; mobile sources; and reductions of emissions from stationary sources. As explained in the following discussion, the control measures are enforceable. Accordingly, EPA is proposing to approve the control measures. The TSD contains further information about enforceability requirements, including a discussion of the personnel and funding intended to support effective implementation of the control measures.

a. Residential Wood Burning Controls. 1. High Pollution Day Wood Burning Restrictions: Regulation No. 4 requires the APCD to implement and enforce wood burning restrictions in areas which did not have local enforceable ordinances before January 1, 1990. To ensure proper enforcement, the APCD contracts with local health departments to execute the enforcement provisions of the Regulation. In communities where local ordinances regulating wood burning were in place prior to January 1, 1990, the local government is responsible for enforcement of its ordinance, including issuing fines, penalties, warnings, and conducting inspections. (Local ordinances cover approximately 85% of the Denver metro area.) The State has authority to enforce local ordinances in place prior to January 1, 1990, if local governments fail to do so.

2. Clean Wood Burning Technology for New or Remodeled Construction: Beginning on January 1, 1993, state law

[8] The emissions reduction progress made prior to the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement (57 FR 13539). The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

requires that new or remodeled fireplaces in new or remodeled structures must be gas appliances, electric devices, or low emissions fireplace inserts meeting the EPA Phase II New Source Performance Standard (NSPS) or State adopted Phase III requirements. (EPA's Phase II and Colorado's Phase III requirements are equivalent.) Under the law, the fireplace restrictions must be adopted as building code revisions by each local government and be enforced through the normal code enforcement programs of each community. This requirement became effective on January 1, 1993.

3. Encourage Conversion of Existing Wood Burning Units to Cleaner Burning Technology: Legislation passed in 1992, required that the lead air quality planning organization (the Regional Air Quality Council) develop and implement a financial incentive program to provide subsidies toward the purchase of new cleaner technologies. Additionally, retailers must report the number of purchases of certified stoves or inserts, and gas or electric fireplaces to the Colorado Department of Revenue and submit a $1 fee for each certification of conversion. Under the program, the Department of Revenue is responsible for tracking conversions to cleaner technologies, reported by retailers, and reporting the status of the conversion program to the AQCC.

4. New Stove and Fireplace Insert Certification: State law prohibits the resale and/or installation of any uncertified wood burning device in the metro Denver area after January 1, 1993. The law is enforced through the building code provisions of the various local governments within the Denver area.

*b. Street Sanding and Cleaning Controls.* 1. Material Specifications for Street Sanding Material: Regulation No. 16 sets specifications for fines and durability of new and recycled sanding materials, and requires that sand providers and users conduct testing and report the quality of sanding materials and amounts used during the winter season to the APCD. The Regulation is enforced through authority provided to the State by statute.

2. Local Management Plans: Regulation No. 16 requires State and local agencies that apply street sand to develop and submit a plan for reducing their use of sand by 20% from 1989 base year levels. The agencies are required to adopt ordinances or resolutions to support the plans, to submit the plans by September 30, 1993, and to implement the plans by November 1, 1993. The agencies are also required to submit annual reports to the APCD documenting the reductions in sand use achieved through implementation of the plans. The Regulation is enforced through authority provided to the State by statute.

3. Further Enhancements to Street Sanding and Sweeping Practices in the Denver CBD and Central Denver Area: Regulation No. 16 also requires that the City and County of Denver reduce the amount of street sanding material applied to all regional arterials, principal arterials and main arterials within the Denver CBD by a total of 50 percent from 1989 base sanding amounts for these roadways. The revision also requires that the Colorado Department of Transportation (CDOT) increase its reduction in applied street sanding material from 20 percent to an equivalent 50 percent on state-maintained freeways and ramps within the Denver CBD. CDOT and the City/County are allowed to implement an alternative plan to achieve an equivalent reduction through increased sweeping and use of alternative deicers and/or sanding material, subject to review and approval by APCD. EPA will review and concur by letter on the alternative plans prior to APCD approval. EPA will not consider such plans valid absent EPA concurrence. The Regulation is enforced through authority provided to the State by statute.

*c. Mobile Source Emission Reduction Measures.* The SIP contains a variety of mobile source control measures included in the 1990 Clean Air Act Amendments in addition to the street sanding and sweeping controls. These mobile source measures include the new light-duty vehicle, light-duty truck $NO_X$ standards, urban bus particulate standards, and diesel fuel sulfur limitations. Particulate emission reductions are also incorporated for three existing State programs, the enhanced inspection and maintenance program, the diesel inspection and maintenance program, and the oxygenated fuels program (Regulations 11, 12 and 13). These programs were developed independently from the $PM_{10}$ SIP but are included because of their particulate matter reduction benefit. The Act-required programs are enforced by the federal government while the State regulations are enforced by the APCD.

The SIP also includes a number of transportation control measures to slow growth in vehicle miles traveled. These are not measures that were developed specifically for the SIP, but measures that are already planned or underway in the Denver area and accounted for in the mobile source modeling for the attainment year. These measures are assumed to be implemented by 1995 and have been included in the transportation modeling supporting the attainment and maintenance demonstrations. The Regional Transportation District (RTD) is implementing these measures through its Transit Development Plan which has been adopted by the RTD Board of Directors.

The measures for which the SIP takes credit within the transportation modeling include the MAC Light Rail Line and additional express bus service to the new Denver International Airport. Also, several programs aimed at attracting new ridership are being implemented. These new programs include the CommuterCheck program, ECOPass, and the CU Student Pass Program. Through the implementation of these and other marketing programs, transit ridership is expected to increase by 20% between 1989 and 1995. A complete description of the measures included in the SIP is found in section VIII of the SIP.

The Act requires that all federally funded transportation measures be included in a conforming Regional Transportation Plan and Transportation Improvement Program (TIP). Because the implementation of these measures must conform to the SIP, any changes to the federally funded measures included in the attainment demonstration must go through a conformity analysis before they can be implemented. The existing TIP has been found to conform with the SIP.

*d. Stationary Source Measures.* To control emissions from stationary sources, APCD enforces both permit limitations and regulations through authority provided under State statute. See the discussion under section II.D. contained in the TSD for more information on the permit and regulation revisions at stationary sources.

Rules and controls relating to woodburning, street sanding/cleaning, mobile sources, and stationary sources are in effect now. Colorado has a program that will ensure that the measures contained in the Denver $PM_{10}$ SIP are adequately enforced. EPA proposes to find that the air enforcement program is adequate. The TSD contains further information on enforceability responsibilities, requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures (see

generally 57 FR 13510–13512 and 13543–13544). These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the $PM_{10}$ NAAQS by the applicable statutory deadline. Colorado chose to submit the contingency measures separately from the $PM_{10}$ SIP requirements addressed in this document. The contingency measures for the Denver $PM_{10}$ nonattainment area were initially submitted by the Governor on December 9, 1993. However, those measures were later incorporated into the revised March 30, 1995 $PM_{10}$ SIP. Therefore, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA is taking action on the contingency measures SIP submittal in a separate rulemaking action.

*B. Denver $PM_{10}$ Emissions Budget*

On February 16, 1995, the AQCC adopted the Denver $PM_{10}$ mobile source emissions budget into the Colorado ''Ambient Air Quality Standards'' following a properly noticed public hearing. On July 18, 1995, the Governor submitted a SIP revising certain Chapters of the Denver $PM_{10}$ SIP submitted on March 30, 1995, to include the Denver $PM_{10}$ mobile source emissions budget.

The EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565 and EPA's completeness criteria for SIP submittals set out at 40 CFR Part 51, Appendix V). EPA did not make its completeness determination within six months of receiving the submission. Thus, the submittal was deemed complete by operation of law.

The Denver mobile source $PM_{10}$ emissions budgets are being used to assess the conformity of transportation plans, transportation improvements programs, and where appropriate, federally funded projects for the applicable periods indicated. The Denver $PM_{10}$ mobile source emissions budget was set for 1995 (41.2 tons/day), 1996–1997 (44 tons/day), 1998–2005 (54 tons/day) and 2006 and beyond (60 tons/day). (The State was able to demonstrate attainment and maintenance of the $PM_{10}$ standard using the 1995 and 1996–1997 $PM_{10}$ mobile source emissions budgets.) The State adopted the $PM_{10}$ revisions to the Ambient Air Standards Emissions Budget to make them state enforceable. EPA is proposing that the $PM_{10}$ emissions budgets are approvable. (See the TSD prepared for this action for more information.)

*C. Denver $NO_X$ Emissions Budget*

On April 22, 1996, the Governor submitted a SIP which contained an amendment to the Colorado ''Ambient Air Quality Standards.'' The amendment incorporated the $NO_X$ emissions budget for the Denver $PM_{10}$ nonattainment area and was adopted by the AQCC following a properly held public hearing on June 15, 1995.

EPA reviewed the documentation as provided in accordance with section 110(k)(1) and 57 FR 13565 and EPA's completeness criteria for SIP submittals set out at 40 CFR Part 51, Appendix V. EPA found the submittal complete, and advised the Governor of that finding in a letter on July 15, 1996.

The 1995 and beyond $NO_X$ budget of 119.4 tons per day was used in the March 30, 1995 $PM_{10}$ SIP. (The State was able to demonstrate attainment and maintenance of the $PM_{10}$ standard using the $NO_X$ mobile source emissions budget.) The State adopted the $NO_X$ revisions to the Ambient Air Quality Standards Emissions Budget to make it state enforceable. EPA is proposing that the $NO_X$ emissions budget is approvable. (See the TSD prepared for this action for more information.)

III. Proposed Action

EPA is proposing to approve the following: the revised Denver $PM_{10}$ SIP submitted by the Governor of Colorado on March 30, 1995; the Denver $PM_{10}$ mobile source emissions budget submitted by the Governor on July 18, 1995; and the Denver $NO_X$ mobile source emissions budget submitted by the Governor on April 22, 1996.

The EPA is requesting comments on all aspects of this proposal. As indicated elsewhere in this document, EPA will consider any comments received by December 2, 1996 on the appropriateness of the proposed approval action on the Denver $PM_{10}$ SIP, the Denver $PM_{10}$ mobile source emissions budget, and the Denver $NO_X$ mobile source emissions budget.

IV. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

VI. Unfunded Mandates

Under Section 202, of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has also determined that this proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-

existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result form this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 13, 1996.

Patricia D. Hull,

*Acting Regional Administrator.*

[FR Doc. 96–25230 Filed 10–2–96; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 52

**[PA091–4029b; FRL–5613–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Enhanced Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed interim rule.

**SUMMARY:** EPA is proposing a conditional interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York Counties. The intended effect of this action is to propose conditional interim approval of an I/M program proposed by the Commonwealth, based upon the Commonwealth's good faith estimate, which asserts that the Commonwealth's network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA. EPA is proposing a conditional approval because the Commonwealth's SIP revision is deficient with respect to the following requirements of the CAA and/or EPA's I/M program regulatory requirements: geographic coverage and program start dates, program evaluation, enhanced performance standard, test types, test procedures and emission standards, test equipment specifications and motorist compliance enforcement. If the Commonwealth commits within 30 days of this proposal to correct these deficiencies by a date certain within 1 year of the final interim ruling, and corrects the deficiencies by that date, then this interim approval shall expire pursuant to the NHSDA and section 110 of the CAA on the earlier of 18 months from final interim approval, or on the date of EPA action taking final full approval of this program. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If the Commonwealth does make a timely commitment but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA will notify the Commonwealth by letter that the conditions have not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA proposes that the Commonwealth's program must start by no later than November 15, 1997 in the five county Philadelphia and four county Pittsburgh areas and must start by no later than November 15, 1999 in the remaining 16 counties. EPA also proposes that if the Commonwealth fails to start its program as defined in this notice on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent by EPA to the Commonwealth. Elsewhere in today's Federal Register, EPA has published an interim final determination to defer sanctions until either this conditional interim approval is converted to a disapproval, the interim approval lapses, the full SIP is approved or the full SIP is disapproved.

**DATES:** Comments must be received on or before November 4, 1996.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone/CO Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn (215) 566–2176, at the EPA Region III address above or via e-mail at bunker.kelly@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:**

I. Background

*A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act*

The NHSDA establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require States to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with sections 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a State SIP revision, nor apply an automatic discount to a State SIP revision under sections 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50% credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a State's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for States to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA, continue to be required of those States submitting I/M SIP revisions under the NHSDA. The NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires States to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring States to submit these plans

within 120 days of the NHSDA passage, in allowing these States to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period), by providing expiration of interim approval after 18 months and requiring final approval to be based on evaluation of data collected during operation of the program, it is clear that Congress intended for States to begin testing vehicles as soon as practicable.

Submission criteria described under the NHSDA allows for a State to submit proposed regulations for this interim program, provided that the State has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, States are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the State need only establish that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a State's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate State agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

Furthermore, in taking action under section 110 of the CAA, it is appropriate to conditionally approve this submittal since there are some deficiencies with respect to CAA statutory and regulatory requirements (identified herein) that EPA believes must be and can be corrected by the State during the interim period.

*B. Interim Approvals Under the NHSDA*

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under the NHSDA. The NHSDA also directs EPA and the States to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the State in its good faith effort to reflect the emissions reductions actually measured by the State during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA by the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be by November 15, 1997 at the latest, so that at least 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a State's required areas. EPA proposes that if the State fails to start its program on this schedule, the conditional interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the State.

The program evaluation to be used by the State during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the State will conduct a long term, ongoing evaluation of the I/M program as required in 40 CFR 51.353 and 51.366.

*C. Process for Full Approvals of This Program Under the CAA*

As per the NHSDA requirements, this interim rulemaking will expire on the earlier of 18 months from the date of final interim approval, or the date of final full approval. A full approval of the State's final I/M SIP revision (which will include the State's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's full SIP revision will occur.

## II. EPA's Analysis of Pennsylvania's Submittal

On March 22, 1996, the Pennsylvania Department of Environmental Protection submitted a revision to its SIP for an enhanced I/M program to qualify under the NHSDA. The revision was supplemented on June 27, 1996 and July 29, 1996. The revision consists of enabling legislation that will allow the state to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and description of program features), and a good faith estimate that includes the Commonwealth's basis in fact for the emission reduction claim of the program. The Commonwealth's credit assumptions are based only on the application of the Commonwealth's own good faith estimate of the effectiveness of its decentralized test and repair program and do not consider the 50% credit discount for all portions of the program that are based on a test-and-repair network.

*A. Analysis of the NHSDA Submittal Criteria*

Transmittal Letter

On March 22, 1996, the Commonwealth of Pennsylvania submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA and the CAA of 1990. On June 27, 1996 and July 29, 1996 supplements to the March 22, 1996 SIP revision were officially submitted to EPA. The official submittal of the March 22, 1996 revision and the supplements were made by the appropriate Commonwealth official, James M. Seif, Secretary, Pennsylvania Department of Environmental Protection, and were addressed to the appropriate EPA official in the EPA Region III office.

Enabling Legislation

The Commonwealth of Pennsylvania has legislation at 75 Pa.C.S. § 4706 enabling the implementation of an enhanced I/M program.

Proposed Regulations

On March 16, 1996, the Commonwealth of Pennsylvania proposed regulations in accordance with 40 CFR Part 51 establishing an enhanced I/M program. The Commonwealth anticipates finalizing these regulations in early 1997.

Program Description

The Commonwealth's proposed program includes annual testing of 1975 and newer gasoline powered light-duty vehicles (LDGV) and light-duty trucks 1 & 2 (LDGT1 & LDGT2) up to 9,000 pounds gross vehicle weight rating (GVWR) in a test and repair network, utilizing: (1) one-mode Acceleration Simulation Mode (ASM) (ASM5015 or equivalent) emission testing and evaporative pressure and purge testing in the five county Philadelphia area and two speed idle emission testing in the remaining twenty counties, (2) visual inspection of the catalytic converter, fuel inlet restrictor, PCV and EGR on 1981 and newer vehicles in all twenty-five I/M counties and (3) mandatory technician training and certification (TTC) in all twenty-five counties. The Commonwealth proposes to demonstrate that the pre-existing sticker enforcement mechanism is more effective than registration denial. The Commonwealth will contract out the quality control, quality assurance, data collection, data analysis and reporting, inspector training and certification, public outreach and on-road testing portions of the program.

Emission Reduction Claim and Basis for the Claim

As stated in the March 22, 1996 SIP submittal and in the June 27, 1996 supplement, the Commonwealth has claimed 100% credit for their test and repair network which is permitted under the interim approval process of NHSDA. The Commonwealth has 18 months from the date of the final interim approval to demonstrate and prove their claim.

The Commonwealth's good faith estimate claims the additional credit through the following measures:

1. increased oversight through covert and overt audits;
2. additional on-road testing through remote sensing;
3. use of the State Police for more visible enforcement;
4. ability to collect and analyze data instantaneously so that swift enforcement action can be taken; and
5. improvements to automate data input activities that removes opportunity for inspector error or abuse.

*B. Analysis of the EPA I/M Regulation and CAA Requirements*

EPA summarizes the requirements of the I/M rule as found in 40 CFR 51.350–51.373 and its analysis of the Commonwealth's submittal below. A more detailed analysis of the Commonwealth's submittal is contained in a Technical Support Document (TSD) which is available from the Region III office, listed in the **ADDRESSES** section. Parties desiring additional details on the I/M rule are referred to 40 CFR 51.350–51.373.

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to the network design or test type intact. Based upon EPA's review of Pennsylvania's submittal, EPA believes the Commonwealth has not complied with all aspects of the CAA and the I/M Rule. For certain sections of the I/M Rule or of the CAA identified below with which the Commonwealth has not yet fully complied, EPA proposes to conditionally approve the SIP if it receives a commitment from the Commonwealth to correct said deficiency. Before EPA can continue with the interim rulemaking process, the Commonwealth must make a commitment within 30 days of [insert publication date] to correct these major SIP elements by a date certain within 1 year of EPA interim approval. If the Commonwealth does not make this commitment, EPA proposes in the alternative to disapprove the Pennsylvania submittal. In addition, the Commonwealth must correct these major deficiencies by the date specified in the commitment or this proposed interim approval will convert to a disapproval under CAA section 110(k)(4).

EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a *de minimis* impact on the Commonwealth's ability to meet clean air goals. Therefore, the Commonwealth need not commit to correct these deficiencies in the short term, and EPA will not impose conditions on interim approval with respect to these deficiencies. The Commonwealth must correct these deficiencies during the 18 month term of the interim approval, as part of the fully adopted rules that the Commonwealth will submit to support full approval of its I/M SIP. So long as the Commonwealth corrects these minor deficiencies prior to final action on the Commonwealth's full I/M SIP, EPA concludes that failure to correct the deficiencies in the short term is *de minimis* and will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

*Applicability—40 CFR 51.350*

Sections 182(c)(3) and 184(b)(1))(A) of the CAA and 40 CFR 51.350(a) require all states in the Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. Pennsylvania is part of the OTR and contains the following MSAs or parts thereof with a population of 100,000 or more: Allentown-Bethlehem, Altoona, Beaver, Erie, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Pittsburgh-Beaver Valley, Reading, Scranton-Wilkes-Barre, Sharon, State College, Williamsport, and York. The Philadelphia area is classified as a severe ozone nonattainment area and also required to implement an enhanced I/M program as per section 182(c)(3) of the CAA and 40 CFR 51.350(2).

Under the requirements of the CAA, the following 33 counties in Pennsylvania (in which the above listed MSAs are located) would be subject to the enhanced I/M program requirements: Adams, Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Carbon, Centre, Chester, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Monroe, Montgomery, Northampton, Perry, Philadelphia, Somerset, Washington, Westmoreland, Wyoming and York. However, under the federal I/M regulations, specifically 40 CFR 51.350(b), some rural counties having a population density of less than 200 persons per square mile based on the 1990 census can be excluded from program coverage provided that at least 50% of the MSA population is included in the program. The following eight counties in the Commonwealth qualify for the exemption discussed in 40 CFR 51.350(b) and are exempt from participation in the program: Adams, Carbon, Columbia, Fayette, Monroe, Perry, Somerset and Wyoming. Consequently, the I/M rule requires that the enhanced I/M program be implemented in 25 counties in the Commonwealth. The 25 counties are as follows: Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York.

The Pennsylvania I/M legislative authority (referred to as 75 Pa.C.S. § 4706 throughout the remainder of this notice) provides the legal authority to establish the geographic boundaries for the program. The program boundaries listed in an appendix to the SIP include the 25 counties listed above and meet the federal I/M requirements under 40 CFR 51.350. However, 75 Pa.C.S. § 4706 states ''this program shall be established

in all areas of this Commonwealth where the secretary certifies by publication in the *Pennsylvania Bulletin* that a system is required in order to comply with Federal law. Any area, counties, county or portion thereof certified to be in the program by the secretary must be mandated to be in the program by Federal law.'' 75 Pa.C.S. § 4706 requires ''at least 60 days prior to the implementation of any enhanced emission inspection program developed under this subsection, the Secretary of Transportation shall certify by notice in the *Pennsylvania Bulletin* that an enhanced emission inspection program will commence''. The Pennsylvania I/M proposed regulation, 67 Pa.Code § 177.22, states ''the enhanced I/M program, as described in this chapter, will commence on a date designated by the Secretary by notice in the *Pennsylvania Bulletin*. The notice will provide affected motorists with at least 60 days notice''. EPA, therefore, proposes to conditionally approve the Pennsylvania SIP based on receiving the Commonwealth's commitment to publish a notice in the *Pennsylvania Bulletin* by a date certain no later than September 15, 1997 which certifies the need for the I/M program and the geographic scope of the program. The geographic coverage certified in the notice must include the 25 counties listed above or EPA will consider the commitment not met and will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

The I/M rule requires that the state program shall not sunset until it is no longer necessary. EPA interprets the federal I/M rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Pennsylvania I/M regulation provides for the program to continue past the attainment dates for all applicable nonattainment areas in the Commonwealth and therefore meets the I/M rule for purposes of interim approval.

*Enhanced I/M Performance Standard—40 CFR 51.351*

In accordance with the CAA and the I/M rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Pennsylvania submittal the most current version was MOBILE5a. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxides ($NO_X$) and hydrocarbons (HC).

The five county Philadelphia area, which includes the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia, must meet the high enhanced I/M performance standard for HC and $NO_X$. The five county Philadelphia area does not qualify to use the low enhanced or the OTR low enhanced I/M performance standards. The program design parameters used in the modeling found in the SIP submittal demonstrate that the five county Philadelphia area does meet the high enhanced I/M performance standard. However, the proposed I/M regulations do not contain all the same program design parameters found in the modeling in the SIP submittal.

EPA established an alternate, low enhanced I/M performance standard to provide flexibility for nonattainment areas that are required to implement enhanced I/M but which can meet the 1990 Clean Air Act emission reduction requirements for Reasonable Further Progress and attainment from other sources without the stringency of the high enhanced I/M performance standard (60 FR 48029). The Pittsburgh area, which includes the counties of Allegheny, Beaver, Washington and Westmoreland, qualifies for the low enhanced I/M performance standard but does not qualify for the OTR low enhanced performance standard. The program design parameters used in the modeling found in the SIP submittal demonstrate that the four county Pittsburgh area does meet the low enhanced I/M performance standard. However, the proposed I/M regulations do not contain all of the same program design parameters found in the modeling in the SIP submittal.

The Commonwealth's program demonstrates compliance with the low enhanced performance standard established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15% reduction SIP. In fact, EPA approval of 15% plans has been delayed, and although EPA is preparing to take action on 15% plans in the near future, it is unlikely that EPA will have completed final action on most 15% plans prior to the time EPA believes it would be appropriate to give final interim approval to I/M programs under the NHSDA.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network designs. By providing that such programs must be submitted within a four month period, that EPA could approve I/M programs on an interim basis based only upon proposed regulations, and that such approvals would last only for an 18 month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

Many states have designed a program to meet the low enhanced performance standard, and have included that program in their 15% plan submitted to EPA for approval. Such states anticipated that EPA would propose approval both of the I/M programs and the 15% plans on a similar schedule, and thus that the I/M programs would qualify for approval under the low performance standard. EPA does not believe it would be consistent with the intent of the NHSDA to delay action on interim I/M approvals until the agency has completed action on the corresponding 15% plans. Although EPA acknowledges that under its regulations full final approval of a low enhanced I/M program after the 18 month evaluation period would have to await approval of the corresponding 15% plan, EPA believes that in light of the NHSDA it can take final interim approval of such I/M plans provided that the agency has determined as an initial matter that some type of approval of the 15% plan is appropriate, and has issued some type of proposed approval of that 15% plan.

The Commonwealth has submitted a 15% plan for the Pittsburgh area which includes the low enhanced I/M program. EPA is currently reviewing that program and plans to propose action on it shortly. EPA here proposes to approve the I/M program as satisfying the low enhanced performance standard

provided that EPA does propose some type of approval of the 15% plan containing that program. Should EPA propose approval of the 15% plan, EPA will proceed to take final interim conditional approval action on the I/M plan. EPA proposes in the alternative that if the agency proposes instead to disapprove the 15% plan, EPA would then disapprove the I/M plan as well because the state would no longer be eligible to select the low enhanced performance standard under the terms of 51.351(g).

EPA established an alternate, OTR low enhanced I/M performance standard, in order to provide OTR qualifying areas the flexibility to implement a broader range of I/M programs (61 FR 39039). This standard is designed for states in the OTR which are required to implement enhanced I/M in areas that are designated and classified as attainment, marginal ozone nonattainment or moderate ozone nonattainment with a population of under 200,000. The remaining areas of the Pennsylvania I/M program other than the five county Philadelphia and four county Pittsburgh areas qualify for the OTR low enhanced performance standard. The program design parameters used in the modeling found in the SIP submittal demonstrate that the remaining areas meet the requirements of the OTR low enhanced I/M performance standard. However, the proposed I/M regulations do not contain the same program design parameters found in the modeling in the SIP submittal.

The Pennsylvania submittal includes the following program design parameters:

*Network type*—decentralized, test and repair, modeled claiming 100% emission reduction credits.

*Start date*—1997 for the five county Philadelphia and the four county Pittsburgh areas and 1999 for the remaining areas.

*Test frequency*—annual.

*Model year/ vehicle type coverage*—1975 and newer gasoline powered LDGV, LDGT1 & LDGT2.

*Exhaust emission test type*—one-mode ASM (ASM5015 or equivalent) in five county Philadelphia area and BAR90 two speed idle test in the remaining twenty counties; the one-mode ASM testing was modeled utilizing the credit assigned for ASM2 testing.

*Emission standards*—ASM: 0.8 gpm HC, 20.0 gpm CO, 2.0 gpm $NO_X$; 2 speed idle: 220 ppm HC, 1.2% CO, 999 ppm $NO_X$.

*Emission control device*—visual inspection of the catalytic converter, fuel inlet restrictor, EGR and PCV on 1981 and newer vehicles in all 25 counties.

*Evaporative system function checks*—pressure and purge testing on 1981 and newer vehicles in five county Philadelphia area.

*Stringency (pre-1981 failure rate)*—20%.

*Waiver rate*—3% for all model years.

*Compliance rate*—96%.

*Evaluation dates*—July 1999, 2002 and 2005 for five county Philadelphia area and July 2000, 2003, 2006 and 2007 for twenty remaining counties.

Pennsylvania's modeling also included taking 100% credit for a mandatory technician training and certification (TTC) program in all twenty-five counties; however, Pennsylvania's proposed regulations does not provide for the TTC program.

Because the Pennsylvania proposed I/M regulations are not the same as the program design parameters in the modeling and the modeling takes credit for features not in the proposed regulation, EPA is proposing to find that the enhanced I/M performance standard requirements are satisfied based on the condition that the Commonwealth of Pennsylvania will submit to EPA within 12 months of the final interim ruling, the final Pennsylvania I/M regulations which reflect the program design parameters found in the modeling portion of the Pennsylvania I/M SIP. EPA, therefore, proposes to conditionally approve the Pennsylvania SIP based on receiving within 30 days the Commonwealth's commitment to submit to EPA by a date certain within nine months of the final interim ruling the final Pennsylvania I/M regulations which reflect the program design parameters found in the modeling portion of the Pennsylvania I/M SIP. If this condition is not met EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will meet the minimum enhanced I/M performance standard, expressed in gpm, for HC and $NO_X$ for each milestone and for the attainment deadline. The emission levels achieved by Pennsylvania were modeled using MOBILE5a. However, Pennsylvania utilized the two-mode ASM (ASM2) credit matrix in that model because a one-mode ASM (ASM1) credit matrix had not been released by EPA. Pennsylvania will be required to repeat the demonstration if EPA provides the appropriate one-mode ASM credit matrix as part of the MOBILE model.

In order to determine whether the Commonwealth's I/M program meets the performance standard, the Commonwealth needed to submit modeling of its program to reflect that it met the performance standard. Because of delayed program start up and program reconfiguration, the existing modeling used by the Commonwealth to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cut-points that do not reflect the current program configuration or start dates that the Commonwealth will actually implement. EPA believes, based on the available modeling, analysis of program elements in the SIP submittals and EPA's own extrapolation of expected emission reductions from the program, that the delayed program start up, as compared to that start up which was modeled by the Commonwealth, will not jeopardize the Commonwealth's ability to meet the performance standard. However, the Commonwealth must conduct new modeling using the actual program configuration to verify that the performance standard will in fact be met. For example, phase-in cutpoints corresponding to the test-type and correct program start up dates should be included in the new modeling.

The Commonwealth must conduct and submit the necessary new modeling and demonstration that the program will meet the performance standard within one year from final conditional interim approval. If the Commonwealth fails to submit this new modeling within one year, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the Commonwealth has failed to timely submit the modeling and demonstration of compliance with the performance standard.

In addition, the existing I/M rules require that the modeling demonstrate that the Commonwealth program has met the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to demonstrate compliance with the performance standard by that date as a result of delays in program start up and phase-in of testing requirements. EPA believes that based on the provisions of the NHSDA, the evaluation dates in the current I/M rule have been superceded. Congress provided in the NHSDA for state development of I/M programs that would start significantly later than the start dates in the current I/M rule.

Consistent with congressional intent, such programs by definition will not achieve full compliance with the performance standard by the beginning of 2000.

As explained above, EPA has concluded that the NHSDA superceded the start date requirements of the I/M rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be by November 15, 1997. Therefore, EPA believes that pursuant to the NHSDA, the initial evaluation date should be January 1, 2002. This evaluation date will allow states to fully implement their I/M programs and complete one cycle of testing at full cut points in order to demonstrate compliance with the performance standard.

*Network Type and Program Evaluation—40 CFR 51.353*

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the CAA and the I/M rule. The SIP must include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission transient test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

Both 75 Pa.C.S. § 4706 and the Commonwealth's proposed I/M regulation provide for a decentralized, test and repair network. The Commonwealth has claimed 100% effectiveness for its test and repair network.

In its SIP, the Commonwealth has committed to conducting one-mode ASM (ASM5015 or equivalent) or BAR90 2 speed idle testing in order to evaluate the program under the long term program demonstration. This does not comply with the evaluation protocol set by EPA in 40 CFR 51.353(c). The Environmental Council of States (ECOS) has formed a committee to develop an evaluation protocol to be used by states in order to evaluate program effectiveness. ECOS has agreed that the states must follow the long term program evaluation found in 40 CFR 51.353. 40 CFR 51.353 requires mass emission transient testing (METT) be performed on 0.1% of the subject fleet each year. The submittal also fails to commit to the other program evaluation elements as specified in 40 CFR 51.353(b)(1) and (c).

EPA, therefore, proposes to conditionally approve the Pennsylvania SIP based on receiving the Commonwealth's commitment within 30 days to submit to EPA by a date certain within nine months of the final interim ruling, the final Pennsylvania I/M regulation which requires METT be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353 (c)(3) and meets the program evaluation elements as specified in 40 CFR 51.353(b)(1) and (c). If this condition is not met EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

*Adequate Tools and Resources—40 CFR 51.354*

The I/M rule requires the Commonwealth to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from a state or local general fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

According to Pennsylvania, the Pennsylvania State Constitution currently prohibits monies received from test fees or any other fees received to be deposited in a proprietary account. The Pennsylvania Department of Transportation (PADOT), which implements the I/M program, has no means to fund the I/M program and must rely on future uncommitted annual appropriations from the General Assembly. The I/M rules allow for this funding method if, as in Pennsylvania, doing otherwise would be a violation of the State Constitution. The submittal demonstrates that sufficient funds have been currently appropriated to meet program operation requirements.

The SIP fails to detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions, because a majority of these functions will be performed by a contractor and the Commonwealth has not released the request for proposals to address these program areas. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

Thus, the Commonwealth's submittal meets the adequate tools and resources requirements of the I/M rule for purposes of interim approval.

*Test Frequency and Convenience—40 CFR 51.355*

The enhanced I/M performance standard in the I/M rule assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP must describe the test year selection scheme, how the test frequency is integrated into the enforcement process and must include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program must be designed to provide convenient service to the motorist and regular testing hours.

Pennsylvania's proposed enhanced I/M regulation provides for an annual test frequency. The Commonwealth has submitted modeling that demonstrates that the performance standard is met using the annual test frequency. 75 Pa.C.S. § 4706 and the Commonwealth's proposed I/M regulation provide the legal authority to implement and enforce the annual test frequency. The Pennsylvania submittal meets the test frequency and convenience requirements of the I/M rules for purposes of interim approval.

*Vehicle Coverage—40 CFR 51.356*

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved.

Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities if such alternatives are approved by the program administration, but shall be

subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the State, according to the requirements of 40 CFR § 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the State or local I/M area.

The I/M rule requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The Pennsylvania enhanced I/M program requires coverage of all 1975 and newer gasoline powered LDGV, LDGT1 and LDGT2 up to 9,000 pounds GVWR which are registered or required to be registered in the I/M program area. As of the date of the SIP submittal, 5.9 million vehicles will be subject to enhanced I/M testing. The Commonwealth's regulation does not currently include vehicles operating on all fuel types but Pennsylvania commits to adding the required testing of these vehicles once EPA promulgates regulations on alternative fueled vehicle I/M testing. 75 Pa.

C.S. § 4706 and the proposed Pennsylvania I/M regulation provide the legal authority to implement and enforce the vehicle coverage. This level of coverage is currently approvable because it provides the necessary emission reductions to meet the performance standard.

Pennsylvania's program provides that fleets with 15 or more vehicles can be inspected at a certified fleet inspection station. The Commonwealth's plan for testing fleet vehicles requires the vehicles to be subject to the same test requirements using the same quality control standards as non-fleet vehicles, according to the requirements of 40 CFR § 51.353(a). The fleet program is acceptable and meets the requirements of the I/M rule. The Commonwealth's regulation requires vehicles which are operated on Federal installations located within an I/M program area to be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The Commonwealth's regulation provides for no special exemptions for vehicle coverage.

The definition of light duty truck in the definitions section of Pennsylvania's proposed I/M regulation does not provide for coverage up to 9,000 pounds GVWR and conflicts with the modeling parameters found in the SIP. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

Thus, the Pennsylvania submittal meets the vehicle coverage requirements of the I/M rule for purposes of interim approval.

*Test Procedures and Standards—40 CFR § 51.357*

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR § 51.357 and in the EPA documents entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994 and ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–RSPD–IM–96–2, dated July 1996. The I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of 40 CFR 51.357(d).

Pennsylvania has proposed an one-mode ASM (ASM5015 or equivalent) exhaust testing with evaporative system pressure and purge testing in the five county Philadelphia area. Pennsylvania is considering opting for the two-mode ASM test instead of the one-mode ASM test. Pennsylvania has been working with other states and the equipment manufacturers, in coordination with EPA, to develop their own procedures, specifications and standards for one and two-mode ASM testing. It is anticipated that these test procedures, specifications and standards will be released in late August 1996. Two speed idle exhaust testing will be required in the remaining 20 counties. A visual emission control inspection for the presence of the catalytic converter, fuel inlet restrictor, PCV and EGR valve on 1981 and newer model year vehicles will be required in all 25 counties.

The Commonwealth's proposed regulation does not include a description of a test procedure which is acceptable to both the Commonwealth and EPA for two speed idle and one-mode ASM testing, for evaporative system pressure and purge testing and for a visual emission control device inspection. The Commonwealth's proposed regulation does not establish HC, CO, and $CO_2$ pass/fail exhaust standards for the two speed idle test procedure and one-mode ASM test procedure. The Commonwealth regulation does not establish evaporative purge and pressure test standards which conform to EPA established standards. The final Pennsylvania I/M regulation must include the test procedures and emission standards for these items. The July 29, 1996 supplement submitted by Pennsylvania provides a commitment to include the test procedures for the 2 speed idle test and the one-mode ASM (ASM5015 or equivalent) in the final regulation; however, the Commonwealth fails to commit to test procedures for evaporative system pressure and purge tests and visual emission control device inspections.

Pennsylvania's proposed regulation does not provide phase-in emission standards for one-mode ASM testing or two speed idle testing. EPA anticipates that the Commonwealth will provide for phase-in emission standards in the final state regulation. The final emission standards must be implemented at the beginning of the second test cycle so that the Commonwealth can obtain the full emission reduction program credit prior to the first program evaluation date. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Commonwealth's regulation also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles.

EPA must receive the test procedures, specifications and standards before EPA can go forward with a final interim ruling. In light of the anticipated release of these test procedures, specifications and standards in late August 1996, the Commonwealth must submit the procedures, specifications and standards to EPA within 30 days of the proposed interim ruling.

If, within 30 days of the proposed interim ruling, the Commonwealth of Pennsylvania submits to EPA test procedures and standards for one-mode ASM (or two-mode ASM if the Commonwealth opts for two-mode ASM) and two speed idle testing which are acceptable to EPA, then EPA proposes to conditionally approve the Pennsylvania SIP based on receiving within 30 days of this proposed rule the

Commonwealth's commitment to submit to EPA by a date certain within twelve months of the final interim ruling, the final Pennsylvania I/M regulation which includes test procedures and emission standards which are acceptable to both the Commonwealth and EPA for the two speed idle test, one-mode ASM test (or two-mode ASM test), evaporative system purge and pressure tests and the visual emission control device inspection (referred to collectively in the remainder of this section of the notice as ''test procedures and standards''). If within 30 days of the proposed interim ruling the submittal requirement is not met or the state fails to commit within 30 days to submit final regulations which incorporate the ''test procedures and emission standards'' which are acceptable to both the Commonwealth and EPA by a date certain within twelve months from the final interim ruling then this notice proposes in the alternative to disapprove the Pennsylvania I/M SIP. If the condition to submit the final regulations which incorporate the ''test procedures and emission standards'' which are acceptable to both the Commonwealth and EPA is not met by a date certain within twelve months from the final interim ruling EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

*Test Equipment—40 CFR § 51.358*

Computerized test systems are required for performing any measurement on subject vehicles. The I/M rule requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Commonwealth's submittal contains the written technical specifications for the two speed idle test equipment but does not contain equipment specifications for the one-mode ASM (ASM5015 or equivalent) and the pressure and purge test equipment. Pennsylvania has been working with other States and the equipment manufacturers, in coordination with EPA, to develop their own procedures, equipment specifications and standards for one and two-mode ASM testing. It is anticipated that these test procedures, equipment specifications and standards will be released in late August 1996.

Pennsylvania must submit ASM equipment specifications once they have been established. The proposed regulation does require the use of computerized test systems.

EPA must receive the test procedures, equipment specifications and standards before EPA can go forward with a final interim ruling. In light of the anticipated release of these test procedures, equipment specifications and standards in late August 1996, the Commonwealth must submit the procedures, equipment specifications and standards to EPA within 30 days of the proposed interim ruling.

If, within 30 days of the proposed interim ruling, the Commonwealth of Pennsylvania submits to EPA equipment specifications for one-mode ASM (or two-mode ASM if the Commonwealth opts for two-mode ASM) testing which are acceptable to EPA, then EPA proposes to conditionally approve the Pennsylvania SIP based on receiving within 30 days of this proposed rule the Commonwealth's commitment to submit to EPA by a date certain within twelve months of the final interim ruling, the final Pennsylvania I/M regulation which includes test equipment specifications which are acceptable to both the Commonwealth and EPA for the one-mode ASM test (or two-mode ASM test) and evaporative system purge and pressure tests. If within 30 days of the proposed interim ruling the submittal requirement is not met or the state fails to commit within 30 days to submit final regulations which incorporate the equipment specifications which are acceptable to both the Commonwealth and EPA for the one-mode ASM test (or two-mode ASM test) and evaporative system purge and pressure tests by a date certain within twelve months from the final interim ruling then this notice proposes in the alternative to disapprove the Pennsylvania I/M SIP. If the condition to submit the final regulations which incorporate the equipment specifications which are acceptable to both the Commonwealth and EPA for the one-mode ASM test (or two-mode ASM test) and evaporative system purge and pressure tests is not met by a date certain within nine months from the final interim ruling, EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

The proposed Pennsylvania regulation requires a data link system between the Commonwealth and each emission station; however it is not a real time data link. A real time data link is required as per 40 CFR § 51.358(b)(2). This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

*Quality Control—40 CFR § 51.359*

Quality control measures must insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The Commonwealth's proposed regulation and the SIP submittal contain information which describe and establish quality control measures for all the emission measurement equipment except for one-mode ASM (or two-mode ASM if the Commonwealth opts for it). Recordkeeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements are included in the submittal. The Commonwealth intends to contract with a private vendor who will develop and implement, consistent with the proposed state regulations, the quality control requirements. The failure to provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it) is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Commonwealth's submittal meets the quality control requirements of the I/M rule for purposes of interim approval.

*Waivers and Compliance Via Diagnostic Inspection—40 CFR § 51.360*

The I/M rule allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The I/M rule allows for compliance via a diagnostic inspection after failing a retest on

emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

75 Pa.C.S. § 4706 and the Pennsylvania proposed I/M regulation provide the necessary authority to issue waivers, set and adjust cost limits, administer and enforce the waiver system, and set a $450 cost limit and allow for an annual adjustment of the cost limit to reflect the change in the CPI as compared to the CPI in 1989. The Pennsylvania proposed I/M regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration.

The Commonwealth has set a 3% maximum waiver rate, as a percentage of failed vehicles, for both pre-1981 and 1981 and later vehicles. The Commonwealth has committed to, as per 40 CFR § 51.360, corrective actions to be taken if the waiver rate exceeds 3%. This waiver rate has been used in the performance standard modeling demonstration.

The Commonwealth's proposed regulation allows emission inspection stations to issue waivers. The I/M rule, 40 CFR § 51.360(c)(1), only allows the State or a single contractor to issue waivers. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the waiver requirements of the I/M rule for purposes of interim approval.

*Motorist Compliance Enforcements—40 CFR § 51.361*

The I/M rule requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has been more effective than registration denial. Currently the I/M rule does not provide this alternative for newly implementing enhanced areas, including newly subject areas in a state with an I/M program in another part of the state. In a separate action expected to be taken shortly, EPA intends to take direct final action to amend 40 CFR § 51.361 to allow in the alternative, the use of more effective pre-existing motorist compliance enforcement mechanism anywhere within a State. EPA proposes to approve Pennsylvania's use of sticker enforcement throughout the state, based on the state's demonstration of effectiveness described below, provided that EPA takes final action on this amendment prior to final approval of the Pennsylvania program.

In addition, the SIP must provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Commonwealth proposes to use their pre-existing sticker enforcement mechanism in all 25 counties. The Commonwealth proposes to demonstrate that its existing sticker enforcement program is more effective than registration denial. Pennsylvania's proposed I/M regulation provides the legal authority to implement a sticker enforcement system. The Pennsylvania SIP commits to a compliance rate of 96% which was used in the performance standard modeling demonstration. EPA proposes to conditionally approve the Pennsylvania SIP based on receiving within 30 days from this notice a commitment from the Commonwealth to submit by a date certain no later than November 15, 1997, a demonstration that meets the requirements of 40 CFR § 51.361(b) (1) and (2) and demonstrates that the Pennsylvania's existing sticker enforcement system is more effective than registration denial enforcement. The demonstration must be received by EPA no later than November 15, 1997 because November 15, 1997 is the date by which the Pennsylvania enhanced I/M program must begin testing and EPA believes that the demonstration must be complete and submitted to EPA by the time testing is required to begin.

*Motorist Compliance Enforcement Program Oversight—40 CFR § 51.362*

The I/M rule requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Pennsylvania SIP contains a commitment to contract with a private vendor which will develop a manual which addresses the quality assurance, quality control and information management of the motorist compliance enforcement oversight program. The submittal does not include the request for proposals (RFP) that adequately addresses how the private vendor will comply with the motorist compliance enforcement program oversight requirements. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

*Quality Assurance—40 CFR § 51.363*

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Pennsylvania submittal contains a commitment to contract with a private vendor who will be charged with developing a quality assurance program that meets all requirements of 40 CFR 51.363.

Performance audits of inspectors will consist of both covert and overt audits.

The submittal does not include a RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, does not include a procedures manual which adequately addresses the quality assurance program and does not require annual auditing of the quality assurance auditors as per 40 CFR 51.363(d)(2). These are minor deficiencies and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the quality assurance requirements of the I/M rule for purposes of interim approval.

*Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*

Enforcement against licensed stations, contractors and inspectors must include swift, sure, effective, and consistent penalties for violation of program requirements. The I/M rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP.

State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Pennsylvania submittal includes the legal authority to establish and impose penalties against stations and inspectors. The penalty schedules for inspectors and stations which are found in the Commonwealth's proposed regulation meet the I/M rule requirements and are approvable. The Commonwealth's July 27, 1996 supplement to the SIP revision states that the Commonwealth auditor has the authority to temporarily suspend station and inspector licenses or certificates immediately upon finding a violation. The submittal includes descriptions of administrative and judicial procedures relevant to the enforcement process which meet the I/M rule and are approvable.

The SIP does not include provisions to maintain and submit to EPA records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the enforcement against contractors, stations and inspectors requirements of the I/M rule for purposes of interim approval.

*Data Collection—40 CFR 51.365*

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The I/M rule requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The submittal states that the Commonwealth's data collection will be implemented by a private vendor and will be in accordance with 40 CFR §§ 51.365 and 51.366. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR § 51.359. The submittal does not include a RFP that adequately addresses how the private vendor will comply with 40 CFR §§ 51.365 and 51.366. This is a minor deficiency which must be corrected by submitting the portion of the RFP which adequately addresses data collection as part of the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the data collection requirements of the I/M rule for purposes of interim approval.

*Data Analysis and Reporting—40 CFR § 51.366*

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The I/M rule requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period of January to December of the previous year. In addition, a biennial report must be submitted to EPA which adequately addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Pennsylvania I/M SIP states that data analysis and reporting will be implemented by a private vendor and provides a commitment that the reports submitted to EPA will provide summary data and other information as required under 40 CFR § 51.366. The Commonwealth commits to submit annual reports on test data, quality assurance and quality control to EPA by July of the subsequent year. A commitment to submit a biennial report to EPA which adequately addresses reporting requirements set forth in 40 CFR § 51.366(e) is also included in the SIP.

The submittal does not include an RFP that adequately addresses how the private vendor will comply with 40 CFR § 51.366. This is a minor deficiency which must be corrected by submitting the portion of the RFP which adequately addresses data analysis and reporting as part of the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the data analysis and reporting requirements of the I/M rule for purposes of interim approval.

*Inspector Training and Licensing or Certification—40 CFR § 51.367*

The I/M rule requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Pennsylvania I/M regulation requires all inspectors to receive formal training, be certified by the PADOT and renew the certification every two years. The Commonwealth will hire a private vendor to implement the inspector training and certification program. The Commonwealth's proposed I/M regulation includes a description of the information covered in the training program, a requirement for both written and hands-on testing and a description of the certification process. However, the SIP fails to include requirements that the inspectors are to complete a refresher training course or pass a comprehensive skill examination prior to being recertified and does not include a commitment that the Commonwealth will monitor and evaluate the inspector training program delivery. These are minor deficiencies and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the inspector training and licensing or certification requirements of the I/M rule for purposes of interim approval.

*Public Information and Consumer Protection—40 CFR § 51.368*

The I/M rule requires the SIP to include public information and consumer protection programs.

The Commonwealth will hire a private vendor to implement the public information program which educates the public on I/M, state and federal I/M rules, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the I/M rule. The submittal does not include an RFP that adequately addresses how the private vendor will comply with the public information requirements of 40 CFR § 51.368. This is a minor deficiency which must be corrected by submitting the portion of the RFP which adequately addresses the public information program as part of the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the public information and consumer protection requirements of the I/M rule for purposes of interim approval.

*Improving Repair Effectiveness—40 CFR § 51.369*

Effective repairs are the key to achieving program goals. The I/M rule requires states to take steps to ensure

that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the I/M rule, and a description of the repair technician training resources available in the community.

The Pennsylvania SIP requires the implementation of a technical assistance program. The Commonwealth will hire a private vendor to implement a technician hotline service. The Commonwealth will periodically inform the repair facilities of changes in the program, training courses, and common repair problems. The Commonwealth's proposed regulation provides for the establishment and implementation of a repair technician training program which, at a minimum, covers the four types of training described in 40 CFR 51.369(c).

The SIP does not include provisions that meet the requirements of 40 CFR 51.368(a) and 51.369(b) for a repair facility performance monitoring program plan and for providing the motorist with diagnostic information based on the particular portions of the test that failed. These are minor deficiencies and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the improving repair effectiveness requirements of I/M rule for purposes of interim approval.

*Compliance with Recall Notices—40 CFR 51.370*

The I/M rule requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

75 Pa.C.S. § 4706 and the Commonwealth's proposed I/M regulation provide the legal authority to require owners to comply with emission related recalls before completing the emission test. The SIP includes procedures to be used to incorporate national database recall information into either the data collection contractors database or directly to the emission inspection station. The submittal includes a commitment to submit an annual report to EPA which includes the recall related information as required in 40 CFR 51.370(c).

The Pennsylvania submittal meets the recall compliance requirements of the I/M rule for purposes of interim approval.

*On-road Testing—40 CFR 51.371*

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the I/M rule. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in 75 Pa.C.S. § 4706 and the Commonwealth's proposed I/M regulation. The SIP submittal requires the use of RSD or systematic roadside checks to test 20,000 vehicles per year in the I/M program area and will be implemented by a private vendor. A description of the program which includes test limits and criteria is found in the SIP.

The submittal does not contain sufficient information on resource allocations, methods of analyzing and reporting the results of the testing and information on staffing requirements for both the Commonwealth and the private vendor. These are minor deficiencies and must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period.

The Pennsylvania submittal meets the on-road testing requirements of the I/M rule for purposes of interim approval.

*State Implementation Plan Submissions/Implementation Deadlines—40 CFR §§ 51.372–373*

The Pennsylvania submittal included the Commonwealth's proposed I/M regulations, legislative authority to implement the program, a modeling demonstration showing that the program design meets the performance standard, evidence of adequate funding and resources to implement the program, and a discussion of each of the required program design elements.

75 Pa.C.S. § 4706 provides the legal authority to implement the program. However, 75 Pa.C.S. § 4706 states ''this program shall be established in all areas of this Commonwealth where the secretary certifies by publication in the *Pennsylvania Bulletin* that a system is required in order to comply with Federal law. Any area, counties, county or portion thereof certified to be in the program by the secretary must be mandated to be in the program by Federal law.'' 75 Pa.C.S. § 4706 requires ''at least 60 days prior to the implementation of any enhanced emission inspection program developed under this subsection, the Secretary of Transportation shall certify by notice in the *Pennsylvania Bulletin* that an enhanced emission inspection program will commence''. The Pennsylvania I/M proposed regulation, 67 Pa. Code § 177.22, states ''the enhanced I/M program, as described in this chapter, will commence on a date designated by the Secretary by notice in the *Pennsylvania Bulletin*. The notice will provide affected motorists with at least 60 days notice''. EPA, therefore, proposes to conditionally approve the Pennsylvania SIP based on receiving from the Commonwealth within 30 days of this notice a commitment to publish a notice in the *Pennsylvania Bulletin* by a date certain no later than September 15, 1997 certifying the start date for the I/M program so that the program for the five county Philadelphia and four county Pittsburgh areas can start no later than November 15, 1997 and so that the remaining 16 counties can start no later than November 15, 1999. If the Commonwealth does not meet the commitment, EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

## III. Discussion of Rulemaking Action

Today's notice of proposed rulemaking begins a 30 day clock for the Commonwealth to make a commitment to EPA to correct the major elements of the SIP that EPA considers deficient, by a date certain, within 1 year of interim approval. These elements are: geographic coverage and program start dates, program evaluation, enhanced performance standard, test types, test procedures and emission standards, test equipment specifications and motorist compliance enforcement. If the Commonwealth does not make such commitments within 30 days, EPA today is proposing in the alternative that this SIP revision be disapproved.

In an April 13, 1995 letter EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced I/M SIP revision had been converted to a disapproval (60 FR 47084). The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. This 18-month sanction clock will expire on October 13, 1996 at which time 2:1 stationary sources offsets would be automatically imposed. In the Final Rules section of

today's Federal Register, 61 FR 51598, EPA has published an interim final determination to defer sanctions based on the determination that Pennsylvania has cured the SIP deficiency triggering the clock for the duration of EPA's rulemaking process on the I/M SIP revision. This interim determination will not stop the sanctions clock but will defer the implementation of sanctions until either the conditional interim approval is converted to a disapproval, the interim approval lapses, the full SIP is approved or the full SIP is disapproved.

If the Commonwealth makes the required commitments within 30 days, EPA's conditional approval of the plan will last until the date by which the Commonwealth has committed to cure all of the deficiencies. EPA expects that within this period the Commonwealth will not only correct the deficiencies as committed to by the Commonwealth, but that the Commonwealth will also begin program start-up no later than November 15, 1997 in the five county Philadelphia and four county Pittsburgh areas. If the Commonwealth does not correct deficiencies and implement the interim program in said areas by no later than November 15, 1997, EPA is proposing in this notice that the interim approval will convert to a disapproval upon a finding letter being sent by EPA to the Commonwealth.

## IV. Explanation of the Interim Approval

At the end of the 18 month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the Commonwealth will make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that the Pennsylvania I/M program will have started by no later than November 15, 1997, the Commonwealth will have approximately 6 months of program data that can be used for the demonstration. If the Commonwealth fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the Commonwealth's permanent I/M SIP revision. If the Commonwealth's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the Commonwealth's previous submittal, EPA will adjust the Commonwealth's credits accordingly, and use this information to act on the Commonwealth's permanent I/M program.

## V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final approval of the Commonwealth's plan will be granted based upon the following criteria:

1. The Commonwealth has complied with all the conditions of its commitment to EPA,
2. EPA's review of the Commonwealth's program evaluation confirms that the appropriate amount of program credit was claimed by the Commonwealth and achieved with the interim program,
3. Final program regulations are submitted to EPA, and
4. The Commonwealth's I/M program meets all of the requirements of EPA's I/M rule, including those deficiencies identified herein as minor for purposes of interim approval.

## VI. EPA's Evaluation of the Interim Submittal

EPA's review of the Commonwealth's submittal indicates that with satisfaction of the conditions described above, the Commonwealth will have adopted an enhanced I/M program in accordance with the requirements of the NHSDA. EPA is proposing conditional interim approval of the Pennsylvania SIP revision for an enhanced I/M program and the supplements to that revision submitted on June 27, 1996 and July 29, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final interim action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

## Proposed Action

EPA is proposing conditional interim approval of this revision to the Pennsylvania SIP for an enhanced I/M program if a commitment is received from the Commonwealth within 30 days of the date of this proposal, to correct the identified deficiencies by a date certain within one year from the date of the final interim approval. The conditions for approvability are as follows:

(1) By no later than September 15, 1997, a notice must be published in the *Pennsylvania Bulletin* by the Secretary of the Department of Transportation which certifies that the enhanced I/M program is required in order to comply with federal law, certifies the geographic areas which are subject to the enhanced I/M program (the geographic coverage must be identical to that listed in Appendix A–1 of the March 22, 1996 SIP submittal), and certifies the commencement date of the enhanced I/M program. The commencement date for the five county Philadelphia and four county Pittsburgh areas must be no later than November 15, 1997 and the commencement date for the remaining 16 counties must be no later than November 15, 1999;

(2) The Commonwealth must submit to EPA as a SIP amendment by a date certain within twelve months of the final interim ruling, the final Pennsylvania I/M regulation which requires METT be performed on 0.1% of the subject fleet each year as per 40 CFR § 51.353(c)(3) and meets the program evaluation elements as specified in 40 CFR § 51.353(b)(1) & (c);

(3) By a date certain no later than November 15, 1997, the Commonwealth must submit a demonstration to EPA as an amendment to the SIP that meets the requirements of 40 CFR § 51.361(b)(1) & (2) and demonstrates that Pennsylvania's existing sticker enforcement system is more effective than registration denial enforcement;

(4) If, within 30 days of the proposed interim ruling, the Commonwealth of Pennsylvania submits to EPA test procedures, specifications and standards for one-mode ASM (or two-mode ASM if the Commonwealth opts for two-mode ASM) and two speed idle testing which are acceptable to EPA, then EPA proposes to conditionally approve the Pennsylvania SIP if the Commonwealth adopts and submits to EPA as a SIP amendment by a date certain within twelve months of the final interim ruling, the final Pennsylvania I/M regulation which requires and specifies (and reflects the modeling assumptions found in the March 22, 1996 submittal and July 29, 1996 supplement) the following: exhaust & evaporative test types and procedures which are acceptable to both the Commonwealth and EPA, visual inspection for presence and tampering of emission control devices, equipment specifications which are acceptable to both the Commonwealth and EPA, emission standards for both exhaust and evaporative testing which are acceptable to both the Commonwealth and EPA, and a technician training and certification (TTC) program.

(5) The Commonwealth must perform and submit the necessary new modeling and demonstration that the program will meet the performance standard, within one year from final conditional interim approval. If the Commonwealth fails to

submit this new modeling within one year, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the Commonwealth has failed to submit, timely, the modeling and demonstration of compliance with the performance standard.

The following minor deficiencies must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period:

(1) Detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions as per 40 CFR § 51.354;

(2) The definition of light duty truck in the definitions section of the Pennsylvania I/M regulation must provide for coverage up to 9,000 pounds GVWR;

(3) The Pennsylvania I/M regulation must require implementation of the final full stringency emission standards at the beginning of the second test cycle so that the state can obtain the full emission reduction program credit prior to the first program evaluation date;

(4) The Pennsylvania I/M regulation must require a real time data link between the state or contractor and each emission inspection station as per 40 CFR 51.358(b)(2);

(5) Provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it);

(6) The Pennsylvania I/M regulation must only allow the Commonwealth or a single contractor to issue waivers as per 40 CFR 51.360(c)(1);

(7) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with the motorist compliance enforcement program oversight requirements as per 40 CFR 51.362;

(8) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, a procedures manual which adequately addresses the quality assurance program and a requirement that annual auditing of the quality assurance auditors will occur as per 40 CFR 51.363(d)(2);

(9) The final I/M SIP submittal must include provisions to maintain and submit to EPA records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations as per 40 CFR 51.364;

(10) The final I/M SIP submittal must include a RFP that adequately addresses how the private vendor will comply with 40 CFR 51.365 and 51.366;

(11) The Pennsylvania regulation must require that the inspectors complete a refresher training course or pass a comprehensive skill examination prior to being recertified and the final SIP revisions must include a commitment that the Commonwealth will monitor and evaluate the inspector training program delivery as per 40 CFR 51.367;

(12) The final I/M SIP submittal must include a RFP that adequately addresses how the private vendor will comply with the public information requirements of 40 CFR 51.368;

(13) The Pennsylvania I/M regulation must include provisions that meet the requirements of 40 CFR 51.368(a)and 51.369(b) for a repair facility performance monitoring program plan and for providing the motorist with diagnostic information based on the particular portions of the test that were failed; and

(14) The final I/M SIP submittal must contain sufficient information to adequately address the on-road test program resource allocations, methods of analyzing and reporting the results of the on-road testing and information on staffing requirements for both the Commonwealth and the private vendor for the on-road testing program.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Pennsylvania enhanced I/M SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Section 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 1996.

William T. Wisniewski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96–25398 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[TX55–1–6879; FRL–5611–6]**

## Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed interim rule.

**SUMMARY:** The EPA is proposing a conditional interim approval of an I/M program proposed by the State, based upon the State's good faith estimate of emission reductions indicating that the State's network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (the Act). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Act. The EPA is proposing a conditional approval because the State's SIP revision is lacking legislative authority needed to implement certain elements of the program.

If the State corrects these deficiencies within 1 year of the final interim ruling, then this interim approval shall expire on the earlier of 18-months from final interim approval, or on the date of EPA action taking final full approval of this program. If the conditions are not met within 1 year, EPA proposes in the alternative to disapprove the SIP revision. The EPA will notify the State by letter that the conditions have not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA proposes that the State's program must start no later than November 15, 1997 in all I/M program areas. The EPA also proposes that if the State fails to start its program as defined in this document, the approval granted under the provisions of the NHSDA will convert to a disapproval. The EPA will notify the State by letter that the approval has converted to a disapproval for failure to start the program according to the schedule.

The EPA is also proposing removal of the previously approved I/M program from the SIP which was approved on August 22, 1994.

**DATES:** Comments must be received on or before November 4, 1996.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Davis, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

**SUPPLEMENTARY INFORMATION:**

I. Background

*A. Previous State Submittal Under the 1990 Act*

On November 12, 1993, and in several later submittals, the State of Texas made its submission of an I/M program which met the requirements of the Act and Federal I/M rule promulgated on November 5, 1992. This program was given final approval by EPA in a Federal Register notice dated August 22, 1994 (59 FR 43046–43048). The program was designed to be a test-only testing program with most vehicles receiving an I/M loaded mode transient emission test known as the IM240. The program was designed, developed and began operation in January 1995 before being halted by the Texas Legislature and Governor.

While EPA fully supported this program and believes it would have been very effective in reducing mobile source emissions if continued, various states including Texas desired greater flexibility in implementing their I/M programs. In response to this desire, on September 18, 1995, EPA revised and finalized I/M rules which gave states much greater flexibility in implementing their I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard which would allow for less stringent I/M programs if other required air quality goals were met. Also, included in these rules was a provision that nonattainment areas with populations under 200,000 such as Beaumont/Port Arthur would not need to implement an I/M program if other required air quality goals were met. In addition, on November 28, 1995, the NHSDA was signed which allowed even greater flexibility in I/M programs for states especially in the area of emission reduction estimates. The revised Texas I/M program, while meeting the minimum of Federal requirements (with the exceptions identified in this notice), represents a substantially less effective I/M program than the previously approved program.

*B. Impact of the National Highway System Designation Act on the Design and Implementation of Inspection and Maintenance Programs under the Clean Air Act*

The NHSDA establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle I/M programs as a means of compliance with section 182, 184 or 187 of the Act. Also under the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the Act, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50 percent credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, at 57 FR 52950, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for states to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the Act continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA requires that these submittals must otherwise comply in all respects with the I/M Rule and the Act.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the Act and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage,

and in allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period), it is clear that Congress intended for states to begin testing vehicles as soon as practicable, now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allows for a state to submit proposed regulations for this interim program, provided that the State has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the State need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the Act. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. The Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data may not match exactly at that time. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

Furthermore, EPA believes that in also taking action under section 110 of the Act, it is appropriate to propose granting a conditional approval to this submittal since there are some deficiencies with respect to Act statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the State during the interim period.

*C. Interim Approvals Under the NHSDA*

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the State in its good faith effort to reflect the emission reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval period shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest by November 15, 1997. The EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. The EPA proposes that if the State fails to start its program on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the State.

The program evaluation to be used by the State during the 18-month interim period must be acceptable to EPA. The EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States group that has convened and that was organized for this purpose. The EPA further anticipates that in addition to the interim, short term evaluation, the State will conduct a long term, ongoing evaluation of the I/M program as required by the I/M rule in sections 51.353 and 51.366.

*D. Process for Full Approvals of This Program Under the Act*

In accordance with NHSDA requirements, this interim rulemaking will expire 18 months of the final interim approval, or the date of final full approval, whichever comes first. A full approval of the State's final I/M SIP revision (which will include the State's program evaluation) is still necessary under section 110 and under section 182, 184 or 187 of the Act. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's SIP revision will occur.

II. EPA's Analysis of Texas's Submittal

In response to this flexibility, in a letter dated March 12, 1996, Texas submitted its revised I/M program to EPA Region 6 within the submission deadlines contained in the NHSDA. The submission was received in our office on March 14, 1996. It contained a SIP narrative, proposed Texas Natural Resource Conservation Commission (TNRCC) I/M rules, and several appendices addressing the requirements of the I/M program. In addition, the I/M SIP including finalized TNRCC regulations, revised SIP narrative and responses to comments received during the State's public comment period was received in the Region 6 office on June 27, 1996. The submittals were intended to fulfill the requirements of the Act and the NHSDA for the nonattainment areas of Texas which are required to implement I/M programs. The SIP revision also contains enabling legislation that will allow the State to implement most of the elements of the I/M program (with the exceptions noted in this conditional rulemaking), their modeling analysis, and a good faith estimate that includes the State's basis for emission reductions claims of the program. The State's credit assumptions were based upon the removal of the 50 percent credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State's own good faith estimate of the effectiveness of its decentralized test and repair program.

The EPA has reviewed the State's submittal against the requirements contained in the NHSDA, the Act, and Federal I/M rules (40 CFR part 51 subpart S). On April 10, 1996, the Region provided its comments to the State resulting from this review. The Region highlighted the need for the State to obtain all of the additional legislative and regulatory authority required to implement the proposed program.

As outlined in the Governor's Executive Order, the additional legislative authority that the Governor intends to support includes: (1) The denial of reregistration of vehicles that have not complied with I/M program requirements, (2) the establishment of a class C misdemeanor penalty for operating a gross polluting vehicle in a nonattainment area, and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties. In addition, the Region commented that the Texas Department of Safety (DPS) rules for the I/M program were needed before EPA could take a final full approval action on this plan. The other comments and questions stated in our letter reflected a comparison of the

revised Texas I/M SIP with the Federal I/M rules.

The EPA has reviewed the State responses to comments which were in large part satisfactory to EPA. The major deficiencies of legislative authority outlined in this notice can be corrected in the next Texas legislative session. The State must correct these major deficiencies within 12 months of final action by EPA, or this approval will automatically convert to a disapproval under the Act section 110(k)(4). The EPA has also identified certain minor deficiencies in the SIP, which are itemized below. In the response to EPA comments at the State's public hearing, the State has made commitments to correct two minor deficiencies concerning the future submittal a State Attorney General's opinion regarding State constitutional impediments to immediate suspension authority of inspectors (and seek additional immediate suspension authority if needed) and a penalty schedule. The EPA has determined that delayed correction of these minor deficiencies will have a *de minimis* impact on implementation of the I/M program. Therefore, EPA will not impose conditions on interim approval with respect to these deficiencies. However, the State must correct these deficiencies during the 18-month term of the interim approval to support full approval of its I/M SIP. So long as the State corrects these minor deficiencies prior to final action on the State's full I/M SIP, EPA concludes that failure to correct the deficiencies in the short term is *de minimis* and will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

The following analysis addresses how the State intends to fulfill the requirements of the Federal I/M rules. A more detailed analysis of the State submittals and copy of EPA's comments on the plan are included in the Technical Support Document for this action and may be obtained from the EPA Region 6 office. A summary of the EPA's findings follows.

*Section 51.350 Applicability*

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The revised Texas I/M regulations specify that I/M programs will be implemented in Dallas, Tarrant, Harris, and El Paso counties. A basic I/M program will be implemented in Dallas and Tarrant counties, while low enhanced I/M programs will be implemented in Harris and El Paso counties. As the State's submittal indicates, vehicles traveling in from counties surrounding the Dallas, Tarrant and Harris counties will be subject to the I/M program through remote sensing to ensure that the entire urbanized area coverage requirements are minimally met. Without the additional remote sensing coverage the Dallas/Fort Worth area would have fallen approximately 147,000 vehicles short of the requirements, while the Houston area would have fallen about 65,000 vehicles short. The State has committed to cover at least these amounts of commuting vehicles in the remote sensing program. The Federal I/M flexibility rule promulgated September 18, 1995, allowed for the removal of the Beaumont/Port Arthur area from the I/M program. Currently, the State does not have the legislative authority to enforce the remote sensing program, but the Governor's Executive Order states the Governor intends to support such legislation in the next State legislative session. If the remote sensing program proves to be ineffective or not practicable by the end of this interim approval action, the Texas I/M program area will need to be expanded to make up the urbanized area shortfall. The State submittal meets the applicability requirements of the Federal I/M regulations for conditional interim approval.

*Section 51.351–2 Enhanced and Basic I/M Performance Standard*

The I/M programs provided for in the SIP are required to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of the emission levels which need to be achieved by the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the low enhanced performance standard is met in the Houston and El Paso areas, and the basic I/M performance standard is met in the Dallas/Fort Worth area. The low enhanced performance standard is established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15 percent reduction SIP. In fact, EPA approval of 15 percent plans has been delayed, and although EPA is preparing to take action on 15 percent plans in the near future, it is unlikely that EPA will have completed final action on most 15 percent plans prior to the time EPA believes it would be appropriate to give final interim approval to I/M programs under the NHSDA.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network design systems. By providing that such programs must be submitted within a four month period, that EPA could approve I/M programs on an interim basis based only upon proposed regulations, and that such approvals would last only for an 18-month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

Many states have designed a program to meet the low enhanced performance standard, and have included that program in their 15 percent plan submitted to EPA for approval. Such states anticipated that EPA would propose approval both of the I/M programs and the 15 percent plans on a similar schedule, and thus that the I/M programs would qualify for approval under the low performance standard. The EPA does not believe it would be consistent with the intent of the NHSDA to delay action on interim I/M approvals until the agency has completed action on the corresponding 15 percent plans. Although EPA acknowledges that under its regulations, full final approval of a low enhanced I/M program after the 18-month evaluation period would have to await approval of the corresponding 15 percent plan, EPA believes that in light of the NHSDA it can take final interim approval of such I/M plans provided that the agency has determined as an initial matter that approval of the 15 percent plan is appropriate, and has issued a proposed approval of that 15 percent plan.

The State has adopted and submitted a revised 15 percent plan which includes the low enhanced I/M program. The EPA is currently reviewing that plan and plans to propose action on it shortly. The EPA here proposes to approve the I/M program as satisfying the low enhanced

performance standard provided that EPA does propose to approve the 15 percent plan containing that program. Should EPA propose approval of the 15 percent plan, EPA will proceed to take final interim approval action on the I/M plan. The EPA proposes in the alternative that if EPA proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the State would no longer be eligible to select the low enhanced performance standard under the terms of 51.351(g).

The State's modeling originally assumed 40 percent of the vehicles received loaded mode tests. However, the State is removing loaded mode testing commitments from its SIP. While EPA fully supports the use of loaded mode testing and believes loaded testing to be more effective, revised modeling has been submitted to EPA which shows that removing loaded mode testing from the SIP will still enable the State to meet the low enhanced and basic performance zstandard for each respective area. Neither the low enhanced or basic performance standard modeling input parameters include a loaded mode component or requirement. Under the provisions of the NHSDA, the State is claiming full credit for vehicles that are tested at test-and-repair stations based on the State's program design, and claiming full credit for self-testing of fleets. At the end of the 18-month approval, the program demonstration will have to verify the appropriateness of the State's credit estimates.

In its submittals, the State has claimed more credit for its gas cap evaporative system pressure test than can be justified by EPA's own current data or any other source of data provided to the EPA. The EPA's guidance for emission reduction credit for the gas cap check is expressed in a December 1994 policy memorandum entitled, ''Credit for Gas Cap Check plus Purge Test.'' However, the additional credit claimed does not make a difference with regard to the general approvability of the I/M program under the NHSDA, since the program appears to meet the low enhanced I/M performance standard with or without the additional credit claimed for the gas cap test. The EPA anticipates the State will gather data during the operation of its program or may choose to seek out alternative data sources to share with EPA which potentially could justify a higher level of credit than EPA's current policy. As always, EPA would evaluate any data submitted by a state as the basis for credit claims made and convey the results of such evaluation to the state. If such data indicates a higher level of credit is justified, EPA will evaluate the appropriateness of its current policy based on such new data at that time. The State submittal meets the enhanced and basic performance standard requirements of the Federal I/M regulations for interim approval.

*Section 51.353 Network Type and Program Evaluation*

The SIP must include a description of the network to be employed, and the required legal authority. Also, for enhanced areas, the SIP must include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, related details of the evaluation program, and the legal authority enabling the evaluation program.

The State is implementing a decentralized testing network which will allow for both test-only and test-and-repair stations. While the State is planning to allow for some types of maintenance functions at test-only facilities, EPA believes that such network design issues as they relate to credit estimates are essentially moot due to the passage of the NHSDA. The TNRCC commits in the SIP to develop an acceptable one time evaluation of the I/M program to meet the NHSDA requirements. In addition, the SIP commits to meet the ongoing program evaluation of mass emission testing of at least 0.1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis beginning on January 1, 1999. Resources and personnel adequate for the program evaluation are described in the SIP. Legal authority which is contained in the Texas Health and Safety Code Sections 382.017 and 382.037 (changed to 382.027) (Vernon 1992) authorizes TNRCC to implement the program and conduct the program evaluation. The State submittal meets the network type and program evaluation requirements of the Federal I/M regulations for interim approval.

*Section 51.354 Adequate Tools and Resources*

The SIP is required to include a description of the resources that will be used for program operation and discuss how the performance standard will be met which includes: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and (2) a description of personnel resources. The plan is required to include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Section 159 of the State's General Appropriations Act allows for the transfer of funds and for fees collected from the I/M program for the purpose of implementation of the program. The TNRCC anticipates that at least $1.75 per paid vehicle inspection will be available to the TNRCC and DPS for the continuance of the I/M program. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State has committed to dedicate a staffing level of 40 full-time-equivalent employees to support the program. The State submittal meets the adequate tools and resources requirements of the Federal I/M regulations for interim approval.

*Section 51.355 Test Frequency and Convenience*

The SIP must describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The SIP must include a demonstration that the network of stations providing test services is sufficient to ensure short waiting times to get a test and short driving distances.

The revised Texas I/M SIP commits to testing all gasoline powered vehicles that are between two and twenty-four years old. Inspections will be required annually unless the vehicle is tested at a loaded mode facility in which case the test is biennial. The vehicle emission testing will be integrated as part of the annual safety inspection. Vehicles receiving a biennial emission test must still receive an annual safety inspection. Also, within 60 days of resale, or prior to registration, vehicles registered in Dallas, Tarrant or Harris counties will be required to undergo an emission test.

Currently, the State does not have the legislative authority to require test on resale, but the Governor's Executive Order states the Governor intends to support such legislation in the next

State legislative session. In addition, at least 10 percent of the vehicle population will be subject to remote sensing. The program is decentralized and stations will be open at least eight hours per day, five days per week, for a minimum of 40 hours per week for motorist convenience. The TNRCC anticipates that over 2,000 facilities will participate in the program. The State submittal meets the test frequency and convenience requirements of the Federal I/M regulations for conditional interim approval.

*Section 51.356 Vehicle Coverage*

The SIP must include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP is required to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP is required to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The revised Texas I/M SIP includes coverage of gasoline powered light-duty vehicles and light and heavy-duty trucks registered or required to be registered in the I/M program area including fleets. Subject vehicles will be identified through the Texas Department of Transportation database. While the State statute does allow for the exemption of ''circus'' or ''slow moving'' vehicles from the program, TNRCC does not anticipate modeling results to be affected. Legal authority for vehicle coverage is contained in the Texas I/M rule. The State submittal meets the vehicle coverage requirements of the Federal I/M regulations for interim approval.

*Section 51.357 Test Procedures and Standards*

The SIP must include a description of each test procedure used. The SIP also is required to include the rule, ordinance or law describing and establishing the test procedures.

Vehicles tested in the Texas program shall be subject to a two speed idle test or vehicle owners may elect an ASM loaded mode test. Idle test procedures shall meet requirements in Appendix B of the Federal I/M rule. Idle test emission standards are contained in the SIP modeling analysis and are consistent with the Federal I/M rule. The Acceleration Simulation Mode (ASM) loaded mode test procedures and standards were developed between EPA and the States. They were recently issued in July 1996 in a document entitled, ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications.'' The SIP states that loaded mode test equipment procedures shall meet EPA requirements for two-mode ASM equipment or an acceptable alternative. As was stated previously, the State is removing loaded mode testing commitments from its SIP, however, EPA anticipates that loaded mode testing will still be an option in the Dallas/Fort Worth and Houston I/M program areas. In addition, the SIP states that vehicles shall receive a gas cap integrity test in accordance with EPA procedures. The Texas I/M rule requires that vehicles comply with the inspection requirements of the revised Texas I/M SIP. The State submittal meets the test procedure and standards requirements of the Federal I/M regulations for interim approval.

*Section 51.358 Test Equipment*

The SIP is required to include written technical specifications for all test equipment used in the program and must address each of the requirements contained in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The revised Texas I/M SIP contains written technical specifications for the two speed idle test equipment consistent with the Federal I/M rule and EPA guidance. The ASM loaded mode test specifications were developed between EPA and the States. They were recently issued in July 1996 in a document entitled, ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications.'' The SIP states that loaded mode test equipment specifications shall meet EPA requirements for two-mode ASM equipment or an acceptable alternative. In addition, the SIP states that vehicles shall receive a gas cap integrity test in accordance with EPA test procedures and equipment specifications. The Texas I/M rule requires that vehicles comply with the inspection requirements of the revised Texas I/M SIP. The State submittal meets the test equipment requirements of the Federal I/M regulations for interim approval.

*Section 51.359 Quality Control*

The SIP must include a description of quality control and record keeping procedures. The SIP must include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

The revised Texas I/M SIP contains descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded as well as maintaining document security. Analyzer manufacturers will prepare a manual of quality control procedures, periodic maintenance schedules, and calibration procedures to ensure proper operation of the test equipment. The revised I/M SIP commits to meet calibration practices contained in Appendix A of the Federal I/M rule. The State submittal meets the quality control requirements of the Federal I/M regulations for interim approval.

*Section 51.360 Waivers and Compliance via Diagnostic Inspection.*

The SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate must be used for estimating emission reduction benefits in the modeling analysis. Also, the State must take corrective action if the waiver rate exceeds that committed to in the SIP, or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP should describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP should include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waiver in the Texas SIP are in accordance with the Act and Federal I/M rules. These limits are $450 adjusted annually in the enhanced areas of Houston and El Paso, and $200 for 1981 and later model year vehicles and $75 for 1980 and earlier model year vehicles in the Dallas/Fort Worth area. The revised Texas I/M program includes waiver rates as percentages of initially failed vehicles of 3 percent in all three I/M areas. These waiver rates are used in the modeling demonstration. The TNRCC commits in the SIP that if the

waiver rates are higher than estimated the State will take corrective action to address the deficiency. The SIP describes the three types of waivers the State will allow, which include a minimum expenditure waiver, individual vehicle waiver, parts availability time extension and low income time extension. The DPS will have the responsibility of ensuring that waivers are issued properly. In addition, the waiver criteria including the minimum expenditure requirements are contained in the Texas I/M rule. The State submittal meets the waiver and compliance via diagnostic inspection requirements of the Federal I/M regulations for interim approval.

*Section 51.361 Motorist Compliance Enforcement*

The SIP is required to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP must include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to enforce the I/M program with a combination of sticker-based enforcement and comparing registration data with inspection data to address vehicles not complying with the program. Contingent upon legislation being passed, continual noncompliance would result in denial of re-registration. The motorist compliance enforcement program will be implemented by the DPS, the Texas Department of Transportation, and the TNRCC. Vehicle coverage requirements are described in the previous section. Gasoline powered vehicles greater than 24 years old, motorcycles, dedicated alternative fueled vehicles and diesel vehicles are not included in the program. Fleet vehicles will be allowed to conduct self-testing provided that they meet the required equipment standards, are licensed by DPS, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid state inspection certificate will be subject to citations by local and state law enforcement officials. The SIP includes a recent safety inspection compliance survey from the Dallas/Fort Worth area that indicates a compliance rate of 95 percent, but this information is only preliminary. The proposed program with enhancements estimates compliance at 95 percent and TNRCC commits to maintain this rate in practice. The legal authority to implement and enforce the program is included in the Texas statutes and regulations cited in the SIP. Currently, the State does not have the legislative authority to enforce the denial of reregistration, but the Governor's Executive Order states the Governor intends to support such legislation in the next State legislative session.

In the State's response to comments given at the public hearing, it stated that the State's I/M program is complying with the requirements of this section through a sticker based enforcement program. The Federal I/M rule does contain a provision for alternative enforcement mechanisms other than registration denial, however a demonstration must be made per § 51.361(b) that an alternative such as sticker enforcement is more effective than registration denial for enhanced I/M areas and as effective for basic areas. The State submittal does not include such a complete demonstration. Thus, EPA cannot provide approval on the basis of sticker enforcement unless a complete demonstration is made. However, the State does not have to comply with the alternative enforcement mechanisms in § 51.361 if registration denial requirements are met. The EPA is proposing to conditionally approve this provision conditioned upon the State obtaining authority for a reregistration denial system as is stated in the Governor's Executive Order and Texas I/M SIP. The State submittal meets the motorist compliance enforcement requirements of the Federal I/M regulations for conditional interim approval.

*Section 51.362 Motorist Compliance Enforcement Program Oversight*

The SIP must include a description of enforcement program oversight and information management activities.

The Texas I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the SIP narrative and include: the establishment of written audit procedures and/or checklists for I/M document handling and processing, audit procedures, notification of motorists and inspection facilities suspected of violating program rules, an on-line telecommunication network to support the State's oversight and management requirements, and an I/M database which will be compared to the registration database to determine program effectiveness. The State submittal meets the motorist compliance enforcement program oversight requirements of the Federal I/M regulations for interim approval.

*Section 51.363 Quality Assurance*

The SIP must include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The revised Texas I/M SIP includes a description of its quality assurance program. The program includes both covert and overt audits. The SIP commits to a minimum of three performance audits, two overt for each lane or test bay and one covert for each full time equivalent inspector to be conducted each year. Audits will include the inspection of records and equipment. Procedures for overt and covert audits will be based upon written instructions and will be updated as necessary. The State submittal meets the quality assurance requirements of the Federal I/M regulations for interim approval.

*Section 51.364 Enforcement Against Contractors, Stations and Inspectors*

The SIP must include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the

state Attorney General must furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP is required to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The revised Texas I/M SIP states that TNRCC may assess penalties of up to $10,000 in its enforcement against stations and inspectors and will develop a more specific penalty schedule at a later date. The SIP describes the enforcement process. The DPS is planning to assign six full time equivalent employees to covert and overt auditing as well as seven additional full time equivalent employees for other enforcement activities. The TNRCC is currently seeking an Attorney General opinion seeking whether there are any constitutional impediments to immediate suspension authority and is in the process of developing a penalty schedule. Once the opinion is obtained by the State, EPA will be working with the State to consider the necessary action that will be needed to comply with the requirements of this section. The legal authority for TNRCC to asses penalties is contained in the Texas Clean Air Act, subchapter D. The authority for DPS to deny application for license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles is found in the Texas Transportation Code, Section 548.407. The minor deficiencies regarding the State Attorney General's opinion regarding State constitutional impediments to immediate suspension authority of inspectors (and seek additional immediate suspension authority if needed) and a penalty schedule must be corrected by the end of the 18-month interim period.

*Section 51.365–6 Data Collection, Analysis and Reporting*

The SIP must describe the types of data to be collected and reported.

The revised Texas I/M SIP provides for the collecting of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. The data will be used to generate reports in the areas of test data, quality assurance, quality control, and enforcement. It will also be used to assess changes and weaknesses in the program. The State submittal meets the data collection, analysis and reporting requirements of the Federal I/M regulations for interim approval.

*Section 51.367 Inspector Training and Licensing or Certification*

The SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Texas I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program and curriculum which includes hands-on testing. Certified inspector appointments will expire on August 31 of the even numbered year following the first date of appointment and afterwards will be made for two year periods. All inspectors will be required to be certified to inspect vehicles in the Texas I/M program. The State submittal meets the inspector training and licensing or certification requirements of the Federal I/M regulations for interim approval.

*Section 51.368 Public Information and Consumer Protection*

The SIP must include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Texas I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the benefits of an inspection program, steps to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP commits that motorists will be offered general repair information including a list or repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also includes consumer protection provisions which include DPS challenge/referee facilities, DPS oversight of the program though the use of audits, whistle blower protection, and complaint handling procedures. The State submittal meets the public information and consumer protection requirements of the Federal I/M regulations for interim approval.

*Section 51.369 Improving Repair Effectiveness*

The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Texas I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities through the use of a newsletter regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. The newsletter will also contain information on technical assistance hotlines that meet the State's criteria. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will monitor the need for additional training resources for repair technicians. If motorist demand for repair technicians is not being satisfied, the State will also ensure that adequate repair technician training resources are available to the repair community. The State submittal meets the improving repair effectiveness requirements of the Federal I/M regulations for interim approval.

*Section 51.370 Compliance With Recall Notices*

The SIP must describe the procedures used to incorporate the vehicle lists provided into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Texas I/M SIP contains a plan describing the procedures for

ensuring that vehicles that are included in either a voluntary emission recall, or a remedial plan determination pursuant to the Act, have had the appropriate repair made prior to the inspection. The TNRCC commits in the SIP to complying with the policies of the National Recall Committee and additional rulemaking when it becomes available. Additional rulemaking by EPA is needed before the State will be able to implement this provision. The State submittal meets the compliance with recall notices requirements of the Federal I/M regulations for interim approval.

*Section 51.371 On-Road Testing*

The SIP must include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP must include technical support for the claimed additional emission reductions.

The revised Texas I/M SIP includes a detailed description of its on-road testing program. The State is planning to use remote sensing to help meet the requirement of covering the entire urbanized areas of Dallas/Fort Worth and Houston. As was stated previously in the applicability section of this notice, the State has committed to cover at least the amount of commuting vehicles in the remote sensing program to ensure adequate area coverage. In addition, the State will test at least 20,000 of the vehicles subject to I/M tests in all of the I/M areas. As has been stated previously, the State needs additional legal authority to enforce this program. The State submittal meets the on-road requirements of the Federal I/M regulations for conditional interim approval.

*Section 51.372 State Implementation Plan Submissions.*

The NHSDA called for submissions of I/M SIPs that were going to be eligible for its provisions to be submitted by March 27, 1996. The NHSDA allowed EPA to grant interim approval of the plan based on State proposed regulations if the State had its statutory authority and was in otherwise compliance with the Act. In a letter dated March 12, 1996, the revised Texas I/M SIP was submitted on March 14, 1996. In addition, in a letter dated June 27, 1996, the I/M SIP with finalized regulations and responses to comments received during the State's public comment period was submitted to EPA Region 6. While some enforcement authority is lacking, Texas does have authority to implement major portions of the program. The Governor has signed an Executive Order stating his intention to support the additional needed legal authority. The State submittal meets the NHSDA requirements for interim approval.

*Section 51.373 Implementation Deadlines*

EPA is expecting that I/M programs submitted under the NHSDA be implemented by November 15, 1997. The revised Texas I/M SIP includes a schedule for program implementation. The emission testing start date contained in the schedule is January 1, 1997, or earlier for all program areas.

## III. Discussion for Rulemaking Action

### *A. Concluding Statement of Conditional Interim Approval*

EPA's review of this material indicates that it meets the minimum requirements of the Act, NHSDA, and Federal I/M rules with the exceptions of the deficiencies explained in this notice. Based upon the discussion contained in the previous analysis sections and technical support document, EPA concludes the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for conditional interim approval. Therefore, EPA is proposing a conditional interim approval of the Texas I/M SIP revision which was submitted on March 14, 1996, and June 27, 1996. The Regional office, in conjunction with EPA's Office of Mobile Sources and other Regional offices, has taken efforts to help ensure that overall this action is consistent with other EPA actions on I/M programs. The EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

### *B. Withdrawal of Previous I/M Program*

As was stated in the Summary section of this notice, the EPA is also proposing removal of the previously approved I/M program from the SIP which was finally approved on August 22, 1994 (59 FR 43046–43048). Also, the EPA will not be processing an I/M SIP revision submittal relating to the previously approved I/M program which was submitted on November 10, 1994 relating to the hardship waiver eligibility criteria and repair effectiveness program. In addition, the EPA will not be acting on portions of two previously submitted revisions which relate to the pre-1990 Act Dallas/Fort Worth I/M program submitted on February 21, 1989, and September 20, 1990. The portions of these submittals which are superseded by this proposed action are contained in 31 TAC sections 114.3–4.

## IV. Explanation of the Interim Approval

At the end of the 18-month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the State will, at that time, be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that these programs will have started by November 15, 1997, the State will have at least 6 months of program data that can be used for the demonstration. If the State fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the State's permanent I/M SIP revision if the State does not demonstrate the interim program's effectiveness. If the State's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the State's previous submittal, EPA will adjust the State's credits accordingly, and use this information to act on the State's permanent I/M program.

## V. Further Requirements for Permanent I/M SIP Approval

Final approval of the State's plan will be granted based upon the following criteria:

1. The State has complied with all the major conditions listed in this proposed notice.

2. The EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program.

3. Final DPS program regulations are submitted to EPA.

4. The State I/M program meets all of the requirements of EPA's I/M rule, including those deficiencies found *de minimis* for the purposes of interim approval.

5. The remote sensing program proves to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program area is expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston.

VI. Proposed Action

The EPA is proposing to grant conditional interim approval of the State's submission contingent upon the State obtaining all of the additional authority needed to implement the program outlined in the Governor's Executive Order. In addition, the EPA is issuing conditional interim approval contingent upon the program starting by November 15, 1997. The EPA proposes that if the State fails to obtain the needed additional legal authority as outlined in the Governor's Executive Order, or fails to start the program by November 15, 1997, the approval will convert to a disapproval after a letter is sent notifying the State of the conversion to disapproval. The minor or *de minimis* deficiencies regarding immediate suspension authority of inspectors and a penalty schedule will need to be corrected before final full approval will be granted.

As stated previously, interim approvals granted under the NHSDA are valid for 18 months subject to an adequate program demonstration justifying the program is achieving the claimed emission reductions.

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

VII. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, 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, 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 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 conditional approval action proposed 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. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 9, 1996.

Jane N. Saginaw,

*Regional Administrator.*

[FR Doc. 96–25397 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–01–P

---

**40 CFR Part 52**

**[CO–001–0007; FRL–5630–8]**

## Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in Section VI of the document entitled ''Long-Term Strategy Review and Revision of Colorado's State

Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements,'' as submitted by the Governor with a letter dated August 23, 1996. The revision was made to incorporate into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. EPA proposes to approve the SIP revision, which is expected to remedy Hayden Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution.

**DATES:** Comments on this proposed action must be received in writing by November 4, 1996.

**ADDRESSES:** Comments should be addressed to Richard Long, Director, Air Program, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Air Program, Environmental Protection Agency, Region VIII, (303) 312–6449.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 169A of the Clean Air Act (CAA),[1] 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas[2] (referred to herein as the ''National goal'' or ''National visibility goal''). Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. section 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

EPA promulgated regulations that required affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. section 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. EPA approved this SIP revision in an August 12, 1988 Federal Register notice (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992. This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. EPA approved that long-term strategy revision on October 11, 1994 (59 FR 51376).[3]

Since Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig Generating Stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993.

Hayden Station, which is the focus of this SIP revision, is located 19 miles upwind from MZWA. The facility consists of two units as follows: Unit 1 is a 180 megawatt steam generating unit completed in 1965 and Unit 2 is a 260 megawatt steam generating unit completed in 1976. The facility is currently uncontrolled for $SO_2$ $NO_X$ and operates electro-static precipitators to control particulate pollution. The 1995 emissions inventory for Hayden Station indicated that the plant emitted 16,000 tons of $SO_2$ and 14,000 tons of $NO_X$. Particulate emissions have been more difficult to estimate due to control equipment malfunction.

On August 18, 1993, the Sierra Club sued the owners of the Hayden Station in United States District Court, alleging over 16,000 violations of the State's opacity standards and arguing that the alleged violations resulted in a number of air quality impacts in MZWA. On July 21, 1995, the Court found the Hayden Station owners liable for over 19,000 violations of the opacity standards between 1988 and 1993. See *Sierra Club* v. *Public Service Company of Colorado, et al.*, 894 F. Supp. 1455 (D. Colo. 1995). In October 1995, the Sierra Club, the Colorado Air Pollution Control Division (APCD), and the Hayden Station owners entered into negotiations to try to reach a ''global settlement'' of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification

[1] The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Mandatory Class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a ''Federal land manager'' (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

[3] As a matter of clarification to EPA's October 11, 1994 action, please note that the September 1 due date referred to by EPA as the reporting deadline for Colorado's long-term strategy three-year reviews applies to the Colorado Air Pollution Control Division's responsibility to provide its review, and revision as appropriate, of the long-term strategy to the Colorado Air Quality Control Commission, with a submittal to EPA made by November 1 of each three-year cycle.

of impairment in MZWA. In January 1996, EPA issued a Notice of Violation (NOV) to the owners of the Hayden Station for continuing opacity violations and joined in the settlement negotiations.

On May 22, 1996, the parties to the negotiations (EPA, Sierra Club, State of Colorado, and the Hayden Station owners) filed a signed Consent Decree with the United States District Court for the District of Colorado, in Civil Action No. 93–B–1749. The United States published notice of the settlement in the Federal Register and provided a thirty-day public comment period. The United States responded to comments in a motion to the Court to approve the Consent Decree. The Court approved the Consent Decree on August 19, 1996. The Consent Decree resolves a number of issues, including the Sierra Club and EPA enforcement actions, and, as part of that resolution, requires substantial reductions in air pollutants that are intended to resolve Hayden Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates incorporation into the SIP of the visibility protection-related requirements of the Consent Decree. The terms ''Hayden Consent Decree'' or ''Consent Decree'' are used herein to refer to this judicially-enforceable settlement.

## II. Revision Submitted August 23, 1996

With a letter dated August 23, 1996, the Governor of Colorado submitted an August 15, 1996 revision to the long-term strategy portion of Colorado's SIP for Visibility Protection, entitled ''Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Visibility Protection, Part I: Hayden Station Requirements.'' The revision was made to fulfill, with respect to Hayden Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy as appropriate following the three-year periodic review.[4] The State reviewed the long-term strategy in light of the USFS's certification of visibility impairment, the results of the Mt. Zirkel Visibility Study[5] and other technical data, and the Hayden Consent Decree. Based on this review, the State concluded that a revision to the long-term strategy was necessary to remedy Hayden Station's contribution to visibility impairment at MZWA and to ensure reasonable progress toward the National visibility goal.

Among other things, the SIP revision submitted by the Governor incorporates provisions of the Hayden Consent Decree that require the owners of Hayden Station to install control equipment or switch to natural gas and meet stringent emission limitations for particulates (including opacity) and sulfur dioxide ($SO_2$).

### *A. Analysis of State Submission*

#### 1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see Section 110(k)(1) and 57 FR 13565]. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

To entertain public comment, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing on August 15, 1996 to consider the proposed revision to the Long-Term Strategy of the Visibility SIP, Part I: Hayden Station Requirements. Following the public hearing, the AQCC adopted the revision. The Governor of Colorado submitted the SIP revision to EPA with a letter dated August 23, 1996.

EPA reviewed the SIP revision to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. EPA found the submittal complete and forwarded a letter dated August 29, 1996 to the Governor indicating the completeness of the submittal and the next steps in the review process.

#### 2. Content of SIP Revision

The SIP revision is contained in Section VI of the August 15, 1996 document entitled Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements. Only Part C of Section VI contains provisions that are enforceable against the Hayden Station owners. Part C incorporates relevant portions of the Hayden Consent Decree into the long-term strategy. The remainder of the SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

##### a. Part C of Section VI: Provisions from the Hayden Consent Decree

The State incorporated into its Visibility SIP revision provisions of the Hayden Consent Decree pertinent to visibility, including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting.[6] Such provisions must be met by the Hayden Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only those sections pertinent to visibility, necessary to ensure enforceability of the requirements related to visibility, and necessary to assure reasonable progress in remedying Hayden Station's contribution to visibility impairment at MZWA were adopted into the SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Hayden Consent Decree are summarized below.

*$SO_2$ Emission Limitations*—As described below, the $SO_2$ emission limitations will result in at least an 82%

[4] The report resulting from this review was specific to Hayden Station and the State reviewed the components of the Long-Term Strategy as they relate to Hayden Station only. According to an August 16, 1996 letter from Margie Perkins, Colorado Air Pollution Control Division, to Richard Long, EPA, the State intends to address Colorado's remaining visibility issues in ''part two'' of the Long-Term Strategy review and report by December 1996.

[5] This collaborative study was spearheaded by the State to collect additional information regarding visibility conditions in the Mt. Zirkel Wilderness Area and to identify potential sources of impairment. The final report is available at the addresses listed in the beginning of this document. The study was completed on July 15, 1996.

[6] The Consent Decree also includes requirements for $NO_X$ emission controls and limitations; however, since these controls and limits do not have a direct relationship to visibility, they are not being incorporated into this Visibility SIP revision nor will any detailed discussion be provided. The $NO_X$ requirements were included in the Consent Decree to address acid deposition concerns.

reduction in $SO_2$ from Hayden Station. The Hayden Station owners must install a Lime Spray Dryer (LSD) system to meet the emissions limitations or must switch to natural gas. The following emissions limitations apply regardless of the fuel utilized:

—No more than 0.160 lbs $SO_2$ per million Btu heat input on a 30 boiler operating day rolling average basis;
—No more than 0.130 lbs $SO_2$ per million Btu heat input on a 90 boiler operating day rolling average basis;
—At least an 82% reduction of $SO_2$ on a 30 boiler operating day rolling average basis (to make sure that substantial reductions occur and that control equipment is run optimally even if lower sulfur coal is used); and
—A unit cannot operate for more than 72 consecutive hours without any $SO_2$ emissions reductions; that is, it must shut down if the control equipment is not working at all for three days (to prevent the build-up of $SO_2$ emissions that may lead to visibility impairment events).

Since $SO_2$ is a chemical precursor to visibility-impairing sulfate particles or aerosols, the State has concluded that these $SO_2$ emissions limitations will help remedy the facility's contribution to visibility impairment in MZWA.

*Particulate Emission Limitations*—The Hayden Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on each unit unless the owners elect to switch to natural gas. In either case, particulate emissions should be virtually eliminated. Particulate emission limitations for each unit are:

—No more than 0.03 lbs of primary particulate matter per million Btu heat input; and
—No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

*Compliance with Emissions Limits*—All required controls must be designed to meet enforceable emission limits. Compliance with the $SO_2$ and opacity emission limits shall be determined by continuous emission monitors.

*Hayden Station Owner's Decision: Coal vs. Natural Gas*—No later than November 17, 1996 the Hayden Station owners must decide whether to continue using coal as the primary fuel at the Hayden Station or to switch to natural gas.

*Schedule—Coal as Primary Fuel*—Should the owners of the Hayden Station elect to continue to burn coal, the schedule for constructing control equipment is as follows:

Unit 1
—Commencement of physical, on-site construction of control equipment by 6/30/97
—Commencement of start-up testing of FFDC and $SO_2$ control equipment by 12/31/98

Unit 2
—Commencement of physical, on-site construction of control equipment by 6/30/98
—Commencement of start-up testing of FFDC and $SO_2$ control equipment by 12/31/99

The schedule for commencement of compliance with the emissions limitations is as follows:

$SO_2$
—For Unit 1, within 180 days after flue gas is passed through the $SO_2$ control equipment, or by July 1, 1999, whichever date is earlier.
—For Unit 2, within 180 days after flue gas is passed through the $SO_2$ control equipment, or by July 1, 2000, whichever date is earlier.

Particulates
—For Unit 1, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 1999, whichever date is earlier.
—For Unit 2, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 2000, whichever date is earlier.

*Schedule—Natural Gas as Primary Fuel*—Should the owners of the Hayden Station elect to switch to natural gas, the construction schedule is as follows:

Units 1 & 2
—Initiate permitting activities for construction of natural gas pipeline by 10/30/96
—Complete construction of pipeline and Hayden Station boiler modifications and commence use of natural gas as primary fuel source by 12/31/98

The schedule for commencement of compliance with the emissions limitations is as follows:

$SO_2$ and Particulates
—February 1, 1999 or 30 days after the owners of Hayden Station commence use of natural gas as the primary fuel source, whichever date is earlier.

These construction deadlines and emission limitation compliance deadlines (for either coal or natural gas as primary fuel) are subject to the ''force majeure'' provisions of the Consent Decree, which are being included in this SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Hayden Station owners.

To help ensure that reasonable progress continues to be made, the State commits to reopen the SIP (with public notice and hearing) as soon as possible after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress. Necessary revisions may include the adoption of new construction or compliance deadlines as necessary to ensure that the emission limitations are met. In addition, the SIP also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the SIP should assure reasonable progress toward the National visibility goal. If deadlines extend more than twelve months, EPA fully expects the State to revise the SIP.

b. Remainder of SIP Revision

i. Analysis of Reasonable Progress

Congress established as a National goal ''the prevention of any future, and the remedying of any existing'' anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for ''reasonable progress'' toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such ''emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal.''

EPA's implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(i) and 51.306. The regulations also provide that the affected FLM may certify to a State at any time that visibility impairment exists in a mandatory Class I Federal area. See 40 CFR 51.302(c)(1). Recognizing the need to periodically evaluate the effectiveness of the long-term strategy in protecting visibility, EPA required States to review their

long-term strategies at least every three years. See 40 CFR 51.306(c). This requirement ensures that States will periodically assess their visibility-related air quality planning in light of a certification of impairment from the FLM, information about visibility conditions and sources gathered from the visibility monitoring requirements, or other relevant information. A central aspect of the periodic assessment is to evaluate ''[a]dditional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national goal.'' See 40 CFR 51.306(c)(4).

Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Hayden Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Hayden Station's contribution to visibility impairment in MZWA to below perceptible levels. The State has analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State has concluded that the measures assure reasonable progress by remedying Hayden Station's contribution to perceptible visibility impairment in MZWA and has submitted a visibility SIP revision containing these measures.

Further, in a June 24, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS concluded that the magnitude of the emission reductions for particulates and sulfur oxides contained in the Consent Decree should effectively address the USFS's concerns with visibility impairment in MZWA associated with the Hayden Station. Based in part on this letter, the State concludes that the pertinent provisions of the Hayden Consent Decree, as embodied in this SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Hayden Station.

EPA has reviewed the State's SIP revision and supporting information in light of the statutory and regulatory requirements and proposes to approve it. EPA believes the State has reasonably concluded that the emission reduction measures at Hayden Station required in the judicially-enforceable Consent Decree and contained in this visibility SIP revision will remedy Hayden Station's contribution to perceptible visibility impairment at MZWA, with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State's August 15, 1996 SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provides a detailed analysis of each of the ''reasonable progress'' considerations. EPA has reviewed these ''reasonable progress'' considerations and a summary of the State's analysis follows.

(a) Factor (1) Cost of Compliance

The costs of compliance are reasonable. The State found the cost of the control equipment (approximately $120 million) at the facility to be within the range of retrofit costs at other facilities. It is important to note that neither the Consent Decree, nor this SIP revision, dictates that the owners continue to burn coal or switch to natural gas at the Hayden Station. The owners retain the discretion to make this choice and presumably will evaluate cost as one factor in making their decision.

The cost of switching the plant to natural gas is not known at present and is the subject of a current study by the Hayden Station owners, who must determine by November 17, 1996 whether to continue to use coal or switch to natural gas. However, in terms of evaluating the associated costs, the State believes that available information for a coal retrofit suffices. The State's rationale is that if natural gas is more expensive, it is unlikely that the Hayden Station owners will switch fuels. If natural gas is less expensive, then the coal retrofit analysis serves as an upper bound estimate of costs.

At this time, it is unknown whether the Colorado Public Utilities Commission (PUC) will give approval for the costs to be passed into the rate base (*i.e.*, pass the costs along to the electricity customers). If the PUC does give such approval, the State estimates that it would result in a rate increase of approximately 1.42%, or an increase to the average household electric bill of $0.58/month. As a comparison, EPA estimated the cost of pollution controls ($SO_2$ only) to remedy visibility impairment in Grand Canyon National Park from the Navajo Generating Station in Arizona to result in a maximum increase of $1.72/month for the average customer at that time (1992), *i.e.*, more than the potential rate-based cost to customers for the Hayden Station retrofit, which includes both $SO_2$ and particulate controls. The State also compared costs with the results of an EPA modelling study[7] which estimated the retrofit costs for $SO_2$ control at 200 coal-fired electric utilities and found the costs to be reasonable.

The State found that estimated costs for $SO_2$ and particulate emission reductions at Hayden Station appear to be lower or similar to estimates for other projects. The State concludes, therefore, that the cost of these $SO_2$ and particulate emission reductions is reasonable.

(b) Factor (2) Time Necessary for Compliance

The time necessary for compliance is reasonable. If the Hayden Station owners elect to continue using coal as their primary fuel, start-up testing of the baghouses and $SO_2$ control equipment will occur by 12/31/98 for Unit 1 and 12/31/99 for Unit 2. If the owners elect to switch to natural gas as the primary fuel, they must do so by 12/31/98. Even in the longest scenario (coal retrofit), only approximately 3½ years would elapse between the filing of the Hayden Consent Decree and the operation of control equipment.[8] By comparison, EPA's Federal Implementation Plan (FIP) implementing visibility protection measures for Grand Canyon National Park allowed approximately 6, 7, and 8 years, respectively, for the installation of $SO_2$ controls on the Navajo Generating Station's three 750 megawatt units. See 56 FR 50172 (October 3, 1991). In addition, the State notes that alternative regulatory processes might allow a significantly longer period of time to install controls or switch to natural gas.

(c) Factor (3) Energy and Non-air Quality Environmental Impacts of Compliance

Any negative impacts are minimal, as discussed below.

*Natural Gas*

If the Hayden Station owners elect to switch to natural gas as the primary fuel, the owners will have to initiate permitting, design and construction activities for a natural gas pipeline. The construction of any pipeline generally

[7] ''Project Summary: Retrofit Costs for $SO_2$ and $NO_X$ Control Options at 200 Coal-Fired Plants,'' EPA/600/S7–90–021, March 1991.

[8] EPA notes that should this proposed approval be finalized, the time period between SIP approval and operation of control equipment would be even shorter.

would cause disturbances, and such disturbances would be addressed during permitting.

*Coal*

If the Hayden Station owners elect to retrofit for continued coal use, there are (1) energy, (2) water, and (3) ash and sludge impacts.

(1) Energy Impacts. It is estimated that the use of baghouses and LSDs would decrease the plant output by 1.1%, due to the energy needed to run these systems.

(2) Water Impacts. Some additional water use would be necessary to operate the LSDs. Most of the required water would come from the reuse of water in evaporation ponds. The remainder would come from existing water rights owned by Hayden Station in the Yampa River.

(3) Ash and Sludge Impacts. Hayden Station's solid waste stream would be changed as a result of the LSD operations. In addition to coal ash in the baghouse, the LSD would add spent reagent plus unreacted absorbent, typically low in solubility and not considered an environmental disposal problem. The operator of Hayden Station (Public Service Company of Colorado—''PSCo'') has indicated that, should a retrofit be chosen, these compounds and flyash would be disposed of in the current landfill located near the plant, and no major changes to the current solid waste disposal practices would be required. However, the quantity of waste generated, and therefore needing disposal, would be increased by 36%.

Overall, the State concludes that any energy and non-air quality related impacts are acceptable from either a natural gas conversion or a coal retrofit, as required by this SIP revision.

Additionally, in a July 10, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS indicated that the significant reductions in $SO_2$ emissions required in this SIP revision, as well as the $NO_X$ emission reductions required under the Consent Decree, will provide positive environmental impacts to the aquatic ecosystems in MZWA.

(d) Factor (4) Remaining Useful Life of Source

PSCo has indicated it anticipates a useful life of the Hayden Station on the order of another 20 years, provided that the plant remains competitive in the marketplace. Therefore, the State believes that the retrofit or conversion required in this SIP revision is reasonable. The State's conclusion is based on the overall competitive position of PSCo in the region, the typical current projected life of electric generating stations, and past representation of the remaining life of the Hayden Station made by PSCo in its 1994 Annual Report (indicated remaining life of Unit 1 as 20 years and Unit 2 as 31 years).

(e) Visibility Benefits and Level of Emission Reduction

(1) Visibility Benefits

Any contribution to visibility impairment in MZWA from the Hayden Station would come from primary particulate plumes and/or a locally generated sulfate haze. Based on the State's technical judgment, experience with information generated regarding the operation of the Hayden Station, and findings of the Mt. Zirkel Visibility Study, there is close correspondence between occasions when particulate plumes are clearly visible from the Hayden Station and malfunctions with its existing electro-static precipitators. The conversion of the station to natural gas or use of baghouses will virtually eliminate particulate plumes coming from Hayden Station that may enter MZWA. With regard to locally generated sulfate hazes, it is the State's technical judgment that removing at least 82%[9] of Hayden Station's 1995 inventory of 16,000 tons/year of $SO_2$ emissions will effectively address visibility problems in MZWA caused by $SO_2$ emissions from the facility. Any contribution to visibility impairment in MZWA from Hayden Station $SO_2$ emissions will be reduced to below perceptible levels. The State also notes that evidence in the Mt. Zirkel Visibility Study indicates that eliminating Hayden Station's $SO_2$ emissions (which the Consent Decree and this SIP revision nearly accomplish) would result in a change in visibility in MZWA that would be perceptible.[10] EPA believes these conclusions are reasonable.

(2) Level of Emission Reductions

The State believes that the level of particulate reduction at Hayden Station is appropriate and bases this conclusion, in part, on a comparison of levels of control required at the most recently permitted coal-fired utilities in Colorado. In each case, the emission limit was set at 0.03 lbs per million Btu heat input, *i.e.*, the same limit required for the Hayden Station retrofit/conversion. The State also believes that the $SO_2$ emission limits for Hayden Station are comparable to, or better than, what is generally required for new sources. Hayden Station's emission limits were established by reducing the sulfur content of its coal by 85%.

(f) Reasonable Progress

The measures contained in the SIP revision will produce significant emission reductions that are expected to effectively eliminate Hayden Station's contribution to visibility impairment in MZWA. The retrofit or conversion requirements appear to be reasonable upon examination of the associated costs, time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life of the facility. By expeditiously remedying Hayden Station's perceptible contribution to visibility impairment in MZWA, at a reasonable cost and in a reasonable time frame without undue energy or non-air quality environmental impacts, the State believes that this SIP revision assures reasonable progress toward meeting the National visibility goal as it relates to Hayden Station and MZWA. It should be noted that the State recognizes that regional haze from outside Colorado, emissions from sources outside Colorado, and emissions from other Colorado sources could also be contributing to visibility impairment in MZWA.

Finally, as noted above, the USFS has concluded that the emissions reductions reflected in this SIP revision should effectively address concerns of visibility impairment in MZWA associated with Hayden Station.

ii. Six Factors Considered in Developing the Long-Term Strategy

The State considered the six factors contained in 40 CFR 51.306(e) when developing this revision to its long-term strategy. These six factors are as follows: (1) Emission reductions due to ongoing air pollution control programs; (2) additional emission limitations and schedules for compliance; (3) measures to mitigate the impacts of construction activities; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and (6) enforceability of emission limitations and control measures. Because this long-term strategy SIP revision is focused entirely on the Hayden Station requirements that resulted from a

[9] EPA believes that emissions reductions will actually be more than 82%. The mass emissions limits for the 90 day averaging period represent an 85% reduction from the average sulfur content in coal utilized at Hayden Station.

[10] It should be noted that current Hayden Station emissions are not expected to contribute to visibility impairment under all meteorological conditions.

negotiated settlement, the State concluded that factors (1), (4), and (5) are not applicable. These factors will be considered in Part II of the long-term strategy review/revision process that the State has committed to complete by the end of the year. For a detailed discussion of the remaining factors as they relate to Hayden Station, please refer to Colorado's long-term strategy revision, which is available at the addresses listed in the beginning of this document.

3. Additional Requirements

a. FLM Consultation

As required under State and Federal regulations (Colorado Air Quality Control Commission Regulation No. 3, Section XV.F.; 40 CFR 51.306(c)), the State prepared and distributed a FLM Comment Draft of its long-term strategy review/revision to the USFS and the National Park Service. These agencies are the FLMs of all of Colorado's Class I areas. The State addressed all comments received.

b. SIP Enforceability

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541).

The specific emissions limitations contained in this August 15, 1996 revision to the SIP are addressed above in Section II.A.2.a., ''Part C of Section VI: Provisions from the Hayden Consent Decree.'' By adopting emission limitations for Hayden Station into the Visibility SIP on August 15, 1996, the limitations became enforceable by the State. C.R.S. 25–7–115. Enforceability of emission limitations is enhanced by the inclusion in this SIP revision of Consent Decree Sections VI., Continuous Emission Monitors (for $SO_2$ and opacity), and IX., Reporting, to ensure determination of compliance through reliable and valid measurements and to ensure accurate and adequate data reporting. Further, should EPA finalize this proposed approval of the SIP revision, the emission limitations also will be federally enforceable.

Consistent with section 110(a)(2)(A) of the CAA, the State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado APCD has the authority to implement and enforce all control measures adopted by the AQCC. C.R.S. 25–7–111. In addition, Colorado statute provides that the APCD shall enforce against any ''person'' who violates the emission control regulations of the AQCC, the requirements of the SIP, or the requirements of any permit. C.R.S. 25–7–115. Civil penalties of up to $15,000 per day per violation are provided for in the State statute for any person in violation of these requirements (C.R.S. 25–7–122), and criminal penalties are also provided for in the State statute. C.R.S. 25–7–122.1.

Thus, EPA believes that the control measures contained in the revision to the Long-Term Strategy for Colorado's Class I Visibility Protection, Part I: Hayden Station Requirements, are enforceable and that the APCD has adequate enforcement capabilities to ensure compliance with those control measures.

III. Proposed Action

EPA has reviewed the adequacy of the State's revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in Section VI of the document entitled ''Long-Term Strategy Review and Revision of Colorado's SIP for Class I Visibility Protection, Part I: Hayden Station Requirements,'' as submitted by the Governor with a letter dated August 23, 1996. EPA is proposing to approve this revision, which includes the incorporation of certain requirements from the Hayden Consent Decree.

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

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by November 4, 1996.

V. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed 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. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1996.

Patricia D. Hull,

*Acting Regional Administrator.*

[FR Doc. 96–25399 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 2760

**RIN 1004–AC91**

## Reclamation Projects, Grant of Lands in Reclamation Townsites for School Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes the removal 43 CFR part 2760 in its entirety. This action is being undertaken because the regulations consist of outdated material and statutory recitations, and these subparts can be removed without any significant effect.

**DATES:** Any comments must be received by Bureau of Land Management (BLM) at the address below on or before December 2, 1996. Comments received which are postmarked after the above date will not necessarily be considered in the decisionmaking process on the final rule.

**ADDRESSES:** If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You also may transmit comments electronically via the Internet to WOComment@WO0033wp.wo.blm.gov. Please include ''attn: RIN 1004AC91'' in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly during regular business hours. You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., NW., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jeff Holdren, Bureau of Land Management, Realty Use Group, at 202–452–7779.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures

II. Background and Discussion of Proposed Rule

III. Procedural Matters

### I. Public Comment Procedures

*Written Comments*

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

### II. Background and Discussion of Proposed Rule

The existing regulations at 43 CFR part 2760 were created for BLM to assist the Bureau of Reclamation in disposing of lands through public sale or grants to townsites for school purposes. BLM proposes to remove these regulations because they contain no applicable, substantive provisions beyond what is already in the statutes.

Subpart 2764 consists entirely of unnecessary material. Sections 2764.1 and 2764.3 concern procedures the Commissioner of Reclamation must follow when appraising and selling the lots at issue. These provisions are derived from 43 U. S.C. 561–573, and serve the informational purpose of informing the public of the role assumed by the Bureau of Reclamation in this program. However, the regulations are redundant, and BLM regulations cannot bind the Bureau of Reclamation; therefore, these two sections have no substantive effect. The remaining sections of subpart 2764 are direct recitations of statutory language: section 2764.2 repeats 43 U.S.C. 564–565, and section 2764.4 largely repeats 43 U.S.C. 566. Finally, the last sentence of section 2764.4, the part which does not merely repeat the statute, is outdated, as evidenced by its reference to a CFR section that no longer exists.

Subpart 2765 consists of the filing procedures school districts must follow when applying for a land grant for school purposes. These regulations elaborate on the statutory provisions at 43 U.S.C. § 570 authorizing the Secretary of the Interior to grant school districts up to six acres from a reclamation townsite. However, BLM wishes to remove these regulations to give itself and the Bureau of Reclamation added flexibility in processing the rare application for a school grant. Rather than requiring the school district to submit the lengthy requirements currently contained in section 2765. 1, BLM would only ask that an application be submitted which complies with any Bureau of Reclamation requirements and is otherwise adequate to inform BLM of its request. The substantive provisions currently contained in subpart 2765, such as the reversion held by the United States in the event the land is used for purposes other than a school, are entirely contained in the statute at § 570.

### III. Procedural Matters

*National Environmental Policy Act*

BLM has determined that because this proposed rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1. 10. In addition, this action does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

*Paperwork Reduction Act*

This proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C.3501 et seq.

*Regulatory Flexibility*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a

substantial number of small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act*

Removal of 43 CFR part 2760 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

*Executive Order 12612*

The proposed rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment.

*Executive Order 12630*

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the deletion of ''policies that have takings implications.'' Since the primary function of the proposed rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

*Executive Order 12866*

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

*Executive Order 12988*

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this proposed rule is Jeff Holdren, Bureau of Land Management, Realty Use Group, 1849 C Street, NW, Washington, DC 20240; Telephone 202/452–7779.

List of Subjects for 43 CFR Part 2760

Land Management Bureau; Public lands—sale; Reclamation; Schools.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2760 of Group 2700, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

## PART 2760—[REMOVED]

1. Part 2760 is removed in its entirety.

Dated: September 27, 1996.

Sylvia V. Baca,

*Assistant secretary of the Interior.*

[FR Doc. 96–25402 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–84–P**

## 43 CFR Parts 3740, 3810, 3820

**[WO–340–1220–00–24 1A]**

**RIN 1004–AC96**

## Multiple Use, Mining; Mining Claims Under the General Mining Laws

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to remove 43 CFR subparts 3745, 3824, 3825 and section 3811.2–7 in their entirety. Each of these regulations is unnecessary or obsolete, either because it describes programs which no longer exist or because it contains provisions already required by statutes or other applicable regulations. As a result, deleting these regulations will have no impact on BLM customers or the public at large.

**DATES:** Any comments must be received by BLM at the address below on or before November 4, 1996. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

**ADDRESSES:** If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You also may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. Please include ''attn: RIN AC96'', your name and address in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly. You will be able to review comments at the L Street address during regular business hours from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger Haskins, Bureau of Land Management, Solids Group, 1849 C Street, Washington, DC 20240; Telephone: (202) 452–0355.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures.
II. Background and Discussion of Proposed Rule.
III. Procedural Matters.

### I. Public Comment Procedures

*Written Comments*

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

### II. Background and Discussion of Proposed Rule

The regulations that are being removed are obsolete and unnecessary. Therefore their removal will not have a negative impact on the regulated community.

Subpart 3744—this subpart addressing a mining claimant's rights, consists entirely of duplicated statutory language. This subpart merely quotes Sections 7(d) and 8 of the Multiple Minerals Development Act, 30 U.S.C. 527(d) and 528. The regulation adds nothing to the language contained in the statute, nor does the statute itself command that regulations be promulgated as a prerequisite to the statute taking effect. Therefore, this regulation serves no substantive purpose.

Subpart 3745—this subpart sets out the conditions for opening Helium Reserves to mining location and mineral leasing, and is an unnecessary duplication of statutory language from the Multiple Mineral Development Act, 30 U.S.C. 521 *et seq.* Beyond a quotation of the statutory language, this subpart only includes an assertion that applications filed prior to published notice to open the helium reserves will confer no rights. However, merely filing an application cannot confer any rights until the application is approved. Furthermore, Helium Reserves Number 1 and 2 were opened in 1955, have since

been withdrawn. BLM has also determined that no pre-existing applications under this subpart currently exist. Therefore, because this regulation contains only duplicated statutory language and obsolete provisions, it can be deleted without affecting the rights of the public at large or altering existing law.

Subpart 3824, concerning mining in the City of Prescott, Arizona, Watershed, consists entirely of restatements from the underlying statute at 16 U.S.C. 482a, internal procedures, and non-binding policy statements. Section 3824.1(a) and the first sentence of 3824.1(c) unnecessarily restate statutory language. Section 3824.1(b), which directs the authorized officer to note certain application terms on the application itself, depicts internal procedures better suited to the BLM Manual. The remainder of 3824.1(c) elaborates on the statutory provision that valid, pre-existing mining claims in this location may be perfected as the claimant desires. This subsection adds nothing to the statutory law by pointing out that ''as the claimant desires'' means a claimant can subject themselves to the statutory provisions or not; therefore this section is also redundant and unnecessary.

Subpart 3825—this subpart addresses mining on Papago Indian Reservation lands. The provision is obsolete. Papago lands were closed to mineral entry in 1955, and BLM has determined that, to its knowledge, all prior claims have been patented or withdrawn. Therefore, this subpart has no further applicability and should be deleted.

Section 3811.2–7—this subpart addresses location of mining claims for fissionable source material on coal lands. The provision is also obsolete. Claims to mine fissionable and other source material on lands valuable for coal are governed by 30 U.S.C. § 541i, which withdrew coal-bearing public lands from these types of claims on August 11, 1975. All mining claims on the subject lands became void as of that date, except where a claimant had previously filed a valid mineral patent application. Therefore, no further claims can be located under the provisions of 43 CFR 3811.2–7, making this regulation obsolete and wholly unnecessary.

III. Procedural Matters

*National Environmental Policy Act*

The BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA and the Finding of No Significant Impact(FONSI) on file in the BLM Administrative Record at the address specified previously. The BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the *Written Comments* section above, or contact us directly.

*Paperwork Reduction Act*

This proposed rule does not contain information collection requirements which the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*Executive Order 12866*

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

*Unfunded Mandates Reform Act*

Removal of 43 CFR subparts 3745, 3824, 3825 and section 3811.2–7 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

*Executive Order 12612*

The proposed rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment (FA).

*Executive Order 12630*

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the proposed rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

*Executive Order 12988*

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this proposed rule is Roger Haskins, Solids Group, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240; Telephone (202) 452–0355.

List of Subjects

*43 CFR Part 3740*

Administrative Practice and Procedure; Land Management Bureau; Mines; Public Lands—Mineral Resources.

*43 CFR 3810*

Land Management Bureau; Mines; Public Lands—Mineral Resources; Reporting and Recordkeeping Requirements.

*43 CFR 3820*

Land Management Bureau; Mines; Monuments and Memorials; National Forests; National Parks; Public Lands-Mineral Resources; Reporting and Recordkeeping Requirements; Surety Bonds; Wilderness Areas.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, parts 3740 of Group 3700 and parts 3810 and 3820 of Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 3740—[AMENDED]**

**Subpart 3744—[Removed]**

1. Part 3740 is amended by removing subpart 3744 (§§ 3744.1 and 3744.2) in its entirety.

**Subpart 3745—[Removed]**

2. Part 3740 is amended by removing subpart 3745 (§ 3745.1) in its entirety.

## PART 3810—[AMENDED]

3. Part 3810 is amended by removing § 3811.2–7 in its entirety.

## PART 3820—[AMENDED]

## Subpart 3824—[Removed]

4. Part 3820 is amended by removing subpart 3824 (§ 3824.1) in its entirety.

## Subpart 3825—[Removed]

5. Part 3820 is amended by removing subpart 3825 (§§ 3825.0–3 and 3825.1) in its entirety.

Dated: September 27, 1996.

Sylvia V. Baca,

*Assistant Secretary of the Interior.*

[FR Doc. 96–25423 Filed 10–2–96; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 95–98; Notice No.3]**

## Public Meeting on School Bus Transportation

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

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** This notice announces a public meeting at which NHTSA will seek information about school bus transportation. This meeting will be held in cooperation with the National Association of Pupil Transportation (NAPT) and National Association of State Directors of Pupil Transportation Services (NASDPTS) at their annual conference. NHTSA is seeking information from school bus manufacturers, school transportation providers, and other members of the public on issues related to the transportation of school children. NHTSA is also requesting suggestions for actions with respect to NHTSA's regulations and Federal Motor Vehicle Safety Standards (FMVSS) that govern the manufacture of school buses. This notice also invites written comments on the same subject.

**DATES:** *Public meeting:* The meeting will be held on November 4, 1996 at 2:00 p.m. Those wishing to make oral presentations at the meeting should contact Charles Hott, at the address or telephone number listed below, by October 25, 1996.

*Written comments:* Written comments may be submitted to the agency and must be received by December 9, 1996.

**ADDRESSES:** *Public meeting:* The public meeting will be held at the following location: Opryland Hotel, 2800 Opryland Drive, Nashville, TN 37214, Tel: (615) 889–1000.

*Written comments:* All written comments (preferably 10 copies) should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW, Washington, DC 20590. Please refer to the docket number when submitting written comments.

**FOR FURTHER INFORMATION CONTACT:** Charles Hott, Office of Crashworthiness Standards, NPS–12, NHTSA, 400 7th Street, SW, Washington, DC 20590 (telephone 202–366–0247, Fax: 202–366–4329).

**SUPPLEMENTARY INFORMATION:**

*Regulatory Reform*

Calling for a new approach to the way Government regulates the private sector, President Clinton asked Executive Branch agencies to improve the regulatory process. Specifically, the President requested that agencies: (1) cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently.

NHTSA previously announced public meetings to create grassroots partnerships with regulated industries and other affected parties that do not deal with NHTSA on a routine basis. By meeting with these groups, NHTSA believes that it can build a better understanding of their needs and concerns.

NHTSA recognizes that manufacturers who build school buses operate under different conditions than manufacturers of passenger cars and trucks. In addition, the agency is aware that school transportation providers and school bus manufacturers share a common interest in matters relating to pupil transportation safety. Therefore, the agency has decided to hold public meetings to listen to the views of these groups and others in order to be better informed of their specific needs. The agency is interested in obtaining their views on how it can improve its regulations that govern the manufacture of school buses. Suggestions should be accompanied by a statement of the rationale for the suggested action and of the expected consequences of that action. Suggestions should address at least the following considerations:

Administrative/compliance burdens
Cost effectiveness
Costs of the existing regulation and the proposed changes to consumers
Costs of testing or certification to regulated parties
Effects on safety
Effects on small businesses
Enforceability of the standard
Whether the suggestion reflects a ''common sense'' approach to solving the problem

Statements should be as specific as possible and provide the best available supporting information. Statements also should specify whether any change recommended in the regulatory process would require a legislative change in NHTSA's authority.

This meeting is being held in cooperation with NAPT and NASDPTS at their annual conference in an effort to offer pupil transportation professionals an opportunity to interact with federal agencies that affect operational and industry standards. Both NAPT and NASDPTS are voluntary not-for-profit organizations that provide educational opportunities and information services for pupil transportation professionals around the world. NAPT and NASDPTS collectively represent over 2,100 pupil transportation professionals from both public and private sectors in the United States, United State territories and Canada who promote safe and efficient pupil transportation. The NAPT Annual Conference and Trade Show is the United State's largest gathering of pupil transportation professionals. Having a public meeting in cooperation with NAPT and NASDPTS will give NHTSA the opportunity to receive comments from the broadest cross-section of industry professionals who desire to express their need and concerns about Federal regulations that affect their business.

*Other Topics of Interest*

In recent years there have been many changes to the Federal requirements for school buses. These new requirements include stop arms for all school buses, more emergency exits for most of the larger school buses, performance requirements for wheelchair restraints in school buses, and mirror systems that are performance based instead of design based. Future requirements include antilock brake systems for large school buses and may also include requiring small school buses to meet Standard No. 221, joint strength.

Improvements have been made to the safety of the school bus loading zones.

Stop arm and mirror requirements were implemented to reduce the number of loading zone injuries and fatalities. However, changes in clothing style and design have resulted in snagging and dragging injuries to bus occupants departing from the school bus. School bus manufacturers have implemented recalls to modify handrail designs.

The agency is interested in receiving views on how the above regulations and developments have affected school bus safety and school bus users.

There have also been many changes to the Federal requirements for school bus drivers. School bus drivers are now required to possess a commercial drivers license which requires pre-employment drug tests and random drug and alcohol tests. Staff from the Federal Highway Administration will be available to answer questions at the meeting.

Procedural Matters

The agency intends to conduct the meeting informally so as to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a party has completed its presentation, on a time allowed basis as determined by the presiding official. If time permits, persons who have not requested time to speak, but would like to make a statement, will be afforded an opportunity to do so.

The agency is interested in obtaining the views of its customers both orally and in writing. An agenda for the meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting.

Those speaking at the public meeting should limit their presentations to 15 minutes. If the presentation will include slides, motion pictures, or other visual aids, please indicate so that the proper equipment may be made available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: September 30, 1996.

L. Robert Shelton,

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 96–25362 Filed 10–2–96; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 951227306–5306–01; I.D. 092596B]**

### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery

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

**ACTION:** Announcement of nontrawl sablefish mop-up fishery; request for comments.

**SUMMARY:** NMFS announces adjustments to the management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California. This action establishes beginning and ending dates and trip limits applicable to the mop-up fishery for nontrawl limited entry sablefish, and sets trip limits for the nontrawl limited entry sablefish fishery after the mop-up fishery. These actions are intended to provide for harvest of the remainder of the limited entry nontrawl allocation for sablefish.

**DATES:** The nontrawl sablefish mop-up fishery will begin at 1201 hours (local time), October 1, 1996, and will end at 1200 hours (local time), October 15, 1996, at which time the daily trip limits resume. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1997 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the Federal Register. Comments will be accepted until October 15, 1996.

**ADDRESSES:** Comments on these actions should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Administrator, Northwest Region, NMFS (Regional Administrator).

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140; or Rodney R. McInnis at 310–980–4040.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR 660.323(a)(2) established a new season structure for the limited entry nontrawl sablefish fishery in 1995. The ''regular season'' is a derby fishery during which the only trip limit is for sablefish smaller than 22 inches (56 cm). The regular season starts each year on September 1 (April 15, 1996, 61 FR 16402). Because of expected increases in effort and the difficulty in projecting catch rates during a short, intense season (7 days in 1995 and 5 days in 1996), the regular season was designed to harvest only 70 percent of the limited entry nontrawl allocation. The remainder of the nontrawl allocation was set aside as a buffer in case landings were much higher than projected. The Regional Administrator is authorized to release the buffer, if sufficient amounts remain, about 3 weeks after the end of the regular season, to be taken in a mop-up fishery consisting of one cumulative trip limit for each vessel.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year. A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one

landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the beginning of the regular season, and went back into effect after the regular season ended on September 5.

The best available information on September 17, 1996, indicated that approximately 2,381 metric tons (mt) of sablefish had been landed before and during the regular season, about 86 percent of the limited entry nontrawl allocation of 2,754 mt. Therefore, 373 mt remains to be caught after September 6, 1996, of which 90–120 mt is expected to be taken in the daily trip limits after the regular season. The Regional Administrator, after consulting with the Pacific Fishery Management Council (Council) by telephone on September 19, 1996, has determined that the mop-up fishery will occur, and that a cumulative trip limit of 3,400 lb (1,542 kg) in a 2-week period (October 1–15, 1996) would provide for approximately 152–169 participating vessels, leaving enough for small daily trip limits from September 7–30, 1996, and from 1201 hours October 15, 1996, through the end of the year. The trip limit for sablefish smaller than 22 inches (56 cm) total length, or 15.5 inches (39 cm) for sablefish that are headed, that was in effect during the regular season continues during the mop-up season but not under the daily trip limits. Once a vessel has landed its 3,400–lb (1,542–kg) cumulative trip limit, it may not land more sablefish until the daily trip limits resume at 1201 hours on October 15, 1996. A cumulative trip limit applies to each vessel with a valid limited entry permit endorsed for pot or longline gear. Therefore, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit.

The daily trip limits for the limited entry fishery after the mop-up season are the same as those in effect before the mop-up season. Since the daily trip limits apply to a 24–hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on October 1, 1996, just before the start of the mop-up season, and between 1201 hours and 2400 hours on October 15, 1996, following the mop-up season.

As specified in the annual management measures (61 FR 279, January 4, 1996) at paragraph IV.I., a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery or for the same gear and/or subarea in the limited entry fishery. This means that the limited entry trip limits applicable to nontrawl gear also are limits on nontrawl gear used in the open access fishery.

## NMFS Actions

NMFS announces the dates of the nontrawl sablefish limited entry mop-up fishery and the amounts of sablefish that may be taken with nontrawl gear during and after the limited entry mop-up fishery in 1996. All other provisions remain in effect.

In the 1996 annual management measures, paragraph IV.E.(3)(c) is revised to read as follows:

IV. * * *

E. * * *

(3) * * *

(c) *Nontrawl trip and size limits.* (i) *Mop-Up Fishery.* Effective 1201 hours October 1, 1996, until 1200 hours October 15, 1996, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 3,400 lb (1,542 kg) per vessel.

(Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 3,400 lb (1,542 kg) round weight corresponds to 2,125 lb (964 kg) for dressed sablefish.)

(ii) *Daily trip limits.* Effective 1201 hours October 15, 1996, daily trip limits, which apply to sablefish of any size, are reimposed as follows:

(*A*) *North of 36*° N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg).

(*B*) *South of 36*° N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear south of 36 N.° lat. is 350 lb (159 kg).

(iii) *Trip limits for small sablefish.* During the regular and mop-up seasons, the only trip limit in effect, for sablefish smaller than 22 inches (56 cm) (total length), is 1,500 lb (680 kg), or 3 percent of all legal sablefish on board 22 inches (56 cm) or larger, whichever is greater. (See paragraph IV.A.(6) of the annual management measures at (61 FR 279, January 4, 1996) regarding length measurement.

## Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. Because of the need for immediate action to start the mop-up fishery for sablefish, and because the public had an opportunity to comment on these actions at the September 1996 meeting of the Council's Groundfish Management Team in Portland, OR, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under E.O. 12866.

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

Dated: September 27, 1996.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–25369 Filed 9–30–96; 1:09 pm]

**BILLING CODE 3510–22–F**

# Notices

Federal Register
Vol. 61, No. 193
Thursday, October 3, 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.

## AFRICAN DEVELOPMENT FOUNDATION

### Sunshine Act Meeting; Board of Directors Meeting

**TIME:** 12:00 noon–3:00 p.m.
**PLACE:** ADF Headquarters.
**DATE:** Wednesday, 16 October 1996.
**STATUS:** Open.

Agenda

12:00 noon—Lunch
12:30 p.m.—Chairman's Report
1:00 p.m.—President's Report
3:00 p.m.—Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
*President.*
[FR Doc. 96–25566 Filed 10–1–96; 3:41 pm]
**BILLING CODE 6116–01–M**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 28, 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, OCIO, Mail Stop 7602, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Rural Housing Service

*Title:* Form FmHA 410–8, ''Applicant Reference Letter (A Request for Credit Reference)''

*Summary:* Form FmHA 410–8, ''Applicant Reference Letter'' is used by the Rural Housing Service to supplement or verify other debts when a credit report is limited.

*Need and Use of the Information:* The information is collected and used by Rural Housing Service personnel to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for loans and grants.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 27,360.

*Frequency of Responses:* Reporting: On Occasion.

*Total Burden Hours:* 27,086.

- Food Safety Inspection Service

*Title:* Application for Inspection, Sanitation, Accredited Laboratories, and Exemptions.

*Summary:* FSIS requires meat and poultry establishments and FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records.

*Need and Use of the Information:* The information is used to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 6,316.

*Frequency of Responses:* Recordkeeping; Reporting: On Occasion.

*Total Burden Hours:* 2,680.

- Federal Crop Insurance Corporation

*Title:* 7 CFR Parts 401, 402, 407, 443 and 457—Catastrophic Risk Protection Plan and Related Documents—Group risk Plan.

*Summary:* Information collected includes: application and contract, acreage, production and yield reports and supplemental information for crop insurance options.

*Need and Use of the Information:* The information is used to implement the Catastrophic Risk Protection Plan.

*Description of Respondents:* Farms.

*Number of Respondents:* 1,775,708.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 1,889,486.

Larry Roberson,
*Deputy Departmental Clearance Officer.*
[FR Doc. 96–25281 Filed 10–2–96; 8:45 am]
**BILLING CODE 3410–01–M**

## Office of the Secretary

### Determination of Total Amounts and Quota Period for Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

**AGENCY:** Office of the Secretary, USDA.
**ACTION:** Notice.

**SUMMARY:** This notice establishes the aggregate quantity of 2,300,000 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 during fiscal year 1997 (FY 97), with 600,000 metric tons subject to possible cancellation. This notice in addition establishes the aggregate quantity of 47,000 metric tons (raw value basis) for certain sugars, syrups, and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the Harmonized Tariff Schedule of the United States (HTS) during FY 97.

**EFFECTIVE DATE:** October 3, 1996.
**ADDRESSES:** Inquiries may be mailed or delivered to the Sugar Team Leader, Import Policy and Programs Division, STOP 1021, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1000.
**FOR FURTHER INFORMATION CONTACT:** Stephen Hammond (Sugar Team Leader, Import Policy and Programs Division), 202–720–1061.
**SUPPLEMENTARY INFORMATION:** Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides in pertinent part as follows:

* * * the aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than, 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and the aggregate quantity of sugars, syrups, and molasses entered, or withdrawn from warehouse for consumption, under

subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for syrups, sugars and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas for entry during the fiscal year beginning October 1.

The Secretary issued a proposal for the 1997 fiscal year tariff-rate quota on August 13, 1996, and invited comments from interested persons. Approximately 40 comments were received and were considered.

Allocations of the quota amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 2,300,000 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1996, through September 30, 1997. Of this quantity, 1,700,000 metric tons will be immediately available, to be allocated by the United States Trade Representative, and the remaining 600,000 metric tons will be held in reserve.

If the stocks-to-use ratio published in the January 1997 World Agricultural Supply and Demand Estimates (WASDE) is equal to, or less than 15.5 percent, the United States Trade Representative will allocate an additional 200,000 metric tons of the reserved quantity for raw cane sugar. If the stocks-to-use ratio published in the January 1997 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically cancelled without further notice.

If the stocks-to-use ratio published in the March 1997 WASDE is equal to, or less than 15.5 percent, the United States Trade Representative will allocate an additional 200,000 metric tons of the reserved quantity for raw cane sugar. If the stocks-to-use ratio published in the March 1997 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically cancelled without further notice.

If the stocks-to-use ratio published in the May 1997 WASDE is equal to, or less than, 15.5 percent, the United States Trade Representative will allocate an additional 200,000 metric tons of the reserved quantity for raw cane sugar. If the stocks-to-use ratio published in the May 1997 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically cancelled without further notice.

I have further determined that an aggregate quantity of up to 47,000 metric tons, raw value, of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1996, through September 30, 1997. I have further determined that out of this quantity of 47,000 metric tons, the quantity of 1,656 metric tons, raw value, is reserved for the importation of speciality sugars. These quota amounts may be allocated among supplying countries and areas by the United States Trade Representative.

Interested parties are further notified that shipping patterns will be established for imports of raw can sugar from the Dominican Republic, Brazil and the Philippines. Imports from each of these countries during the first quarter of the fiscal year may not exceed 25 percent of the quantity allocated to such country, nor more than 50 percent of such allocations prior to April 1, 1997, nor more than 75 percent of such allocations prior to July 1, 1997.

Signed at Washington, D.C. on September 27, 1996.

Dan Glickman,

*Secretary of Agriculture.*

[FR Doc. 96–25379 Filed 10–2–96; 8:45 am]

BILLING CODE 3410–10–M

## Forest Service

## Extension of Currently Approved Information Collection for Bid Form for National Forest System Timber for Sale

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection. The information is necessary to determine if a bidder, submitting a bid to the National Forest System timber sale program, meets the requirements for the program.

**DATES:** Comments must be received in writing on or before December 2, 1996.

**ADDRESSES:** All comments should be addressed to: Director, Timber Management (2430), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Jim Naylor, Timber Management Staff, at (202) 205–0858.

**SUPPLEMENTARY INFORMATION:**

Description of Information Collection

The following describes the information collection to be extended:

*Title:* FS–2400–42a—Bid Form for Advertised National Forest System Timber.

*OMB Number:* 0596–0066.

*Expiration Date of Approval:* February 28, 1997.

*Type of Request:* Extension of a previously approved information collection.

*Abstract:* The data collected are used by the agency to ensure that National Forest System timber is sold at not less than appraised value, that bidders meet specific criteria when submitting a bid, and that anti-trust violations do not occur during the bidding process. Respondents are bidders on National Forest System timber sales. Forest Service Sale Officers mail bid forms to potential bidders, and bidders return the completed forms, dated and signed, to the Forest Service Sale Officer. Each bidder must include the following: the price bid for the timber, an address, and a tax identification number. The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or bid collusion is occurring. The tax identification number is also used to facilitate electronic payments to the purchaser. Data gathered in this information collection is not available from other sources.

*Estimate of Burden:* 10 minutes.

*Type of Respondents:* Individuals, large and small businesses, and corporations bidding on National Forest timber sales.

*Estimated Number of Respondents:* 5,000.

*Estimated Number of Responses per Respondent:* 1.5.

*Estimated Total Annual Burden on Respondents:* 1,250 hours.

The agency invites comments 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, 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 the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 26, 1996.

David G. Unger,

*Associate Chief.*

[FR Doc. 96–25365 Filed 10–2–96; 8:45 am]

**BILLING CODE 3410–11–P**

## Grain Inspection, Packers and Stockyards Administration

## Timely Service and Open Season Pilot Programs

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA), Agriculture.

**ACTION:** Notice.

**SUMMARY:** GIPSA is currently running two pilot programs, ''timely service'' and ''open season,'' under one of the 1993 amendments to the United States Grain Standards Act, as amended (Act). This amendment provides that GIPSA may conduct pilot programs allowing more than one official agency to provide official services within a single geographic area. GIPSA started the two pilot programs on November 1, 1995, and they will end on October 31, 1996. Effective November 1, 1996, GIPSA is extending both the ''timely service'' and ''open season'' pilot programs to October 31, 1999, to collect and analyze additional information. In addition, GIPSA is modifying the ''open season'' pilot program to allow more open participation. GIPSA also is considering other pilot programs or program changes intended to address the concerns of both the grain industry and official agencies and will announce and solicit comments on any such proposals at a later date.

**EFFECTIVE DATE:** November 1, 1996.

**ADDRESSES:** USDA, GIPSA, Neil E. Porter, Director, Compliance Division, STOP 3604, 1400 Independence Avenue S.W., Washington, DC 20250–3604. Internet and GroupWise users may respond to nporter@fgisdc.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Neil E. Porter, telephone 202–720–8262.

**SUPPLEMENTARY INFORMATION:**

Sections 7(f) and 7A of the Act was amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103–156) on November 24, 1993, to authorize GIPSA's Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of the pilot programs is to evaluate the impact of allowing more than one official agency to provide official services within a single geographic area.

GIPSA considered several possible pilot programs as announced in the March 14, 1994, Federal Register (59 FR 11759) and the March 10, 1995, Federal Register (60 FR 13113). In the September 27, 1995, Federal Register (60 FR 49828), GIPSA announced the following two pilot programs starting on November 1, 1995, and ending on October 31, 1996.

1. Timely Service. This pilot program allows official agencies to provide official services to facilities outside their assigned geographic area on a case-by-case basis when these official services cannot be provided in a timely manner by the official agency designated to serve that area.

2. Open Season. This pilot program allows official agencies an open season during which they may offer their services to facilities outside their assigned geographic area where no official sample-lot or official weighing services have been provided in the previous 6 months.

GIPSA has evaluated these two pilot programs and discussed them with official agency and grain industry representatives. Grain industry representatives contacted unanimously support continuing these two pilot programs. Some said that service improved after the pilot programs were proposed. Others commented that the ''open season'' 6-month waiting period should be eliminated or reduced. Official agency comments ranged from no significant objection to continuation of the pilot programs, to opposition to any pilot programs because they would have an adverse impact on the integrity of the official inspection system.

GIPSA believes that there has been no adverse impact on the official inspection system by the ''timely service'' pilot program, and in view of the comments received, is extending the ''timely service'' pilot program to October 31, 1999, to provide GIPSA with additional information. The ''timely service'' provisions would remain the same as announced in the September 27, 1995, Federal Register (60 FR 49828).

GIPSA also believes that the ''open season'' pilot program has had no adverse impact on the official inspection system and in view of grain industry comments and recognizing official agency concerns, is modifying and extending the ''open season'' pilot program until to October 31, 1999, to provide GIPSA with additional information. Under the revised ''open season'' program, official agencies would be able to offer their services to facilities outside their assigned geographic area where no official sample-lot or official weighing services have been provided in the previous 3 months. This should allow more participation in the program. Under the current pilot program, no official sample-lot or official weighing services could have been provided in the previous 6 months. The other ''open season'' provisions will remain the same as announced in the September 27, 1995, Federal Register (60 FR 49828).

GIPSA will continue to monitor and evaluate the ''timely service'' and ''open season'' programs. If, at any time, GIPSA determines that either program is having a negative impact on the official system or is not working as intended, the programs may be modified or discontinued.

**AUTHORITY:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 27, 1996

Neil E. Porter

*Director, Compliance Division*

[FR Doc. 96–25277 Filed 10–2–96; 8:45 am]

**BILLING CODE 3410–EN–F**

## Natural Resources Conservation Service

**[TE–29]**

## Raccoon Island Breakwater Demonstration Project Terrebonne Parish, LA

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Raccoon Island Breakwaters Demonstration Project, Terrebonne Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone number (318) 473–7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

This project proposes to demonstrate the effectiveness of offshore segmented breakwaters on reducing or eliminating shoreline erosion in the coastal deltaic region of Southeastern Louisiana. Raccoon Island, the area targeted for this demonstration project, is the western-most barrier formation in the Isles Dernieres complex in Terrebonne Parish, Louisiana. Project features include the construction of segmented rock breakwaters to be placed 300–400 ft. offshore, beginning at the eastern-most tip of the island and extending westward.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Donald W. Gohmert,

*State Conservationist.*

[FR Doc. 96–25266 Filed 10–2–96; 8:45 am]

**BILLING CODE 3410–16–M**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meetings

**DATE AND TIME:** October 8, 1996; 9:00 a.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

**CLOSED MEETINGS:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate soley to the internal personnel issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)) The BBG meeting will be followed by a closed meeting of the members of the board of Radio Free Asia, a nonprofit private corporation.

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: October 1, 1996.

David W. Burke,

*Chairman.*

[FR Doc. 96–25524 Filed 10–1–96; 2:07 pm]

**BILLING CODE 8320–01–M**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Questionnaire for Building Permit Official

**ACTION:** Proposed Agency Information Collection Activity; Comment Request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 2, 1996.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Linda P. Hoyle, Bureau of the Census, Manufacturing and Construction Division, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321.

**SUPPLEMENTARY INFORMATION:**

I. Abstract

The Bureau of the Census uses Form SOC–903 to collect information from state and local building permit officials, such as (1) the types of permits they issue, (2) the length of time a permit is valid, (3) how they store the permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales and Completions, also known as the Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

In July 1997, we will use an electronic form to collect all SOC–903 data. We have been experimenting with Computer Assisted Personal Interviewing (CAPI) and have been using this technology on a test basis since November 1995. Currently, interviewers use a paper form to record respondents' answers. We have improved the CAPI instrument over the paper form based on a reassessment of our data capture needs and efforts to minimize burden. For example, we have deleted some items that are no longer used, added others that enhance the conduct of the SOC, and improve the flow of questions and overall survey administration.

II. Method of Collection

The Bureau of the Census uses its field representatives to obtain information on the operating procedures of a permit office. The field representative visits the permit office, conducts the interview, and completes the paper form. The Bureau of the Census will change to CAPI for all data collection in July 1997. There will be no change in the burden hours.

III. Data

*OMB Number:* 0607–0125.

*Form Number:* SOC–903.

*Type of Review:* Regular Submission.

*Affected Public:* State and Local Governments.

*Estimated Number of Respondents:* 835.

*Estimated Time Per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 209 hours.

*Estimated Total Annual Cost:* The total cost in FY 1996 of the Survey of Construction program, of which this questionnaire is a part, is $3,686,200. Of this amount, $1,765,000 is borne by the Department of Housing and Urban Development, and $1,921,200 is borne by the Bureau of the Census. The cost to the respondents is estimated to be $3,066 based on an average hourly salary of $14.67 [1] for state and local government employees.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (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 (including hours and cost) 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 submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

[1] Taken from the Census Bureau's Annual Survey of State and Local Government Employment.

Dated: September 27, 1996.

Linda Engelmeier,

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–25310 Filed 10–2–96; 8:45 am]

BILLING CODE 3510–07–P

## Foreign-Trade Zones Board

**[Order No. 846]**

## Grant of Authority for Subzone Status; Plastic Products Company, Inc. (Plastic In-Line Skates), Lindstrom and Princeton, Minnesota

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas,* an application from the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 119 (Minneapolis, Minnesota, area), for authority to establish special-purpose subzone status at the plastic in-line skate manufacturing facilities of the Plastic Products Company, Inc., in Lindstrom and Princeton, Minnesota, was filed by the Board on February 29, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 17–96, 61 FR 9676, 3–11–96); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby authorizes the establishment of a subzone (Subzone 119E) at the Plastic Products Company, Inc., plants in Lindstrom and Princeton, Minnesota, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of September 1996.

Robert S. LaRussa,

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96–25409 Filed 10–2–96; 8:45 am]

BILLING CODE 3510–DS–P

## International Trade Administration

**A–201–802**

## Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

**AGENCY:** International Trade Administration/Import Administration/ Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1994, through July 31, 1995, and one firm, CEMEX, S.A. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Steven Presing, Nithya Nagarajan, or Dorothy Woster, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act)

by the Uruguay Round Agreements Act (URAA). 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).

Background

On August 1, 1995, the Department of Commerce (the Department) published in the Federal Register (60 FR 39150) a notice of ''Opportunity to Request Administrative Review'' for the August 1, 1994, through July 31, 1995, period of review (POR) of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the petitioners, the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Co. of California, Inc., requested a review for the aforementioned period. On September 15, 1995, the Department published a notice of ''Initiation of Antidumping Review'' (60 FR 47931). The Department is now conducting a review of this respondent pursuant to section 751 of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The written description remains dispositive as to the scope of the product coverage.

Verification

As provided in Section 782(i) of the Act, we verified information provided by the respondents, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Use of Facts Available

Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. Section 776(b) of the Act authorizes the Department to use as facts otherwise available information derived from the petitioner, the final determination, a previous administrative review, or other information placed on the record.

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of partial facts available as the basis for the weighted-average dumping margin is appropriate for CEMEX because despite the Department's attempts to verify certain information provided by CEMEX, the Department could not verify the information as required under section 782(i) of the Act. Where a party provides information requested by the Department but the information cannot be verified, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available. As more fully described below, we found the following inaccuracies in the information provided by CEMEX which render the responses for these variables unusable for purposes of margin calculations: home market freight for sales of bagged Type I cement; differences in merchandise (DIFMER) adjustments for the comparison of Type I cement sales in the home market to Type II cement sales in the United States; and, the interest rate used to calculate inventory carrying costs and imputed credit in the home market.

First, after repeated requests by the Department, CEMEX refused to provide home market freight expenses for bagged Type I sales on a plant-specific basis. The Department has, therefore, not allowed a deduction for home market freight on sales of bagged Type I cement. Second, despite our repeated requests for DIFMER based solely on physical differences in merchandise, CEMEX was unwilling to isolate the differences in cost solely attributable to physical differences in merchandise. Therefore, we calculated a weighted-average DIFMER adjustment based on the verified data reported by CEMEX's affiliate, Cementos de Chihuahua (CDC), and, as an adverse assumption, a twenty percent upward DIFMER adjustment to normal value (NV) See *CEMEX* v. *United States,* Slip Op. 96–132 at 9 (CIT August 13, 1996) (upholding a twenty percent DIFMER adjustment under similar circumstances) to be applied in connection with our comparisons to all U.S. sales. Third, as facts available the Department is utilizing the interest rate reported by CEMEX's affiliated party, CDC, in lieu of the interest rate provided by CEMEX, in the calculation of NV. At verification it was discovered that CEMEX included long-term loans in the calculation of interest. However, CEMEX chose not to revise the reported interest rate using only short-term loans, therefore we used CDC's interest rate in our calculation.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the NV and export price (EP) or constructed export price (CEP) of each entry of subject merchandise during the relevant review period. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review, 58 FR 48826 (1993) (Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade has upheld the Department's practice in this regard. See *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States,* Slip Op. 95–195 (CIT December 1, 1995).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POR, (and covered by the Scope of the Review) to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value of the product sold in the U.S. market during the month of comparison.

Fair Value Comparisons

To determine whether sales of gray portland cement by respondent to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared

these to individual U.S. transactions, during the same month at the same level of trade.

Export Price and Constructed Export Price

We used EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of the record. In addition, we used CEP in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We made adjustments as follows:

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP sales based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for early payment discounts, credit expenses, and direct selling expenses. We deducted those indirect selling expenses, including inventory carrying costs, that related to commercial activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duty. We also adjusted the starting price for billing adjustments to the invoice price. Finally we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Further Manufacturing

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*e.g.*, cement that was imported and further processed into finished concrete by U.S. affiliates of foreign exporters), we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act was applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we estimated that the value added was at least 60 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average CEP calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Where appropriate, we adjusted for discounts, credit expenses, warranty expenses, inland freight, and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price.

We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773 (a)(6)(C)(ii) of the Act. A weighted-average upward DIFMER adjustment was calculated using the methodology described in the section on *Use of Facts Available.* In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to the affiliated party was 99.5 percent or more of the price to the unaffiliated party, we determined that the sales made to the affiliated party were at arm's length.

Cost of Production Analysis

Petitioners alleged, on February 12, 1996, that CEMEX and its affiliate CDC sold gray portland cement and clinker in the home market at prices below COP. Based on these allegations, the Department determined, on February 27, 1996, that it had reasonable grounds to believe or suspect that CEMEX had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX made home market sales during the POR at prices below its COP.

In accordance with section 773(b)(3) of the Act, we calculated an average monthly COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. In our COP analysis, we used the home market sales and COP information provided by the respondent in its questionnaire responses.

After calculating an average monthly COP, we tested whether home market sales of cement were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific average monthly COPs to the reported home market prices less any applicable movement charges, discounts, and rebates. In determining whether to disregard home market sales made at prices below the average COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and

(2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of the product because the below-cost sales were not made in substantial quantities.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York pursuant to section 773(a) of the Act.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, ignoring any ''fluctuations.'' We determine that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent or more. The benchmark rate is defined as the rolling average of the rates for the past 40 business days as reported by the Federal Reserve Bank of New York. When we determined that a fluctuation existed, we substituted the benchmark rate for the daily rate. For a complete discussion of the Department's exchange rate methodology, see ''Change in Policy Regarding Currency Conversions'' (61 FR 9434, March 8, 1996).

Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Mexican peso did not appreciate against the U.S. dollar.

Ordinary Course of Trade

Section 773(a)(1)(B) of the Act states that the NV of the subject merchandise is ''the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.'' Section 771(15) defines ordinary course of trade as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise have been normal in the trade under consideration with respect to merchandise of the same class or kind.''

In the second administrative review of this order CEMEX reported home market sales of Type I, Type II, and Type V cement. Following their receipt of this information, petitioners alleged that CEMEX's home market sales of Type II and Type V cement were outside the ordinary course of trade. See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47254 (Sept. 8, 1993). Pursuant to this allegation, we compared CEMEX's home market sales of Type II and Type V cement with sales of similar merchandise (namely, Type I cement) in order to analyze certain factors regarding the nature of the sales of the different types of cement, including freight expenses and profit levels. *Id.* at 47255–56. Based on this comparison, and on other factors explained in our final determination, we concluded in the second review that CEMEX's home market sales of Type II and Type V cement were not made in the ordinary course of trade. Thus, we did not use these sales in the calculation of foreign market value.

In the third and fourth administrative reviews, the Department again required CEMEX to report sales of subject merchandise in the home market, including Type I cement. We determined that it was necessary to compare Type II and Type V cement sales in the home market with Type I cement sales in the home market in order to make the ordinary-course-of-trade determination. We also determined that the Department needed the data on home market sales of Type I cement in the event CEMEX'S home market sales of Type II and Type V cement were found to be outside the ordinary course of trade. As the Department explained in the final results of the third review:

> even if the Department had been able, using the information supplied by CEMEX in this review, to determine that the Types II and V cement sales were outside the ordinary course of trade, we would still have needed the Type I data to conduct our antidumping duty analysis.

Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 60 FR 26869 (May 19, 1995). When CEMEX failed to provide the information on Type I sales in the third and fourth reviews, the Department was required by the statute to base its determination upon the ''best information available'' (BIA). 19 U.S.C. 1677e(b); 19 CFR 353.37 (a)(1). It should be noted that the factors relied upon by the Department in making the BIA determination in the third administrative review, and subsequently on a preliminary basis in the fourth review, were upheld by the CIT. Slip Op. 95–72 at 6–14.

Given the Department's determination that CEMEX's sales of Type II and Type V cement in the home market were outside the ordinary course of trade during the second administrative review, we believe that it is necessary (as was the case in the third and fourth administrative reviews) to address the same issue in the fifth administrative review. In the present administrative review, the Department sent CEMEX a questionnaire on November 1, 1995, instructing CEMEX to report home market sales of Type II and Type I cement. CEMEX submitted these sales on January 30, 1996 and February 23, 1996, respectively.

We have considered the totality of circumstances surrounding CEMEX's Type II sales. A full discussion of our conclusions, necessitating reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have observed the following. First, in Mexico, Type II cement is a speciality cement sold to a ''niche'' market. These sales represent a minuscule percentage of CEMEX's total sales of cement. Second, shipping arrangements for home market sales of Type II cement are abnormal. More than 95 percent of cement shipments in Mexico are within a radius of 150 miles, yet during the POR, CEMEX shipped Type II cement for the domestic market over considerably greater distances and absorbed much of the freight costs for these longer shipments. Third, CEMEX's profit on Type II cement sales in the POR is abnormal in comparison to the company's profits on sales of all types of cement. Finally, there are two items, historical sales trends and the ''promotional quality'' of Type II cement sales, which were cited previously as factors in the second review ordinary course of trade analysis, but which are not discussed in the instant review. On July 9, 1996, the Department issued a questionnaire which requested CEMEX to support its position that home market Type II cement sales are in the ordinary course of trade by addressing, among other things, ''historical sales trends'' and ''marketing reasons for sales other than profit.'' CEMEX's response

addressed all items in the questionnaire except these two items. Thus, the Department makes the adverse assumption that the facts regarding these items have not changed since the second review and that: (a) CEMEX did not sell Type II until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and (b) sales of Type II cement continue to exhibit a promotional quality that is not evidenced in CEMEX's ordinary sales of cement (see memorandum from Holly A. Kuga to Joseph A. Spetrini, dated August 31, 1993).

These observations lead us to conclude that CEMEX's home market sales of Type II are not in the ordinary course of trade, and thus should not be used for purposes of calculating NV. In this review, CEMEX has provided the Department with extensive information concerning the decision to produce Type II exclusively in the northwest corner of Mexico. It claims that the decision to service the entire Mexican market for Type II cement from this region was based on sound business judgement. According to CEMEX, sales which are based on sound business judgement must necessarily be in the ordinary course of trade. We disagree. The purpose of the ordinary course of trade provision is ''to prevent dumping margins from being based on sales which are not representative'' of the home market. See *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (CIT 1988). Thus, the issue is not whether such sales are based on sound business judgement, but whether sales of the particular product at issue ''are normal in the trade under consideration.'' See 19 U.S.C. 1677(15).

The statute expresses a preference for matching identical merchandise. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on similar merchandise (see section 773(a)(1)(A) of the Act and section 353.46(a) of the Department's regulations). Therefore, we have based NV on sales of Type I cement, since they are representative of CEMEX's sales of similar merchandise adjusted for ''differences in merchandise'' (DIFMER) based on the methodology discussed above. If, over time, the facts pertaining to sales of Type II cement in the home market change from those contained in the record of this review, we will reconsider whether such sales can be used as the basis for NV.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade. See Final Determination of Sales at Less than Fair Value; Certain Pasta from Italy, 61 FR 30326 (June 14, 1996).

In accordance with section 773(a)(7)(A) of the Act, if we compare U.S. sales at one level of trade to NV sales at a different level of trade, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sales and the level of trade of the NV sale. Second, the difference must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

When CEP is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a CEP offset when (1) NV is at a more advanced level of trade, and (2) the data available does not provide an appropriate basis for a level of trade adjustment.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different stages of marketing, or the equivalent. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as ''distributor'' and ''wholesaler'') are useful in identifying different levels of trade, but are insufficient to establish that there is a difference in the level of trade.

Therefore, in addition to the questions related to level of trade in our November 1, 1995, questionnaire, on February 14, 1996, we sent respondent supplemental questions related to level of trade comparisons and adjustments. We asked respondent to explain and document any claimed levels of trade adjustment on the basis of complete information about its system of distribution, including selling functions and services offered to each customer or class of customers. The information provided by respondent in response to this request was not sufficient to establish that the home market sales used to determine normal value were at a different level of trade than its sales in the United States.

CEMEX reported two levels of trade in the home market (bulk sales to end-users, distributors, and ready-mixers; and bagged sales to end-users, distributors, and ready-mixers). We examined the selling functions performed for each alleged level of trade and found that the selling functions provided by CEMEX were the same for both. Therefore, we determined that the two types of sales did not constitute different levels of trade.

CEMEX also claimed that its further manufactured sales of concrete by its subsidiary Sunward Materials Inc. were sold at a different level of trade (to end-users) than sales of cement in the home market (to end-users). Although these sales were not used for comparison purposes, we examined and verified the selling functions performed for U.S. sales of concrete to end-users and determined that the cement that is a portion of the concrete is at the same level of trade, as adjusted, as home market sales of cement to end-users. We then examined and verified that the selling functions performed by CEMEX to end-users in the home market and by Sunward Materials Inc., in the U.S., as adjusted, were sufficiently similar to consider them to be at the same level of trade.

CEMEX's affiliated party, CDC, reported one level of trade in the home market (to end-users, distributors, and ready-mixers). For the U.S. market, CDC claimed that it sold to the same level of trade (end-users and ready-mixers), but claimed a CEP offset based on significant differences in the selling functions performed by its subsidiary Rio Grande Portland Cement Company. We examined and verified that the selling functions performed by CDC to end-users in the home market and by Rio Grande Portland Cement Company in the U.S., after the CEP deductions, were sufficiently similar to consider them to be at the same level of trade.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. The level of trade methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for making level of trade comparisons and adjustments for its final results of review.

Hyperinflation

Due to the currency crisis that occurred during the POR, we requested respondents to submit information on the rates of inflation in our original questionnaire on November 1, 1995 and in our supplemental questionnaire on February 14, 1996. The data submitted by CEMEX indicated that the annual inflation rate in Mexico during the POR exceeded 35 percent. The portion of the POR from August, 1994–December, 1994 was not considered hyperinflationary as the annualized inflation rate did not exceed 50 percent. However, the portion of the POR from January, 1995–July, 1995 was considered hyperinflationary due to the fact that annualized inflation rate exceeded 50 percent see Certain Fresh Cut Flowers from Mexico, 52 FR 6361 (March 3, 1987). Therefore, consistent with our prior practice, we determined that a possible hyperinflationary situation existed during the POR.

For purposes of our comparison we calculated a NV for each month of the POR, converting the foreign currency using the methodology discussed in the ''Currency Conversion'' section above, and comparing the NV to each individual U.S. sale during the same month of the POR as the comparison NV.

By using this methodology we have accounted for the effects of hyperinflation that were present during the POR. The hyperinflationary methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for its final results of review.

Preliminary Results of Review

Thus, as a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1994, through July 31, 1995, to be 107.756 percent.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish its final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 59.91 percent, as explained below.

On May 25, 1993, the CIT in *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul* v. *United States,* 839 F. Supp 864 (CIT 1993), determined that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the ''all others'' rate for this order will be 59.91 percent, which was the ''all others'' rate established in the final notice of the LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 25, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–25408 Filed 10–2–96; 8:45 am]

BILLING CODE 3510–DS–P

**[C–351–406]**

## Certain Agricultural Tillage Tools From Brazil; Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On July 31, 1996, the Department of Commerce (''the Department'') published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil for the period January 1, 1994 through December 31, 1994 (61 FR 39949). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. We determine the net subsidy to be zero for Marchesan Implementos Agricolas, S.A. (Marchesan). The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Marchesan exported on or after January 1, 1994 and on or before December 31, 1994.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest or Kelly Parkhill, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

Background

Pursuant to section 355.22(a) of the Department's Interim Regulations, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim regulations; request for comments,* 60 FR 25130, 25139 (May 11, 1995) (''*Interim Regulations*''). Accordingly, this review covers Marchesan. This review also covers the period January 1, 1994 through December 31, 1994, and five programs.

We published the preliminary results on July 31, 1996 (61 FR 39949). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act'').

Scope of the Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based upon the responses to our questionnaire, and the results of verification, we determine the following:

*I. Programs Found to be Not Used*

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Accelerated Depreciation for Brazilian-Made Capital Goods
B. Preferential Financing for Industrial Enterprises by Banco do Brasil (FST and EGF loans)
C. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brazil
D. Preferential Financing under PROEX (formerly under Resolution 68 and 509 through FINEX)
E. Preferential Financing under FINEP

Since there were no comments submitted by the interested parties, we have not reconsidered our findings in the preliminary results.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to administrative review. Since Marchesan did not use any of the countervailable subsidy programs during the period of review, we determine the net subsidy for Marchesan to be zero percent *ad valorem*.

As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, the Department will instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Marchesan exported on or after January 1, 1994, and on or before December 31, 1994. Also, the cash deposits required for this company will be zero. This cash deposit rate shall be effective upon publication of this notice in accordance with § 355.22(c)(8) of the Department's *Interim Regulations.* Further, this deposit rate, when imposed shall remain in effect until publication of the final results of the next administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* section 355.22(a) of the *Interim Regulations.* Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)).

Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at zero. This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order is zero, the cash deposit rate in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 27, 1996.

Barbara R. Stafford,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–25412 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–DS–P**

---

**[C–423–806]**

## Certain Carbon Steel Products From Belgium: Notice of Decision of the Court of International Trade

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 27, 1996, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final countervailing duty determinations on certain steel products from Belgium. *Geneva Steel, et al.* v. *United States,* Slip Op. 96–147 (CIT Aug. 27, 1996) (''*Geneva II*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that *Geneva II* and the CIT's earlier opinion in this case, discussed below, were ''not in harmony'' with the Department's original determinations.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Vincent Kane at (202) 482–2815, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, or Duane Layton at (202) 482–5285, Office of the Chief Counsel for the Import Administration, U.S. Department of Commerce.

**SUPPLEMENTARY INFORMATION:**

Background

On July 9, 1993, the Department published its final countervailing duty determinations on certain steel products from Belgium. *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium*, 58 FR 37273 (July 9, 1993). On August 17, 1993, the Department published its amendment to the final countervailing duty determinations. *Countervailing Duty Order and Amendment: Certain Steel Products from Belgium*, 58 FR 43749 (Aug. 17, 1993).

Subsequent to the Department's determinations, petitioners and one of the investigated companies filed lawsuits with the CIT challenging these determinations. Thereafter, the CIT issued an Order and Opinion dated January 3, 1996, in *Geneva Steel, et al.* v. *United States*, 914 F. Supp. 563 (CIT 1996), (''*Geneva I*''), remanding six issues to the Department. The Department filed its remand results on May 10, 1995. Petitioners challenged one aspect of the Department's redetermination on remand. On August 27, 1996, the CIT affirmed the Department's final results of redetermination on remand in *Geneva II*.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT or Federal Circuit which is ''not in harmony'' with the Department's determination. The CIT's decisions in *Geneva I* and *Geneva II* were not in harmony with the Department's original countervailing duty determinations. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. If these decisions are not appealed, or if appealed, if they are upheld, the Department will publish amended final countervailing duty determinations.

Dated: September 25, 1996.

Barbara R. Stafford,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–25410 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–DS–M**

**[C–401–804]**

## Certain Cut-to-Length Carbon Steel Plate From Sweden; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden. For information on the net subsidy for the reviewed company, as well as for any non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: Gayle Longest (202) 482–3338 or (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

Background

On August 17, 1993, the Department published in the Federal Register (58 FR 43758) the countervailing duty order on certain cut-to-length carbon steel plate from Sweden. On August 1, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 39150) of this countervailing duty order. We received timely requests for review, and we initiated the review, covering the period January 1, 1994 through December 31, 1994, on September 15, 1995 (60 FR 47930).

In accordance with section 355.22(a) of the Department's *Interim Regulations*, this review covers only those producers or exporters for which a review was specifically requested *(see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments*, (60 FR 25130 ; May 11, 1995) *(Interim Regulations))*. Accordingly, this review covers SSAB, the sole known producer/exporter of the subject merchandise during the period of review (POR). This review also covers 10 programs.

On May 29, 1996, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended (*see Certain Cut-to-Length Carbon Steel Plate From Sweden; Extension of Time Limit for Countervailing Duty Administrative Review* (61 FR 26879). As explained in the memoranda from the Assistant Secretary for Import Administration to the File dated November 22, 1995, and January 11, 1996 (both on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than September 27, 1996, and the deadline for the final results of this review is no later than 180 days from the date on which these preliminary results are published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989) (*1989 Proposed Regulations*) are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *1989 Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. *See Advance Notice of*

*Proposed Rulemaking and Request for Public Comments,* (60 FR 80; Jan. 3, 1995); *Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* (61 FR 7308; February 27, 1996).

Scope of the Review

Imports covered by this review are shipments of certain cut-to-length carbon steel plate from Sweden. These products include hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without pattern in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeter or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000 and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for nonrecurring grant benefits. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37063, 37226; July 9, 1993). However, in *British Steel plc.* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel, 929 F. Supp. 426, 439 (CIT 1996).*

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. Specifically, the Department has preliminarily determined that it is reasonable and practicable to allocate all new nonrecurring subsidies (*i.e.,* subsidies that have not yet been assigned an allocation period) based on a company-specific AUL. However, if a subsidy has already been countervailed based on an allocation period established in an earlier segment of the proceeding, it does not appear reasonable or practicable to reallocate that subsidy over a different period of time. In other words, since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit. The Department has preliminarily determined that a more reasonable and accurate approach is to continue using the allocation period first assigned to the subsidy. We invite the parties to comment on the selection of this methodology and provide any other reasonable and practicable approaches for complying with the Court's ruling.

In the current review, there are no new subsidies. All of the nonrecurring grants under review were provided prior to the POR; allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each grant.

Privatization and Sale of Assets to Other Companies

Within the SSAB group only one subsidiary produces and exports the subject merchandise. SSAB has sold several productive units and the company was partially privatized twice, in 1987 and in 1989. During the review period, SSAB was completely privatized.

In *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* (58 FR 37385; July 9, 1993) (*Final Determination*), the Department found that SSAB had received countervailable subsidies prior to the sale of the productive units and the two partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (*see General Issues Appendix* (58 FR 37217, 37262; July 9, 1993)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate a rate for the subsidies that were allocated to the spin-off, *i.e.,* a productive unit that was sold, we first determined the amount of the subsidies attributable to each productive unit by dividing the asset value of that productive unit by the total asset value of SSAB in the year of the spin-off. We then applied this ratio to the net present value (NPV), in the year of the spin-off, of the future benefit streams from all of SSAB's prior subsidies allocable to the POR. The future benefit streams at the time of the sale of each productive unit reflect the Department's allocation over time of prior subsidies to SSAB in accordance with the declining balance methodology (see section 355.49 of the Department's *Proposed Regulations*), and reflect also the effect of prior spin-offs of SSAB productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of SSAB's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies received by SSAB in each year from fiscal year 1979 through fiscal year 1993 by SSAB's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to the productive unit at the time of sale to arrive at the amount of subsidies allocated to the productive unit being spun-off.

To calculate the subsidies remaining with SSAB after privatization, we performed the following calculations. We first calculated the NPV of the future benefit stream of the subsidies at the

time of the sale of the shares. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the ''Privatization'' section of the *General Issues Appendix* (58 FR 37217, 37259). This amount was then subtracted from the amount of the NPV eligible for repayment, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1994, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after privatization. We then divided the results by the company's total sales in 1994.

Analysis of Programs

*I. Programs Conferring Subsidies*

*Programs Previously Determined to Confer Subsidies*

(1) Equity Infusions

In 1981, the Government of Sweden (GOS) provided equity capital to SSAB totaling 1,125 million Swedish kronor (MSEK). Simultaneously, Granges, a private company and the only other shareholder at the time, contributed 375 MSEK. To persuade Granges to contribute this equity capital, the GOS guaranteed a specified sum to be paid to Granges in 1991. Because of this arrangement, we determined that the 375 MSEK paid by Granges was an equity infusion provided indirectly by the GOS, through Granges, specifically to SSAB. *See Final Determination* (58 FR 37385, 37387).

In the *Final Determination* and in the final determination in a previous investigation of Swedish steel, *Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Sweden* (50 FR 33377; August 19, 1985) (*Final Certain Carbon Steel Products*), we determined that SSAB was unequityworthy in 1981 when it received the equity infusions, and that the two equity infusions are therefore countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

In accordance with the ''Equity'' section of the *General Issues Appendix,* we treated the equity infusions as grants. To calculate the benefit from these equity infusions for the POR, we used the grant methodology as described in the ''Allocation Methodology'' section above. Because the Department determined in the *Final Determination* that the infusions are non-recurring subsidies, we have allocated the subsidies over 15 years, as discussed in the ''Allocation Methodology'' section above. As the discount rate, we have used SSAB's company-specific interest rate on fixed-rate long-term loans (see § 355.49(b)(2) of the *Proposed Regulations*).

We reduced the benefit from these equity infusions attributable to the POR according to the methodology outlined in the ''Privatization'' section above. We then divided the result by SSAB's total sales for 1994. On this basis, we preliminarily determine the net subsidy for equity infusions to be 0.53 percent *ad valorem*.

(2) Structural Loans

Under three separate pieces of legislation, SSAB received structural loans for investment in plant and equipment. The loans were disbursed in installments between 1978 and 1983. All three loans were outstanding during the POR.

According to the terms of the loans, all three structural loans were interest-free for three years from the date of disbursement. After that time, one loan incurred interest at a fixed rate of five percent per annum while the other two loans incurred interest at a variable rate subject to change every five years. The variable interest rate on these two loans is set at the rate of the long-term government bonds plus a 0.25 percent margin. After a five-year grace period, the principal is repaid in 20 equal installments at the end of each calendar year.

In *Final Determination* and in *Final Certain Carbon Steel Products,* we determined that these loans are countervailable because they were provided specifically to SSAB on terms inconsistent with commercial considerations. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit from the fixed-rate structural loan, we employed the long-term loan methodology described in section 355.49(c)(1) of the *1989 Proposed Regulations.* To calculate the benefits from the two variable-rate loans, we used the variable-rate long-term loan methodology described in section 355.49(d)(1) of the *1989 Proposed Regulations.* As the discount rate, we used SSAB's company-specific long-term benchmark interest rates, previously established in the *Final Determination.*

We reduced the benefit attributable to the POR from the fixed-rate structural loan according to the methodology outlined in the ''Privatization'' section above. We then aggregated the benefits for the three loans (fixed interest rate and variable interest rate) and divided the results by SSAB's total sales for 1994. On this basis, we preliminarily determine the net subsidy from the three structural loans to be 0.27 percent *ad valorem*.

(3) Forgiven Reconstruction Loans

The GOS provided reconstruction loans to SSAB between 1979 and 1985 to cover operating losses, investment in certain plants and equipment, and for employment promotion purposes. The loans were interest free for three years, after which a fixed interest rate was charged. According to the terms of the loans, up to half of the outstanding amount of the loan can be written off after the second calendar year following the disbursement. The remainder of the loan can be written off entirely at the end of the ninth calendar year after disbursement. Pursuant to the terms of the reconstruction loans, the GOS wrote off large portions of principal and accrued interest on these loans between 1980 and 1990.

In the *Final Determination* and in *Final Certain Carbon Steel Products,* we determined that forgiveness of these loans is countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit, we treated the written-off portions of the reconstruction loans as countervailable grants received in the years the loans were forgiven and calculated the benefit using the grant methodology as described in the ''Allocation Methodology'' section above. We reduced the benefits from these grants attributable to the POR according to the methodology outlined in the ''Privatization'' section above. We then divided the results by SSAB's total sales for 1994. On this basis, we preliminarily determine the net subsidy from the three forgiven reconstruction loans to be 1.18 percent *ad valorem*.

*II. Programs Preliminarily Determined Not to Confer Subsidies*

(1) Research & Development (R&D) Loans and Grants

The Swedish National Board for Industrial and Technical Development (NUTEK) provides research and development loans and grants to Swedish industries for R&D purposes.

One type of R&D loan (industrial development loans) is mostly aimed at ''new'' industries such as the biotechnical, electronic, and medical industries. Another type of R&D loan (energy efficiency loans) is directed towards big energy consumers.

The loans accrue interest equal to the official ''discount'' rate plus a premium of 3.75 percent. However, no interest or principal payments are due until the R&D project is completed. If, upon completion of a project, the company wishes to use the research results for commercial purposes, the loan must be repaid. On the other hand, if the company decides not to utilize the results and, therefore, does not claim proprietary treatment for the results, NUTEK will forgive the loan and the results of the research become publicly available.

SSAB had several R&D loans outstanding during the POR on which it did not make either principal or interest payments. However, under our current pratice, we cannot determine whether SSAB has received a countervailable benefit until the research is completed, and they will be able to submit information demonstrating that the research results are publicly available. It is only upon completion that it will be known (1) whether the loans are forgiven and (2) if the loans are not forgiven, whether the accrued interest is less than what would accrue if the loans are provided at commercial rates. *See Final Determination* (58 FR 37385, 37390). Therefore, we will continue to examine these R&D loans in future administrative reviews.

As explained above, NUTEK may forgive R&D loans if the companies receiving them disseminate publicly the results of the research financed by the loans. The Department's current practice is to treat forgiven R&D loans as non-countervailable if the research results are publicly available. *See Final Determination* (58 FR 37385, 37390). During the POR, three such loans to SSAB were forgiven. Official documentation from NUTEK, provided in the questionnaire response, indicates that the results of these research projects for which these three loans were made to SSAB were made publicly available. On this basis, we preliminarily determine that these three forgiven R&D loans did not confer countervailable benefits on the subject merchandise during the POR.

(2) Fund for Industry and New Business R&D

SSAB reported in its questionnaire response that SSAB Oxelösund, a subsidiary, received a conditional repayment R&D loan from the Fund for Industry and New Business (the Fund).

The Fund provides project financing to firms with a budget of at least two million Swedish kroner (MSEK), and start-up loans to new ''limited'' companies. Projects are financed through (1) conditional repayment loans, (2) capital in return for royalty, (3) project guarantees, and (4) credit guarantees for developing new products, processes and systems, and marketing. The terms and conditions of the financing depend on the type of financing provided.

In October 1992, the Fund approved a 6–MSEK conditional repayment loan for SSAB Oxelösund. Only 3 MSEK of the loan amount were disbursed. Under the terms of the loan, 50 percent of the principal was to be paid at the end of 1994, with the remaining 50 percent to be paid at the end of 1995. The loan accrued interest from the date of disbursement at a rate equal to the Central Bank's ''discount'' rate, plus a 4 percent premium, paid quarterly, for the prior quarter. Because the base rate changes quarterly, we have analyzed this loan under our variable rate loan methodology. In *Certain-Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Countervailing Duty Administrative Review* (60 FR 44017; August 24, 1995) (*92/93 Preliminary Results*) and *Certain-Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review* (61 FR 5381; February 12, 1996) (*92/93 Final Results*), the previous administrative review of this order, we found that SSAB paid a higher interest rate for this loan than it would have paid at the commercial benchmark rates. Accordingly, we determined that the program did not confer a countervailable benefit on the subject merchandise during the POR. In this review period, the entire outstanding principal and the accrued interest was paid.

During the POR, SSAB made two interest payments on the loan. The first payment was in arrears and covered the last quarter of 1993; the second payment was for interest accrued in 1994. Therefore, we selected benchmarks for both 1993 and 1994, using the same source for benchmarks established previously. *See 92/93 Preliminary Results* and *92/93 Final Results.* We compared the interest paid by the company with the amount of interest that the company would have paid on a similar loan provided at the benchmark rates, and we factored into the calculation the period of time in which the interest payment was in arrears. We found that the amount paid by the company was slightly lower than the amount that would have been paid at the commercial benchmark rate. However, the subsidy rate that would be attributable to this loan is 0.00002 percent *ad valorem*. A rate this small would not change the overall subsidy rate for SSAB. Moreover, since the principal of the loan was entirely repaid during the POR, the issue of the countervailability of the loan will not arise in subsequent administrative reviews. Since any benefit we would calculate for the loan would not affect the overall subsidy rate during the POR, and, since there is no possibility of future benefits from this loan, we do not consider it necessary to make a determination on the specificity of this loan program and are not including it in the calculation of these preliminary results.

*III. Programs Preliminarily Found To Be Not Used*

We also examined the following programs and preliminarily determine that SSAB did not apply for or receive benefits under them during the POR:

A. Regional Development Grants
B. Transportation Grants
C. Location-of-Industry Loans

*IV. Programs Preliminarily Found To Be Terminated*

Mining Exploration Grants

Between 1983 and 1985, SSAB received grants for exploration of new mineral deposits in its Grangesberg mines. In *Final Determination,* the Department found that these grants were countervailable, because they were provided specifically to a group of enterprises or industries (mining companies). The amounts received under this program were less than 0.5 percent of the value of SSAB's total sales for that year and were expensed in the year of receipt in accordance with the Allocation section of the *General Issues Appendix.*

In June 1993, the mining exploration grant program was terminated by the Government of Sweden under law SFS 1993:693 which eliminated Nämnden för Statens Gruvegendom, the agency that administered the program. No grants were given to SSAB under this program after 1985 and there were no residual benefits during the POR from grants previously bestowed.

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations*, we calculated an individual subsidy rate for each

producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy for SSAB to be 1.98 percent *ad valorem* for SSAB. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for SSAB at 1.98 percent *ad valorem*. The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of 1.98 percent of the f.o.b. invoice price on all shipments of the subject merchandise from SSAB, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is the analogue to 19 CFR 355.22(g), the countervailing duty regulation on automatic assessment). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to all non-reviewed companies covered by this order is that established in the most recently completed administrative proceeding. *See Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Countervailing Duty Administrative Review*, 61 FR at 5381. This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22(c)(5)).

Dated: September 25, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–25411 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–DS–P**

## Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 88–7A017.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Construction Industry Manufacturers Association (CIMA) on May 26, 1989. Notice of issuance of the Certificate was published in the Federal Register on June 12, 1989 (54 FR 24932). The Certificate of review was previously amended on April 9, 1990 (55 FR 14100, April 16, 1990), January 3, 1991 (56 FR 843, January 9, 1991), December 11, 1991 (56 FR 65467, December 17, 1991), October 21 1992 (57 FR 48788, October 28, 1992), and November 21, 1994 (59 FR 61877, December 2, 1994).

**EFFETIVE DATE:** July 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Ch. III Part 325 (1995).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**DESCRIPTION OF AMENDED CERTIFICATE:** CIMA's Export Trade Certificate of Review has been amended to:

1. Add as ''Member'' the following company: Allmand Bros. Inc. of Holdrege, Nebraska.

2. Delete as ''Members'' the following companies: General Engines Co., Inc. of Thorofare, New Jersey; and Getman Corp. of Bangor, Michigan.

**ADDITIONAL CHANGES TO CERTIFICATE MEMBERSHIP:** The following Members have merged: Ingersoll-Rand of Woodcliff Lake, New Jersey purchased Blaw-Knox Construction Equipment Corporation of Mattoon, Illinois (''Blaw-Knox''); and TEREX Corporation purchased PPM Cranes, Inc. of Conway, South Carolina (''PPM''). Blaw-Knox and PPM now operate as subsidiaries and as such will not be listed as Members on the amended Certificate.

In addition, the American Mining Congress was merged with the National Coal Association to form the National Mining Association, and the

Manufacturers Division of the American Mining Congress was renamed the Manufacturers & Services Division of the National Mining Association.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: September 25, 1996.

W. Dawn Busby,

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 96–25160 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–DR–P**

## National Oceanic and Atmospheric Administration

**[I.D. 082796F]**

## Marine Mammals; Permit No. 866 (P537)

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

**ACTION:** Issuance of amendment.

**SUMMARY:** Notice is hereby given that a request for amendment of scientific research permit No. 866 submitted by Mr. Fred A. Sharpe, Behavioral Ecology Research Group, Department of Biological Sciences, Simon Fraser University, Burnaby, B.C. Canada V5A 1S6, has been granted.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

**SUPPLEMENTARY INFORMATION:** On June 26, 1996, notice was published in the Federal Register (61 FR 33096) that an amendment of permit no. 866, issued July 15, 1993, had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222). The amended permit is effective upon signature by NMFS and the individual named above.

Permit 866 authorizes the permit holder to: Harass (i.e., observe/photo-identify, conduct side-scanning sonar activities) up to 1000 humpback whales (*Megaptera novaeangliae*) per year, up to 18 of which may be fitted with suction cup time-depth recorders annually through September 30, 1997. The permit holder is also authorized to harass up to 100 killer whales (*Orcinus orca*) annually on an opportunistic basis during the proposed humpback whale studies. Research activities are authorized to be conducted between Dixon Entrance and Cross Sound.

The Permit has now been amended to authorize the conduct of playback studies on up to 280 humpback whales annually, in the waters of Chatham Strait and Frederick Sound, Alaska. Although playback activities were requested to be conducted over a three-year period, the permit expires on September 30, 1997. The permittee has been advised that in order to continue activities beyond that date, a permit extension or a new permit will be required.

Dated: August 29, 1996.

William Windom,

*Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–25367 Filed 10–2–96; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 092796C]**

## Marine Mammals; Scientific Research Permit No. 1006 (P466B)

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that a permit for scientific research has been issued to Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, Massachusetts 02110–3399.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

**SUPPLEMENTARY INFORMATION:** On June 25, 1996, notice was published in the Federal Register (61 FR 32774) that a request for a scientific research permit had been submitted by the above-named applicant. The request was to harass during photo-identification studies and aerial, and vessel surveys, up to 350 North Atlantic right whales, up to 10 time each, annually, over a five year period. Of these 350 animals, up to 80 may be biopsy darted, up to 10 may be radio tagged, up to 15 may be satellite tagged, and up to 50 may have blubber measurements taken ultrasonically, annually. In addition, authorization was requested to import up to 100 and export up to 100 tissue samples annually, and to collect an unspecified number of samples and/or entire carcasses, if feasible, from up to 10 right whale annually that die and strand along the coast of the United States. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222). Authorization for collection and possession of specimens and/or whole carcasses of dead, stranded right whales, has not been granted, inasmuch as this activity is more appropriately handled through a letter of authorization from the Northeast Region's Stranding Network. Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Dated: August 29, 1996.

William Windom,

*Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–25368 Filed 10–02–96; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMODITY FUTURES TRADING COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of submission of information collection No. 3038–0043.

**SUMMARY:** The Commodity Futures Trading Commission has submitted information collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, and has submitted its request to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to these rules is used by the Commission to review National Futures Association proceedings.

**ADDRESSES:** Persons wishing to comment on this information collection should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395–7340. Copies of the submission are available from Joe F. Mink, Agency Clearance Officer, (202) 418–5170.

*Title:* Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

*Control Number:* 3038–0043.

*Action:* Extension.

*Respondents:* National Futures Association and parties to Part 171 proceedings.

*Estimated Annual Burden:* 126 hours.

| Respondents | Regulation (17 CFR) | Estimated number of respondents | Annual responses | Est. avg. hours per response |
|---|---|---|---|---|
| National Futures Association and parties to Part 171 proceedings. | Part 171 ..... | 14 | 1–55 | .5–3.5 |

Issued in Washington, D.C. on September 27, 1996.

Jean A. Webb,

*Secretary to the Commission.*

[FR Doc. 96–25370 Filed 10–2–96; 8:45 am]

**BILLING CODE 6351–01–M**

### Sunshine Act Meeting

This is to give notice that the Chairperson of the Commodity Futures Trading Commission will conduct a roundtable discussion on Wednesday, October 16, 1996, from 1:00 to 6:00 p.m. in the auditorium of the Chicago-Kent College of Law, 565 West Adams Street, Chicago, Illinois 60661–3691. The agenda will consist of:

Exchange Order and Trade Automation Roundtable

I. Welcome and Opening Remarks by Roundtable Moderator, CFTC Chairperson Brooksley Born. 1:00–1:15 p.m.
   Explanation of Roundtable Format and Introduction of Discussants. Discussants will include a wide variety of individuals with vast experience related to financial markets.
   Brief Statements from Discussants on What They Think Most Pressing Technology Concern For the Industry Is.
II. Panel One: Exchange Technology Panel. 1:15–2:00 p.m.
   1. Introduction of Panel One Speakers.
   2. Topics for Discussion:
   a. Description of Order Routing and Order Delivery Systems Currently in use and Planned by Exchanges.
   b. Recent and Planned Actions to Facilitate use of Proprietary Order-Routing and Order-Entry Systems at the Exchanges.
   c. What is Working and What is Not?
   d. Practicability of Accelerating Improvements to Order-Routing Process.
   e. Practicability of Further Automation of Order-Routing Process.
   3. Discussant Group Questions for Panel One. 2:00 - 2:45 p.m.
III. Panel Two: User Representatives. 2:45–3:30 p.m.
   1. Introduction of Panel Two Speakers.
   2. Topics for Discussion:
   a. Use of Order Routing and Trade-Transmittal Technologies.
   —What Users Like/Dislike About Systems.
   —What Future Development Users Want.
   —What Exchange Initiatives are Necessary to Further Such Developments.
   b. Advantages/Disadvantages of Proprietary as Opposed to Exchange Systems.
   c. Biggest Concerns About Use of Systems.
   3. Discussant Group Questions for Panel Two. 3:30–4:15 p.m.
IV. Coffee Break 4:15–4:30 p.m.
V. Panel Three: Clearing Representatives. 4:30–5:00 p.m.
   1. Introduction of Panel Group Three Speakers.
   2. Topics for Discussion:
   a. Advantages of Automated Order Routing/Order Management Systems From a Clearing Perspective.
   —Real-Time Clearing.
   —Risk Assessment.
   —Reduction in Number of Outtrades.
   b. Issues Related to Integrating Proprietary Software With Exchange Systems.
   3. Discussant Group Questions for Panel Three. 5:00–5:30 p.m.
VI. Concluding Remarks. 5:30–5:45 p.m.
   1. Concluding Remarks From Discussants.
   2. Concluding Remarks From Chairperson Born and Commissioners.

The purpose of the roundtable is to serve as a forum to advance public dialog on exchange automation issues and to identify the obstacles and benefits that market users believe are of primary importance to that debate.

The roundtable is open to the public. Chairperson Born is authorized to conduct the roundtable in a fashion that will, in her judgment, facilitate the orderly conduct of business.

Issued in Washington, DC on September 30, 1996.

Andrea M. Corcoran,

*Director, Division of Trading & Markets.*

[FR Doc. 96–25516 Filed 10–1–96; 12:35 pm]

**BILLING CODE 6351–01–M**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** U.S. Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Thursday, October 10, 1996, 10:00 a.m.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:** *Compliance Status Report.* The staff will brief the

Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 1, 1996.

Sadye E. Dunn,

*Secretary.*

[FR Doc. 96–25552 Filed 10–1–96; 2:35 pm]

**BILLING CODE 6355–01–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Proposed Information Collection; Navy Recruiting Command

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of l995, the Navy Recruiting Command announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (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 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 through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 2, 1996.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Commander, Navy Recruiting Command (Code 10D), 801 N. Randolph Street, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mrs. Lambert at (703) 696–4185.

**TITLE AND OMB NUMBER:** Navy Advertising Effectiveness Study (NAES); OMB Control Number 0703–0032.

**NEEDS AND USES:** The Navy Advertising Effectiveness Study measures advertising effectiveness and provides data for strategies to be used in advertising. This information is used to determine management decisions on objectives and strategies of advertising, media selection, and the evaluation of the advertising and recruiting process.

*Affected Public:* Individuals or Households; *Annual Burden Hours:* 500; *Number of Respondents:* 1,000; *Responses per Respondent:* 1; *Average Burden per Response:* 30 minutes; *Frequency:* Semi-annually.

**SUPPLEMENTARY INFORMATION:** The Navy Advertising Effectiveness Study will be used by the Navy Recruiting Command to provide the Navy with a tailored tool for the allocation of resources, management decisions on objectives and strategies of advertising, operating guidelines on media selection, reach, frequency, copy content, market penetration and evaluation of the advertising and recruiting process.

Dated: September 20, 1996.

D.E. Koenig, Jr.,

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 96–25269 Filed 10–2–96; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

**[Dockets EA–121 and EA–122]**

### Application To Export Electric Energy; Electric Clearinghouse, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Electric Clearinghouse, Inc. (ECI) has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act. ECI is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

**DATES:** Comments, protests or requests to intervene must be submitted on or before October 18, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 17, 1996, ECI filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy, as a power marketer, to Mexico (Docket EA–121) and Canada (Docket EA–122) pursuant to section 202(e) of the FPA. ECI neither owns nor controls any facilities for the generation or transmission of electricity, nor does it have a franchised service area. Rather, ECI is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in the wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedules.

The electric energy ECI proposes to transmit to Mexico and Canada will be purchased from electric utilities and other entities as permitted by the FERC. ECI agrees to comply with the terms and conditions contained in the export authorization issued for those cross-border facilities it proposes to use as well as any other conditions imposed by DOE, including providing written evidence that sufficient transmission access to complete the export transaction has been obtained.

In Docket EA–121, ECI proposed to export the electric energy to Mexico over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

| Owner | Location | Voltage | Presidential permit No. |
|---|---|---|---|
| San Diego Gas & Elect. | Miguel, CA | 230 kV | PP–68. |
| | Imperial Valley, CA | 230 kV | PP–79. |
| El Paso Electric | Diablo, NM | 115 kV | PP–92. |
| | Ascarate, TX | 115 kV | PP–48. |
| Central Power and Light | Brownsville, TX | 138 kV | PP–94. |
| Comision Federal De Electricidad | Eagle Pass, TX | 138 kV | PP–50. |

| Owner | Location | Voltage | Presidential permit No. |
|---|---|---|---|
| | Laredo, TX | 138 kV | PP–57. |
| | Falcon Dam, TX | 138 kV | Not required. |

In Docket EA–122, ECI proposes to export the electric energy to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

| Owner | Location | Voltage | Presidential permit No. |
|---|---|---|---|
| Basin Electric | Tioga, ND | 230-kV | PP–64. |
| Bonneville Power Administration | Blaine, WA | 2–500-kV | PP–10. |
| | Nelway, WA | 230-kV | PP–36. |
| | Nelway, WA | 230-kV | PP–46. |
| Citizens Utilities | Derby Line, VT | 120-kV | PP–66. |
| Detroit Edison | St. Clair, MI | 345-kV | PP–38. |
| | Maryville, MI | 230-kV | PP–21. |
| | Detroit, MI | 230-kV | PP–21. |
| | St. Clair, MI | 345-kV | PP–58. |
| Eastern Maine Elect. Coop. | Calais, ME | 69-kV | PP–32. |
| Joint Owners of Highgate Project | Highgate, VT | 345-kV [1] | PP–82. |
| Maine Electric Power Co. | Houlton, ME | 345-kV | PP–43. |
| Maine Public Service Co. | Limestone, ME | 69-kV | PP–12. |
| | Fort Fairfield, ME | 69-kV | PP–12. |
| | Aroostook County, ME | 138-kV | PP–29. |
| | Madawaska, ME | 2–69-kV | PP–29. |
| Minnesota Power and Light Co | International Falls, MN | 115-kV | PP–78. |
| Minnkota Power | Roseau County, MN | 230-kV | PP–61. |
| New York Power Authority | Massena, NY | 765-kV | PP–56. |
| | Massena, NY | 2–230-kV | PP–25. |
| | Niagara Falls, NY | 2–345-kV | PP–74. |
| | Devils Hole, NY | 230-kV | PP–30. |
| Niagara Mohawk Power Corp. | Devils Hole, NY | 230-kV | PP–31. |
| Northern States Power | Red River, ND | 230-kV | PP–45. |
| | Roseau County, MN | 500-kV | PP–63. |
| Vermont Electric Transmission Co | Norton, VT | ±450-kV DC | PP–76. |

[1] These facilities were constructed at 345-kV but operated at 120-kV.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on ECI's request to export to Mexico should be clearly marked with Docket EA–121. Comments on ECI's request to export to Canada should be clearly marked with Docket EA–122. Additional copies are to be filed directly with: Peter G. Esposito, John Hengerer & Esposito, 1200 17th Street, NW, Suite 600, Washington, D.C. 20036 (facsimile 202–429–8805) AND Kathryn L. Patton, Regulatory Counsel, Electric Clearinghouse, Inc., 13430 Northwest Freeway, Suite 1200, Houston, TX 77040–6095 (facsimile 713–507–6834).

A final decision will be made on these applications after the environmental impacts of the proposed actions have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on September 27, 1996.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–25338 Filed 10–2–96; 8:45 am]

BILLING CODE 6450–01–P

## Office of Fossil Energy

**[Docket EA–123]**

## Application to Export Electric Energy; PECO Energy Company

**AGENCY:** Office of Fossil Energy, DOE

**ACTION:** Notice of application.

**SUMMARY:** PECO Energy Company (PECO), an investor-owned utility, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before October 17, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 6, 1996, PECO filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. PECO, an

investor-owned utility that owns generation, transmission, and distribution facilities in the vicinity of Philadelphia, Pennsylvania, also engages in activities similar to those of power marketers. In this application, PECO proposes to purchase energy for export in the wholesale power marketplace rather than transmit electric energy from PECO's own system.

PECO asserts that the energy it proposes to transmit to Canada would be surplus to the requirements of the selling utility or generator. PECO would arrange for the exported energy to be wheeled from the selling entities, over existing domestic transmission facilities, and delivered to the foreign purchaser over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued: Basin Electric's 230-kilovolt (kV) line at Tioga, North Dakota (PP–64); Bonneville Power Administration's (BPA) 2—500–kV lines at Blaine, Washington (PP–10); BPA's 200—230–kV lines at Nelway, British Columbia (PP–36, PP–46); Citizens Utilities' 120–kV line at Derby Line, Vermont (PP–66); Detroit Edison's (Detroit) 2—345–kV lines at St. Clair, Michigan (PP–38, PP–58); Detroit's 230-kV line at Maryville, Michigan (PP–21); Detroit's 230–kV line at Detroit, Michigan (PP–21); Joint Owners of the Highgate Project's 345–kV line (operated at 120-kV) at Franklin, Vermont (PP–82); Maine Electric Power Company's 345–kV line at Houlton, Maine (P–43); Maine Public Service's 138-kV line at Aroostook County, Maine (PP–29); Minnesota Power's 115–kV line at International Falls, Minnesota (PP–78); Minnesota Power's 230-kV line at Roseau County, Minnesota (PP–61); New York Power Authority's (NYPA) 2—230–kV lines at Massena, New York (PP–25); NYPA's 230–kV line at Devil's Hole, New York (PP–30); NYPA's 765-kV line at Fort Covington, New York (PP–56); NYPA's 2—345–kV lines at Niagara Falls, New York (PP–74); Niagara Mohawk Power Corporation's 230–kV line at Devil's Hole, New York (PP–31); Northern States Power's (NSP) 230-kV line at Red River, North Dakota (PP–45); NSP's 500-kV line at Roseau County, North Dakota (PP–63); and Vermont Electric Transmission Company's ±450-kV DC line at Norton, Vermont (PP–76).

In a related matter, in Order No. EA–98–C, issued September 5, 1996 (Docket EA–98–C), PECO was authorized to export electricity to British Columbia Hydro & Power Authority, and other future Canadian members of the Western Systems Power Pool (WSPP), under the terms and conditions of WSPP's pooling agreement and service schedules approved by the Federal Energy Regulatory Commission (FERC).

**PROCEDURAL MATTERS:** Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Marjorie R. Philips, Esq., PECO Energy Company—Power Team, 2004 Renaissance Boulevard, King of Prussia, PA 19406 (facsimile 610–292–6644).

A final decision will be made on this applications after the environmental impacts of the proposed action have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on September 27, 1996.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–25339 Filed 10–2–96; 8:45 am]

**BILLING CODE 6450–01–P**

## Federal Energy Regulatory Commission

**[Docket No. CP96–803–000]**

### Alabama-Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

September 27, 1996.

Take notice that on September 20, 1996, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP96–803–000, a request pursuant to §§ 157.205 and 157.211 (18 CFR 157.205 and 157.211) of the Commission's Regulations under Natural Gas Act, for authorization to construct and operate facilities in Morgan County, Alabama for the delivery of natural gas to an end-user, Trico Steel Company, under Alabama-Tennessee's blanket certificate issued in Docket No. CP85–359–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Alabama-Tennessee states that the facilities would consist of (1) approximately 100 feet of 6-inch pipeline, and (2) meter and regulator facilities consisting of meter tubes, valves, regulators, relief valves, electronics, and other related equipment. Alabama-Tennessee also states that it estimates that the facilities would cost approximately $185,800. Further, Alabama-Tennessee states that the estimated daily and annual volumes of natural gas delivered would be 10,000 MMBtu and 3 TBtu, respectively, and would be transported under Alabama-Tennessee's IT and FT rate schedules.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25286 Filed 10–2–96; 8:45 am]

**BILLING CODE 6717–01–M**

**[Docket No. RP96–388–000]**

### The Brooklyn Union Gas Company v. Transcontinental Gas Pipe Line Corporation; Notice of Complaint

September 27, 1996.

Take notice that on September 24, 1996, pursuant to Section 5(a) of the Natural Gas Act, 15 U.S.C. § 717d, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, The Brooklyn Union Gas Company (Brooklyn Union) submitted for filing a complaint against Transcontinental Gas Pipe Line Corporation (Transco).

Brooklyn Union argues that Transco has, without color of authority and in derogation of Brooklyn Union's rights and entitlements under Transco's FERC Gas Tariff and applicable Commission orders, refused to transport and deliver quantities of natural gas to lawfully nominated secondary delivery points designated by Brooklyn Union.

Brooklyn Union seeks a Commission order directing Transco to permit Brooklyn Union and other similarly situated shippers in Zone 6 under Transco's Part 284 transportation rate schedules, to nominate, schedule and deliver gas on a secondary basis at Transco's Leidy, Pennsylvania and Wharton, Pennsylvania delivery points and any other point where Transco may require delivery of gas for subsequent injection pursuant to Rate Schedule GSS.

Any person desiring to be heard or protest said complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 25, 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 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. Answers to this complaint shall be due on or before October 25, 1996.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25295 Filed 10–2–96; 8:45 am]

**BILLING CODE 6717–01–M**

---

**[Docket No. CP 96–804–000]**

## Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 27, 1996.

Take notice that on September 20, 1996, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–80–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate the facilities to establish three additional points of delivery to existing customers. Columbia Gas makes such request, under its blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the commission and open to public inspection.

Specifically, Columbia Gas is proposing to construct and operate an additional delivery point to Columbia Gas of Ohio, Inc. in Holmes County, Ohio. Columbia Gas is also proposing to construct and operate two additional delivery points to Mountaineer Gas Company, in West Virginia, one of which will be located in Wayne County, and the other to be located in Barbour county. It is stated that each of the delivery points is slated to receive firm service of up to 1.5 Dt of natural per day and up to 150 Dt annually for residential service under Part 284 of the Commission's regulation.

Columbia Gas states that the volumes to be delivered at the proposed delivery points will be within the certificated entitlement of the respective customer. Columbia Gas estimates that the proposed delivery facilities will cost $150 each, and that such cost will be treated as an operating and maintenance expense.

Any person or the Commission's staff may within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25287 Filed 10–2–96; 8:45 am]

**BILLING CODE 6717–01–M**

---

**[Docket No. RP96–390–000]**

## Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1996.

Take notice that on September 25, 1996, Columbia Gas Transmission Corporation (Columbia) filed revisions to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to permit negotiated rate arrangements in accordance with the Commission's orders on similar pipeline filings, and in accordance with the Commission's January 31, 1996 Statement of Policy and Request for Comments in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Docket No. RM95–6–000, to be effective November 1, 1996:

Second Revised Sheet No. 101
First Revised Sheet No. 107
First Revised Sheet No. 116
First Revised Sheet No. 122
Second Revised Sheet No. 123
First Revised Sheet No. 132
Second Revised Sheet No. 146
Second Revised Sheet No. 147
Second Revised Sheet No. 169
First Revised Sheet No. 182
Second Revised Sheet No. 184
Second Revised Sheet No. 197
Second Revised Sheet No. 280
Third Revised Sheet No. 281
Third Revised Sheet No. 282
First Revised Sheet No. 310
Fourth Revised Sheet No. 353
Fourth Revised Sheet No. 374
Fifth Revised Sheet No. 395

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 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.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25297 Filed 10–02–96; 8:45 am]

**BILLING CODE 6717–01–M**

---

**[Docket No. RP96–389–000]**

## Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1996.

Take notice that on September 25, 1996 Columbia Gulf Transmission Company (Columbia Gulf) filed revisions to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No 1, to permit negotiated rate arrangements in accordance with the Commission's orders on similar pipeline filings, and in accordance with the Commission's January 31, 1996

''Statement of Policy and Request for Comments'' in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Docket No. RM95–6–000, to be effective November 1, 1996:

First Revised Original Sheet No. 039
First Revised Original Sheet No. 046
1st Revised Third Revised Sheet No. 054
1st Revised Second Revised Sheet No. 055
2nd Revised Second Revised Sheet No. 062
1st Revised Second Revised Sheet No. 063
Second Revised Sheet No. 144
Second Revised Sheet No. 145
Second Revised Sheet No. 146
2nd Revised First Revised Sheet No. 163
Third Revised Sheet No. 193
Second Revised Sheet No. 205
Second Revised Sheet No. 220

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. 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 appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25296 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP95–326–011]**

## Natural Gas Pipeline Company of America; Notice of Compliance Filing

September 27, 1996.

Take notice that on September 25, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to become effective December 1, 1995.

Natural states that the purpose of this filing is to comply with the Commission's letter order issued September 13, 1996, which required Natural to revised its compliance filing to reflect the change to make discountable Natural's $10 charge for unauthorized overruns under Rate Schedules ITS and BESS.

Natural requests waiver of its Tariff and the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties on the official service lists in Docket Nos. RP95–326–008 and RP96–128–001.

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 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25293 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. CP96–793–000]**

## Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

September 27, 1996.

Take notice that on September 17, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–793–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to establish a point of interconnection to be located in Sangamon County, Illinois, for delivery of natural gas to the City of Springfield, Illinois-City Water Light and Power (Springfield CWL&P) under Panhandle's blanket certificate issued in Docket No. CP83–83–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to establish and install a point of interconnection on its system to serve an end-user, Springfield CWL&P's peaking power project located in Sangamon County, Illinois. Panhandle states the interconnect will include a tap, minor connecting pipe, measuring and regulating station with flow control and electronic flow measurement equipment.

In addition to the facilities described above, Panhandle proposes to construct approximately 3,000 feet of 10-inch pipeline and pressure regulation consisting of a 4-inch pressure control valve and associated 6-inch piping. Panhandle states that Springfield CWL&P will own and operate these proposed facilities.

Panhandle advises the proposed facilities will initially be utilized to deliver up to 40,000 Dt per day of natural gas to Springfield CWL&P. Panhandle states the pipeline will be designed to deliver up to 75,000 Dt per day at a maximum allowable operating pressure of 850 p.s.i.g. Panhandle states the proposed facilities will be located entirely on its existing right-of-way.

Panhandle indicates that Springfield CWL&P will reimburse them 100 per cent for the costs and expenses incurred for installing the tap and appurtenant facilities and for installing Springfield CWL&P's proposed facilities. Panhandle estimates the total costs to construct these new facilities to be approximately $1,174,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25285 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP96–340–001]**

## Questar Pipeline Company; Notice of Tariff Filing

September 27, 1996.

Take notice that on September 25, 1996, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised

Volume No. 1, Substitute Third Revised Sheet Nos. 52 and 68 and Substitute Original Sheet No. 52A, to be effective September 14, 1996.

Questar states that the proposed tariff sheets, which are being filed in compliance with the Commission's September 12, 1996, Order in the referenced docket, have been revised to be consistent with recent Commission precedent as addressed in that order.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

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 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25294 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. GT96–100–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1996.

Take notice that on September 24, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets which are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 15, 1996.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–322 and X–323 and to convert such services to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 15, 1996. In that regard, Transco and its APEC shippers have agreed that, as part of the conversion process, converting APEC shippers will be entitled to elect annual firm transportation service in lieu of seasonal (November 15 through March 31) service. Public Service Electric and Gas Company (PSE&G) and South Jersey Gas Company (South Jersey) timely notified Transco of their election to convert their APEC service to annual firm transportation service.

Transco states that the rates applicable to the converted service are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Original Sheet No. 40E to Transco's Third Revised Volume No. 1 Tariff. Original Sheet No. 40E sets forth the charges applicable to APEC firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to PSE&G, South Jersey and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25289 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–812–000]**

## Wyoming Intestate Company, Ltd.; Notice of Application

September 27, 1996.

On September 24, 1996, Wyoming Interstate Company, Ltd. (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944 filed an application under Section 7(b) of the Natural Gas Act to abandon a transportation service for Northern Natural Gas Company (Northern) and for authorization under Section 7(c) to provide transportation service for Barret Resources Corporation, Questar Energy Trading Company and Western Gas Resources, Inc., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant and Northern entered into a Service Agreement dated August 15, 1983 which provided for the transportation of 89,000 Mcf/d through Applicant's system for delivery to Trailblazer Pipeline Company at the easternmost point on Applicant's system. The Northern has entered into prearranged long term capacity releases with three shippers for the capacity which it holds on Applicant's system. The term of the releases is from November 1, 1996 until January 1, 2004, the day the Northern agreement with Applicant ends. The Shippers are: (i) Barrett Resources Corporation—20,000 Mcf/d, (ii) Questar Energy Trading Company—40,000 Mcf/d and (iii) Western Gas Resources, Inc.—29,000 Mcf/d.

Any person desiring to be heard or to make any protest with reference to this application should on or before October 18, 1996, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25288 Filed 10–2–96; 8:45 am]

**BILLING CODE 6717–01–M**

---

**[Docket No. RM95–8–000; RM94–7–001]**

## Notice of Extension of Time and Clarifying Service and Docketing Procedures

September 27, 1996.

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

This Notice extends the date by which public utilities that are members of tight power pools or are within loose power pools must take service under joint pool-wide open access transmission pro forma tariffs. It also extends the date by which public utilities that are members of holding companies must begin to take service under their system-wide tariffs.

Order No. 888

In Order No. 888,[1] the Commission required that public utilities that are members of tight power pools or are within loose power pools file joint pool-wide Final Rule pro forma tariffs no later than December 31, 1996 and begin to take service under those tariffs for all pool transactions no later than December 31, 1996. The Commission also required that they file reformed power pooling agreements no later than December 31, 1996.[2]

With respect to public utility holding companies (except the Central and South West (CSW) System), the Commission required public utilities that are members of holding companies to file a single system-wide Final Rule pro forma tariff permitting transmission service across the entire holding company system at a single price within 60 days of publication of the Final Rule in the Federal Register.[3] As to CSW, the Commission directed the public utility subsidiaries of CSW to file no later than December 31, 1996, a system tariff that provides comparable service to all wholesale users on the CSW System.[4] Moreover, the Commission extended the date by which public utilities that are members of holding companies must take service under the system tariff for wholesale trades between and among the public utility operating companies within the holding company system to no later than December 31, 1996.

The Commission also noted that registered holding companies may need to reform their holding company equalization agreements to recognize the non-discriminatory terms and conditions of transmission service required under the Final Rule pro forma tariff.[5] However, it did not set a date by which reformed equalization agreements should be filed.

Discussion

Under Order No. 888, the joint pool-wide section 206 compliance tariffs would become effective December 31, 1996, and the requirement to take service under those tariffs would be effective no later than December 31, 1996; however, proposed amendments to the related pooling agreements would need to be made pursuant to section 205 of the FPA and could not become effective until 60 days after filing (*i.e.*, 60 days after December 31, 1996 for those utilities that file on December 31, 1996). The Commission believes it is important to review in tandem the revised tariffs and proposed power pool amendments, and to have the opportunity to act on both prior to their effectiveness. Accordingly, in order to permit Commission review of both the joint pool-wide tariffs and the amended power pooling agreements required by Order No. 888 prior to the time the tariffs become effective, the Commission will extend the date by which public utilities that are members of tight power pools or are within loose power pools must begin to take service under new pool-wide tariffs. Joint pool-wide section 206 compliance tariffs must be filed no later than December 31, 1996, and pool members must begin to take service under the tariffs 60 days after the section 206 filing.[6] Amendments to power pool agreements also must be filed no later than December 31, 1996, and will take effect 60 days after filing unless otherwise ordered by the Commission.[7]

The Commission also will give members of public utility holding companies, including CSW, an extension of time to begin to take service under their system-wide tariff until no later than March 1, 1997, which is 60 days after December 31, 1996. This is consistent with our treatment of power pools.

By direction of the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25357 Filed 10–2–96; 8:45 am]

**BILLING CODE 6717–01–M**

---

**[Project No. 2146–074]**

## Alabama Power Company; Notice of Availability of Environmental Assessment

September 27, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to lease 150 acres of project lands within the Coosa River Project boundary, to the Town of Leesburg, Alabama, for the purposes of constructing a recreational park. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The portion of the Coosa River Project affected by the issuance of this lease is located on the northeast shore of the Weiss Reservoir in Cherokee County, Alabama.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 1C–1, 888 First Street, N.E., Washington, D.C., 20426. Copies can also be obtained by

---

[1] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (May 10, 1996); FERC Stats. & Regs. ¶ 31,036 (Order No. 888), *reh'g pending.*

[2] 61 FR at 21594 and 21694; Order No. 888, *mimeo* at 270–73 and 780–81.

[3] 61 FR at 21594 and 21694; Order No. 888, *mimeo* at 274 and 780–81.

[4] 61 FR at 21595 and 21694; Order No. 888, *mimeo* at 276 and 780–81.

[5] 61 FR at 21595 and 21694; Order No. 888, *mimeo* at 276–77 and 780–81.

[6] As a reminder to affected entities, the Commission will assign OA docket designations to the joint pool-wide section 206 compliance tariff filings and will provide notice of such filings with a period of 30 days for interested entities to respond. *See* Order Clarifying Order Nos. 888 and 889 Compliance Matters, 76 FERC ¶ 61,009 (1996) (Clarifying Order). In addition, as also explained in the Clarifying Order, electronic versions of the compliance tariff filings must be submitted for posting on the Commission's Electronic Bulletin Board and copies of the compliance filings must be provided on electronic diskette (via overnight delivery) to any eligible customer (as well as any state regulatory agency) that requests a copy. In order to receive such a copy, a request must be made prior to the date the compliance tariff is filed and must include an indication of the entity's agreement to pay the costs associated with such service. Moreover, we will require loose and tight power pools, as defined in Order No. 888, to serve copies of their compliance filings (via overnight wholesale service from the pool after the date of issuance of the Open Access NOPR and on the state agencies that regulate public utilities in the states of the power pools and customers.

[7] Any amended pooling agreements, as well as any reformed equalization agreements, will be designated ER dockets, consistent with the Commission's current practice.

calling the project manager, Patti Pakkala at (202) 219–0025.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25290 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–-M

**[Project No. 11499–000; Project No. 11500–000]**

## Armstrong Energy Resources; Notice of Extension of Time

September 27, 1996.

Take notice that a 90-day extension of time for filing comments on Scoping Document I issued July 24, 1996, in the above referenced proceedings is granted. Comments which were due October 7, 1996, will now be due by January 6, 1997.

A subsequent public scoping meeting concerning the impact of transmission line right-of-way will be conducted at a future date following public notice of such meeting.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25292 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 3574–004 Montana]**

## Continental Hydro Corporation; Notice of Availability of Environmental Assessment

September 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original, major license for the Tiber Dam Hydroelectric Project (project), and has prepared a Final Environmental Assessment (EA) for the project. The project is located at the Bureau of Reclamation's existing Tiber Dam and Lake Elwell, on the Marias River in Liberty County, Montana.

In the final EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25355 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 2569–004; Project No. 2538–001]**

## Niagara Mohawk Power Corporation Beebee Island Corporation; Notice of Availability of Final Environmental Assessment

September 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new licenses for the Black River and Beebee Island Projects located in Jefferson County, New York, and has prepared a Final Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A of the Commission's offices at 808 First Street, N.E., Washington, D.C. 20426.

For further information, please contact James Hunter at (202) 219–2839.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25291 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 2275–001]**

## Public Service Company of Colorado; Notice of Availability of Final Environmental Assessment

September 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Salida Hydroelectric Project, located on the South Arkansas River and on Fooses Creek in Chaffee County, Colorado, near the town of Poncha Springs, and has prepared a final environmental assessment (EA) for the project.

On April 7, 1995, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. Comments were filed and are addressed in the final EA.

In the final EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the final EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25356 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. CP96–545–000; CP96–545–001; CP96–671–000; CP96–721–000]**

## Transcontinental Gas Pipe Line Corporation; National Fuel Gas Supply Corporation; Tennessee Gas Pipe Line Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Seaboard Expansion and 1997 Niagara Expansion Projects, Request for Comments on Environmental Issues

September 27, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the SeaBoard Expansion Project and 1997 Niagara Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Projects

Transcontinental Gas Pipe Line Corporation (Transco) wants to expand the capacity of its facilities in

[1] Transcontinental Gas Pipe Line Corporation's, National Fuel Gas Supply Corporation's, and Tennessee Gas Pipe Line Company's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Pennsylvania and New Jersey to transport an additional 115 million cubic feet per day (MMcfd) of natural gas to customers in Pennsylvania, Delaware, New Jersey, and New York. To transport those volumes, Transco requests Commission authorization, in Docket Nos. CP96–545–000 and CP96–545–001, to:

- Construct and operate 10.6 miles of 36-inch-diameter pipeline loop [2] in Clinton and Lycoming Counties, Pennsylvania (Haneyville Loop);
- Construct and operate 6.7 miles of 36-inch-diameter pipeline loop in Lycoming County, Pennsylvania (Williamsport Loop);
- Construct and operate 5.5 miles of 42-inch-diameter pipeline loop in Middlesex and Union Counties, New Jersey (New Jersey Mainline Loop);
- Replace 6.3 miles of 12-inch-diameter pipeline with 6.3 miles of 36-inch-diameter pipeline in Burlington County, New Jersey (Trenton-Woodbury Replacement);
- Install a 12-inch-diameter tap in Chester County, Pennsylvania (Delaware Power & Light Lateral Hot Tap);
- Install 15,000 additional horsepower (hp) at Compressor Station 205 in Mercer County, New Jersey;
- Operate six existing compressors at an uprated horsepower for a total of 1,740 hp at Compressor Station 200 in Chester County, Pennsylvania; and
- Modify the Linden Regulator Station in Union County, and the Milltown Regulator Station (and install a new pig launcher/receiver assembly) in Middlesex County, New Jersey.

National Fuel Gas Supply Corporation (National Fuel) wants to transport up to 48,000 dekatherms of natural gas per day (Dthd) (about 48 MMcfd) from the Niagara import point to the interconnections between the National Fuel and Transco facilities at Leidy and Wharton, Pennsylvania. To transport those volumes, National Fuel requests Commission authorization, in Docket No. CP96–671–000, to:

- Increase the hp of 5 compressor units for a total of 1,300 hp at its existing Concord Compressor Station in Erie County, New York;
- Abandon 4 compressor units, totalling 1,290 hp and install 1 new 2,250 hp compressor at its existing Ellisburg Compressor Station in Potter County, Pennsylvania; and
- Increase the maximum allowable operating pressure of its existing Line X-North and Line XM–2 from 720 to 780 pounds per square inch gauge (psig) by installing or replacing valves, pressure control devices, and station piping at 7 existing metering and regulating stations in Erie and Niagara Counties, New York.

Tennessee Gas Pipe Line Company (Tennessee) operates the Lockport Compressor Station in Niagara County, New York which is jointly-owned with National Fuel. for National Fuel to transport additional volumes proposed in its 1997 Niagara Expansion Project, Tennessee requests Commission authorization, in Docket No. CP96–721–000, to:

- Uprate an existing compressor unit by 1,000 hp at its existing Lockport Compressor Station (CS 230C) in Niagara County, New York to expand the capacity of National Fuel's and Tennessee's jointly-owned Niagara Spur Loop Line.

The general location of the project facilities is shown in appendix 1. Figure 1 shows the general location of Transco's proposed SeaBoard Expansion Project and Figure 2 shows the general location of National Fuel's proposed 1997 Niagara Expansion Project which includes Tennessee's proposed Niagara Spur Loop Line Project.[3]

## Land Requirements for Construction

Construction of Transco's proposed facilities would affect about 326.5 acres of land. Of this amount about 89.2 acres (27 percent) would be within existing, cleared rights-of-way. Following construction, about 253.1 acres of land would be restored and allowed to revert to its former use and 73.4 acres would be maintained as new permanent pipeline right-of-way. Extra temporary work spaces would be required at various locations, including road, stream, and large wetland crossings. In addition, equipment staging and storage areas would be needed.

Construction of the pipelines would require a 75-foot-wide right-of-way. The Haneyville and Williamsport Loops would be constructed at an offset of 25 feet from existing pipelines and would require about 44.8 and 26.1 acres of new permanent right-of-way, respectively. The Trenton-Woodbury Replacement would be installed in the same location as the existing 12-inch-diameter pipeline after it is removed and would not require any new permanent right-of-way. For about 3.8 miles of the New Jersey Mainline Loop no new permanent right-of-way would be required because it would be constructed entirely within existing Public Service Electric & Gas or Transco rights-of-way. About 0.6 mile of the New Jersey Mainline Loop would require about 2.5 acres of new permanent right-of-way.

Additions or expansions at Compressor Station 200, the Linden Regulator Station, and the Milltown Regulator Station would be within existing fence lines and would not require additional land. An existing 4.5-acre fenced area at Compressor Station 205 may be expanded and require an additional 0.3 acre of land. Installation of the Delaware Power & Light Lateral Hot Tap would temporarily affect 0.5 acre of land all of which would be located in Transco's existing right-of-way.

Construction of National Fuel's and Tennessee's proposed facilities would occur within existing fence lines and would not require additional land. Increase in the maximum allowable operating pressure on National Fuel's Line X—North and Line XM–2 pipelines would not require any ground disturbance.

## The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources and wetlands
- Vegetation and wildlife
- Threatened and endangered species
- Cultural resources
- Hazardous waste
- Air quality and noise

[2] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. A loop allows more gas to be moved through that part of the pipeline system.

[3] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco, National Fuel, and Tennessee. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. For Transco's proposed SeaBoard Expansion Project the issues are:

- Effects of blasting on water wells, structures, septic systems, and other utilities;
- Crossing of Pine and Lycoming Creeks, two of the largest waterbodies crossed in Pennsylvania;
- Crossing of high quality, trout stocked or coldwater fisheries in Pennsylvania, including North Fork Tombs Run, Lower Pine Bottom Run, and Staver Run;
- Crossing of significant wetlands associated with Woodbridge Creek, Marshes Creek, and Rahway River in New Jersey;
- Clearing of trees and disturbance of wildlife habitat;
- Construction through Tiadaghton State Forest and State Game Land No. 89 in Pennsylvania;
- Crossing of potential geologic and soil hazard areas, including areas of severe erosion (slopes greater than 6 percent grade) or areas prone to rock failure in Pennsylvania;
- Potential to expose contaminated soils in New Jersey;
- Potential to encounter acid soils in New Jersey;
- Crossing of a property eligible for the National Register of Historic Places;
- Construction in heavily congested residential, commercial, and industrial areas; and
- Potential to increase noise levels.

For National Fuel's proposed 1997 Niagara Expansion Project, which includes Tennessee's proposed Niagara Spur Loop Line Project, the issues are:

- Construction in residential, commercial, and industrial areas; and
- Potential to increase noise levels.

Public Participation and Scoping Meeting

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket Nos. CP96–545–000 and CP96–545–001 for Transco's SeaBoard Expansion Project; CP96–671–000 for National Fuel's 1997 Niagara Expansion Project; and CP96–721–000 for Tennessee's Niagara Spur Loop Line Project.
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE., Room 72–57, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before October 28, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. O'Donnell at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25284 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Project Nos. 2631–000, et al.]**

## Hydroelectric Applications [International Paper Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2631.

c. *Date filed:* August 8, 1996.

d. *Submitted By:* International Paper Company, current licensee.

e. *Name of Project:* Woronoco.

f. *Location:* On the Westfield River, near the Town of Russell, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* May 1, 1965.

i. *Expiration date of original license:* September 1, 2001.

j. The project consists of: (1) The 985-foot-long, 30-foot-high North Dam having a 320-foot-long concrete-gravity spillway section surmounted by 2.5-foot-high flashboards and having a 6-foot-wide, 6-foot-high steel sluice gate, and a 655-foot-long earthfill section; (2) the 350-foot-long, 53-foot-high concrete-gravity South Dam having an overflow spillway surmounted by 2.5-foot-high flashboards and having a 6-foot-wide, 6-foot-high steel sluice gate; (3) a reservoir having a 46-acre surface area at normal pool elevation 231.5 feet msl; (4) a headgate house containing a trash rack with power rake and a timber gate; (5) an 11-foot-diameter, 550-foot-long steel penstock; (6) a powerhouse containing three generating units with a total installed capacity of 2,690-kW; (7) a switching station; and (8) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available

at: International Paper Company, 34 Valley View Avenue, Woronoco, MA 01097.

l. *FERC contact*: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 1, 1999.

2a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2694.

c. *Date filed:* August 9, 1996.

d. *Submitted By:* Nantahala Power and Light Company, current licensee.

e. *Name of Project:* Queens Creek.

f. *Location:* On Queens Creek, in Macon County, NC.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* May 1, 1965.

i. *Expiration date of original license:* September 30, 2001.

j. The project consists of: (1) A 78-foot-high, 382-foot-long earth and rock-fill dam having a low level conduit; (2) a reservoir having a 35 acre surface area and a 718-acre-foot useful storage capacity at normal pool elevation 3,025 feet U.S.C. & G.S. datum; (3) a 135-foot-long side-channel spillway excavated in rock; (4) a 24-inch-diameter, 6,590-foot-long steel penstock; (5) a powerhouse containing a generating unit with a capacity of 1,440-kW; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Nantahala Power and Light Company, 17 West Main Street, Franklin, NC 28734, (704) 524–2121.

l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.19 and 16.20, each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 1999.

3a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2090.

c. *Date filed:* August 29, 1996.

d. *Submitted By:* Green Mountain Power Corporation, current licensee.

e. *Name of Project:* Waterbury.

f. *Location:* On the Little River, in the Town of Waterbury, Washington County, Vermont.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* September 1, 1951.

i. *Expiration date of original license:* August 31, 2001.

j. The project consists of: (1) A powerhouse containing a 5,520-kW generating unit; (2) a substation; (3) a 4-mile-long, 33-kV transmission line; and (4) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Green Mountain Power Corporation, 25 Green Mountain Drive, South Burlington, VT 05403, (802) 864–5731.

l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1999.

4a. *Type of Application:* Approval of Revised Exhibit Drawings and Amendment of License.

b. *Project No:* 2219–011.

c. *Date Filed:* March 1, 1995. *Supplemental Filing*: July 1, 1996.

d. *Applicant:* Garkane Power Association.

e. *Name of Project:* Boulder Creek Hydropower Project.

f. *Location:* Garfield County, Boulder, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Avant, Garkane Power Association, 56 East Center Street, P.O. Box 790, Richfield, UT 84701, (801) 896–5403.

i. *FERC Contact:* Susan Tseng, (202) 219–2798.

j. *Comment Date:* October 31, 1996.

k. *Description of Project:* The licensee filed a revised exhibit K drawing showing that the project boundary has been decreased to 36.86 acres of federal lands.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Name and No:* Catawba-Wateree Project, FERC Project No. 2232–331.

c. *Date Filed*: August 9, 1996.

d. *Applicant*: Duke Power Company.

e. *Location*: Mecklenburg, North Carolina, Overlook Subdivision on Mountain Island Lake near Charlotte.

f. *Filed pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact*: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

h. *FERC Contact*: Brian Romanek, (202) 219–3076.

i. *Comment Date*: November 1, 1996.

j. *Description of the filing*: Application to grant an easement of 5 acres of project land to Overlook Properties, Inc. to construct a private residential marina consisting of 180 floating boat slips. The proposed marina would provide access to the reservoir for residents of Overlook Subdivision. The proposed marina facility would consist of an access ramp and a floating slip facility. The slips would be anchored by using self-driving piles.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

6a. *Type of filing*: Notice of Intent to File An Application for a Subsequent License.

b. *Project No.*: 3052.

c. *Date filed*: August 9, 1996.

d. *Submitted By*: City of Black River Falls, current licensee.

e. *Name of Project*: Black River Falls.

f. *Location*: On the Black River, in the City of Black River Falls and the Towns of Brockway, Komensky, and Adams, Jackson County, WI.

g. *Filed Pursuant to*: 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license*: April 1, 1962.

i. *Expiration date of original license*: August 30, 2001.

j. The project consists of: (1) Three separate concretegravity non-overflow structures; (2) a 221-foot-long gated spillway with eight 20-foot-wide, 14-foot-high steel tainter gates; (3) a flashboard spillway section; (4) a forebay and headworks; (5) a 198-acre reservoir; (6) a concrete powerhouse containing two generating units with a total installed capacity of 920-kW; and (7) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Municipal Utilities, 119 North Water Street, Black River Falls, WI 54615, (715) 284–9463.

l. *FERC contact*: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.19 and 16.20, each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 30, 1999.

7a. *Type of Application*: Surrender of License.

b. *Project No*: 3131–032.

c. *Date Filed*: August 16, 1996.

d. *Applicant*: SR Hydropower Inc.

e. *Name of Project*: Brockway Mills.

f. *Location*: Williams River, in Windham County, Vermont.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact*: Mr. John M. Rais, RR2, Box 372R, Chester, Vermont 05143, (802) 875–4053.

i. *FERC Contact*: Hillary Berlin, (202) 219–0038.

j. *Comment Date*: November 1, 1996.

k. *Description of Application*: The licensee has applied to surrender the license because the equipment and property have been repossessed by the lender.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

8a. *Type of Application*: Surrender of Exemption.

b. *Project Nos*: 8321–006.

c. *Date Filed*: August 2, 1996.

d. *Applicant*: Murray W. Thurston, Inc.

e. *Name of Project*: Thurston Mill Dam Hydroelectric Project.

f. *Location*: On the Swift River, Oxford County, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Murray W. Thurston, P.O. Box H, Rumford, ME 04276, (207)364–7921.

i. *FERC Contact*: Lynn R. Miles (202) 219–2671.

j. *Comment Date*: November 5, 1996.

k. *Description of the Proposed Action*: The exemption holder seeks to voluntarily surrender its exemption for the existing project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9a. *Type of Application*: Surrender of Exemption.

b. *Project No*: 8746–003.

c. *Date Filed*: August 21, 1996.

d. *Applicant*: Logan Hickerson.

e. *Name of Project*: Fairfield Mill.

f. *Location*: Garrison Fork Creek, in Bedford County, Tennessee.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact*: Mr. Logan Hickerson, 123 Samsonite Blvd., Murfreesboro, Tennessee 37129, (615) 890–7901.

i. *FERC Contact*: Hillary Berlin, (202) 219–0038.

j. *Comment Date*: November 5, 1996.

k. *Description of Application*: The exemptee has applied to discontinue the operation of this project and surrender the exemption.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

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'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 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.

Dated: September 20, 1996, Washington, D.C.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–25354 Filed 10–2–96; 8:45 am]

BILLING CODE 6717–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date this notice appears in the Federal Register.

*Agreement No.:* 203–011524–001.

*Title:* Star/Seatrade Cooperative Working Agreement.

*Parties:* Star Reefers, Seatrade Group N.V.

*Synopsis:* The proposed amendment would delete the authority of the parties to discuss and agree on rates and other transportation terms. The parties have requested a shortened review period.

Dated: September 27, 1996.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

*Assistant Secretary.*

[FR Doc. 96–25316 Filed 10–2–96; 8:45 am]

BILLING CODE 6730–01–M

### 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, DC 20573.

Senrac Transportation Services, 7215 Logging Trail, Humble, TX 77346, Jeannine A. Herndon, Sole Proprietor

Fracht FWO Inc., 2200 Broening Highway, Suite 240, Baltimore, MD 21224. Officers: Marie M. Wyatt, President, Mark D. Knox, Director.

Dated: September 30, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96–25315 Filed 10–2–96; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### 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 October 28, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. ADbanc, Inc.*, Ogallala, Nebraska; to acquire 53.93 percent of the voting shares of The First State Bank, Lodgepole, Nebraska.

Board of Governors of the Federal Reserve System, September 27, 1996.

Jennifer J. Johnson

*Deputy Secretary of the Board*

[FR Doc. 96–25308 Filed 10-2-96; 8:45 am]

BILLING CODE 6210-01-F

## Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Prime Newco, Inc.*, Philadelphia, Pennsylvania; (to be renamed Prime Bancorp, Inc.) to acquire Prime Bank, Philadelphia, Pennsylvania, and thereby indirectly acquire Prime Abstract, Inc., Philadelphia, Pennsylvania, and thereby engage in operating a savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y; in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y; and in real estate title abstracting, pursuant to Federal Reserve Board Order, *The First National Company, 81 Fed. Res. Bull. 805 (1995).*

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Pioneer Bankcorp, Inc.*, Clewiston, Florida; to engage *de novo* through its subsidiary, Development Investments, Inc., Clewiston, Florida, in community development activities designed primarily to promote community welfare, pursuant to § 225.25(b)(6) of the Board's Regulation Y. The activity will be conducted throughout the State of Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Anita Bancorporation*, Newton, Iowa; to acquire 50 percent of the voting shares of Rolling Hills Insurance Agency, L.C., Atlantic, Iowa, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8) of the Board's Regulation Y. The remaining 50 percent of the voting shares are owned by McCauley Insurance Agency, Atlantic, Iowa.

Board of Governors of the Federal Reserve System, September 27, 1996.

Jennifer J. Johnson

*Deputy Secretary of the Board*

[FR Doc. 96–25309 Filed 10-02-96; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Announcement No. 704]**

### Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects

Introduction

The Centers for Disease Control and Prevention (CDC) announces the expected availability of fiscal year (FY) 1997 funds for cooperative agreements for HIV prevention projects for minority and other community-based organizations (CBOs) serving populations at increased risk of acquiring or transmitting HIV infection.

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 relates to the priority areas of Educational and Community-Based Programs, HIV Infection, and Sexually Transmitted Diseases (STDs). It addresses the ''Healthy People 2000'' objectives by providing support for primary prevention for persons at increased risk for HIV infection and by increasing the availability and coordination of prevention and early intervention services for HIV-infected persons. A summary of the HIV-related objectives will be included in the application kit. (To order a copy of ''Healthy People 2000,'' see the section entitled ''Where to Obtain Additional Information.'')

Preapplication Workshops

The following preapplication technical assistance workshops will be held to assist all prospective applicants in understanding CDC application requirements and program priorities:

10/11 Washington, DC
National Skills Building Conference, Washington Hilton Towers, 1919 Connecticut Ave. NW
10/15 San Juan, PR
Sands Hotel—Isla Verde, San Juan
10/15 Detroit, MI
Dept. of Health, Herman Kiefer Health Center, 1151 Taylor St., 7th Floor Chapel
10/16 Dallas, TX
Holiday Inn, 3005 W. Airport Freeway, (Bedford, TX)
10/16 Philadelphia, PA
Doubletree Hotel, Broad Street at corner of Locust Street
10/16 St. Louis, MO
St. Louis City Health Dept., 634 N. Grand Ave., Conference Rm 100
10/16 Orlando, FL
Radisson Hotel, 60 S. Ivanhoe Blvd.
10/17 Ft. Lauderdale, FL
Broward County Public Library, 1350 E. Sunrise Blvd., Suite 100
10/18 Kansas City, MO
Bartle Hall Convention Center, 301 West 13th St.
10/18 Austin, TX
Red Lion Inn, 6121 North I–35 Hwy 290
10/21 Memphis, TN
State Tech Inst.–Farris Auditorium, 5983 Macon Cove
10/21 Seattle, WA
Wyndham Garden Hotel Sea/Tac, 18118 Pacific Highway South
10/21 Cleveland, OH
Cleveland Convocation Center, 2000 Prospect Avenue
10/22 Minneapolis, MN
Minnesota American Indian Women's Resource Center, 2300–15th Ave S.
10/23 Denver, CO
Cherry Creek Inn, 600 S. Colorado Blvd
10/24 Atlanta, GA
Holiday Inn, 130 Clairmont Ave., (Decatur, GA)
10/24 Richmond, VA
Sheraton Airport, 4700 S. Laburnum Ave.
10/24 Chicago, IL
Chicago Public Library, Harold Washington Center, 400 South State St.
10/25 Washington, DC
American Society of Association Executives, 1575 I Street NW
10/25 Phoenix, AZ
State Health Dept., 1740 West Adams St., 4th floor Conf. Room A/B,
10/28 Rock Hill, SC
Baxter Hood Center, 452 S. Anderson Rd.
10/28 Boston, MA
Dept. of Public Health, 250 Washington Street
10/29 New York, NY
New York Hilton Conference Center, 1335 Avenue of the Americas, 53rd to 54th St.
10/29 Orange Co, CA
Red Lion Inn, 3050 Bristol St. (Costa Mesa, CA)
10/30 New Orleans, LA
Radisson Inn New Orleans Airport, 2150 Veterans Blvd. (Kenner, LA)
10/30 North Haven, CT
Holiday Inn North Haven, 201 Washington Ave.
10/31 Oakland, CA
Oakland Marriott, 1001 Broadway St.,
11/01 Somerset, NJ
Woodbridge Hilton, 120 Wood Ave. South, (Iselin, New Jersey)

All workshops are scheduled from 9:00 a.m.–4:00 p.m. and are being held in the high HIV prevalence Metropolitan Statistical Areas.

Application kits will be available at the workshops.

Conference calls for States/territories categorized as low HIV prevalence geographic areas will be scheduled as follows:

10/29, 12–3 p.m. EDST (WY, ID, MT, SD, ND, UT, WI, IN, IA, NE, NV)
11/4, 9–12 p.m. EDST (ME, NH, VI, WV)
11/6, 11–2 p.m. EDST (MS, AL, KY, OK, AR, NM, KS)
11/8, 4–7 p.m. EDST
(Marshall Islands, Micronesia, HI, AK, Palau, Samoa, Guam, Mariana Islands)

The telephone number for all conference calls is: 404–639–4100 and the pass code (when asked by the automated voice) is 267012.

For additional information about the conference calls or workshops, call your State or City Health Department Contact.

During the workshops, information will be presented on application and business management requirements, programmatic priorities, HIV prevention community planning, and how to access additional preapplication resources relevant to application development.

For additional information concerning workshops in your area, please contact your State or local health department or a project officer in the Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Mail Stop E–58, Atlanta, GA 30333, telephone (404) 639–8317.

Prospective applicants are encouraged to attend a workshop in their area.

Authority

This program is authorized under the Public Health Service Act, Sections 301(a) (42 U.S.C. 241(a)), and 317(k)(2) (42 U.S.C. 247b(k)(2)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use 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

To be eligible for funding under this announcement, applicants must be a tax-exempt, non-profit CBO whose net earnings in no part accrue to the benefit of any private shareholder or person. Tax-exempt status is determined by the Internal Revenue Service (IRS) Code, Section 501(c)(3). Tax-exempt status may be proved by either providing a copy of the pages from the IRS' most recent list of 501(c)(3) of tax-exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided with the application.

Note: Organizations authorized under section 501(c)(4) of the Internal Revenue Code of 1986 are not eligible to receive Federal grant/cooperative agreement funds.

CBOs may apply as either: (1) minority CBOs intending to serve predominantly racial or ethnic minority populations at high risk of acquiring or transmitting HIV infection, or (2) CBOs serving high-risk populations without regard to their racial or ethnic identity. Each organization may submit only one application. The applicant must clearly indicate whether it is applying as a minority or other CBO. To apply as a minority CBO the applicant

organization must have the following: (1) a governing board composed of more than 50% racial or ethnic minority members, (2) a significant number of minority individuals in key program positions (including management, administrative and service provision) who reflect the racial and ethnic demographics and other characteristics of the population to be served, and (3) an established record of service to a racial or ethnic minority community or communities. In addition, if the minority organization is a local affiliate of a larger organization with a national board, the larger organization must meet the same requirements listed above. If applying as a minority CBO, proof of minority status must be provided with the application. Affiliates of national organizations must provide proof of their national organization's eligibility and include with the application an original, signed letter from their chief executive officer assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

Organizations applying as a CBO serving high-risk populations, without regard to their racial or ethnic identity, must meet the criteria listed above, except for the proof of minority status.

CDC will not accept an application without proof of tax-exempt status, minority status (if applicable), and proof of eligibility for affiliates of national organizations (if applicable).

Applications requesting funds to support only administrative and managerial functions will not be accepted.

Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this announcement.

CBOs requesting funds under this announcement will be categorized into one of two mutually exclusive groups: (1) high prevalence Metropolitan Statistical Areas (MSAs) or (2) lower prevalence geographic areas. For the purposes of this program, high prevalence MSAs are defined by greater than 500 reported AIDS cases in racial or ethnic minorities (African Americans, Alaskan Natives, American Indians, Asian Americans, Latinos/Hispanics, and Pacific Islanders) in the 3 year period 1993, 1994, and 1995, or as Title I eligible metropolitan areas (EMAs) for FY 1996 under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act. Eligible high prevalence MSAs (and the corresponding OMB Federal Identification Processing (FIPS) code) are the following:

| | |
|---|---|
| Arizona | Phoenix-Mesa (6200). |
| California | Los Angeles-Long Beach (4480), Oakland (5775), Orange County (5945), Riverside-San Bernardino (6780), Sacramento (6920), San Diego (7320), San Francisco (7360), San Jose (7400), Santa Rosa (7500). |
| Colorado | Denver (2080). |
| Connecticut | Hartford (3283), New Haven-Bridgeport-Stamford-Danbury-Waterbury (5483). |
| Delaware-Maryland | Wilmington-Newark (9160). |
| District of Columbia-Maryland-Virginia-West Virginia. | Washington, D.C. (8840) (including Prince Georges County). |
| Florida | Ft. Lauderdale (2680), Jacksonville (3600), Miami (5000), Orlando (5960), Tampa-St. Petersburg-Clearwater (8280), West Palm Beach-Boca Raton (8960). |
| Georgia | Atlanta (520). |
| Illinois | Chicago (1600). |
| Louisiana | New Orleans (5560). |
| Maryland | Baltimore (720). |
| Massachusetts-New Hampshire. | Boston-Worcester-Lawrence-Lowell-Brockton (1123). |
| Michigan | Detroit (2160). |
| Minnesota-Wisconsin | Minneapolis-St. Paul (5120). |
| Missouri-Kansas | Kansas City (3760). |
| Missouri-Illinois | St. Louis (7040). |
| New Jersey | Newark (5640), Jersey City (3640), Bergan-Passaic (875), Middlesex-Somerset-Hunterdon (5015), Monmouth-Ocean (5190), Vineland-Millville-Bridgeton (8760). |
| New York | Duchess County (2281), New York City (5600), Nassau-Suffolk (5380). |
| North Carolina-South Carolina. | Charlotte-Gastonia-Rock Hill (1520). |
| Ohio | Cleveland-Lorain-Elyria (1680). |
| Oregon-Washington | Portland-Vancouver (6440). |
| Pennsylvania-New Jersey | Philadelphia (6160). |
| Puerto Rico | Caguas (1310), Ponce (6360), San Juan-Bayamon (7440). |
| South Carolina | Columbia (1760). |
| Tennessee-Arkansas-Mississippi. | Memphis (4920). |
| Texas | Austin-San Marcos (640), Dallas (1920), Ft. Worth-Arlington (2800), Houston (3360), San Antonio (7240). |
| Virginia-North Carolina | Norfolk-Virginia Beach-Newport News (5720), Richmond-Petersburg (6760). |
| Washington | Seattle-Bellevue-Everett (7600). |

CBOs not located in the aforementioned list of high prevalence MSAs will be categorized as lower prevalence geographic areas.

## Availability of Funds

In FY 1997, CDC expects a total of up to $17,000,000 to be available for funding approximately 80 CBOs (70 in high prevalence MSAs and 10 in lower prevalence geographic areas).

### *A. High Prevalence MSAs*

Up to $15,400,000 of the total $17,000,000 will be made available to CBOs in high prevalence MSAs. The estimated awards will average $200,000 and will range from $75,000 to $300,000. In high prevalence MSAs, $11,500,000 will be dedicated to supporting minority CBOs that represent and serve racial or ethnic minority persons and that meet the criteria outlined in the section entitled Eligible Applicants. The remaining $3,900,000 will be dedicated to supporting CBOs serving high-risk

populations without regard to their racial or ethnic identity, in high prevalence MSAs.

*B. Lower Prevalence Geographic Areas*

The remaining $1,600,000 of the total funds expected will be made available to fund CBOs in lower prevalence geographic areas. These estimated awards will average $100,000. Of the $1,600,000 available, up to $1,200,000 will support minority CBOs and at least $400,000 will support CBOs serving high-risk populations without regard to their racial or ethnic identity.

These estimates are subject to change based on the following: the actual availability of funds; the scope and the quality of applications received; appropriateness and reasonableness of the budget request; proposed use of project funds; and the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities.

Applications for more than $300,000 will be deemed ineligible and will not be accepted by CDC.

Funds available under this announcement must support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other STDs and drug use as a means of reducing or eliminating the risk of HIV infection may be supported. No funds will be provided for direct patient medical care (including substance abuse treatment, medical prophylaxis or drugs). These funds may not be used to supplant or duplicate existing funding. Although applicants may contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

Awards will be made for a 12-month budget period within a 3-year project period. (Budget period is the interval of time into which the project period is divided for funding and reporting purposes. Project period is the total time for which a project has been programmatically approved.)

Noncompeting continuation awards for a new budget period within an approved project period will be made on the basis of satisfactory progress in meeting project objectives and the availability of funds. Progress will be determined by site visits by CDC representatives, progress reports, and the quality of future program plans. Proof of eligibility will be required with the noncompeting continuation application.

Purpose

This program will provide assistance to CBOs to: (1) Develop and implement effective community-based HIV prevention programs that reflect national program goals and are consistent with the HIV prevention priorities outlined in their State or local health department's comprehensive HIV prevention plan developed through HIV Prevention Community Planning (where available); and (2) promote collaboration and coordination of HIV prevention efforts among CBOs and the local activities of HIV prevention service agencies, public agencies including local and State health departments (and HIV prevention community planning groups), substance abuse agencies, educational agencies, criminal justice systems, and affiliates of national and regional organizations.

In order to maximize the effective use of CDC funds, each applicant must conduct at least one of the priority Health Education and Risk Reduction (HERR) interventions described below. Although activities may cross from one intervention type to another (e.g., individual or group level interventions may be a part of a community-level intervention), each applicant must indicate which one of the four interventions is its primary focus. Because of the resources, special expertise, and organizational capacities needed for success, applicants are discouraged from undertaking more than two of the priority interventions listed below.

HERR interventions include programs and services to reach persons at increased risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HERR interventions is to reduce the risk of these events occurring. These interventions should be directed to persons whose behaviors or personal circumstances place them at high risk.

The following have been identified as successful HERR interventions for HIV prevention and will be funded within the scope of this announcement: Individual Level Interventions (including prevention case management), Group Level Interventions, Community Level Interventions, and Street and Community Outreach. The Guidelines for Health Education and Risk Reduction Activities (included in the application kit) will provide additional information on these interventions. A brief description of the priority interventions follows:

A. Individual Level Interventions provide a range of one-on-one client services that offer counseling, assist clients in assessing their own behavior and planning individual behavior change, support and sustain behavior change, and facilitate linkages to services in clinic and community settings (e.g., substance abuse treatment programs) in support of behaviors and practices that prevent the transmission of HIV. Some clients may be at very high risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. Additional prevention counseling, as appropriate to the needs of these clients, should be offered. Prevention Case Management is an individual level intervention directed at persons who need highly individualized support, including substantial psychosocial, interpersonal skills training, and other support, to remain seronegative or to reduce the risk of HIV transmission to others. HIV prevention case management services are not intended as substitutes for medical case management or extended social services. Services provided under this component should concentrate on the identification, coordination, and receipt of appropriate prevention services. Prevention case management services should complement ongoing HIV prevention services such as HIV antibody counseling, testing, referral, and partner notification and early medical intervention programs. Coordination with HIV counseling and testing clinics, STD clinics, TB testing sites, substance abuse treatment programs, family planning services, and other health service agencies is essential to successfully recruiting or referring persons at high risk who are appropriate for this type of intervention.

B. Group Level Interventions shift the delivery of service from individual to groups of varying sizes. Group level interventions provide education and support in group settings to promote and reinforce safer behaviors and to provide interpersonal skills training in negotiating and sustaining appropriate behavior change to persons at increased risk of becoming infected or, if already infected, of transmitting the virus to others. The content of the group session should be consistent with the format, i.e., groups can meet one time or on an on-going basis. One-time sessions can provide participants an opportunity to hear and learn from one another's experiences, role play with peers, and offer and receive support. Ongoing sessions may offer stronger social influence with potential for developing emergent norms that can support risk reduction. A group level intervention can include more tailored individual

level interventions with some of the group members.

C. Community Level Interventions are directed at changing community norms, rather than the individual or a group, to increase community support of the behaviors known to reduce the risk for HIV infection and transmission. While individual and group level interventions also may be taking place within the community, interventions that target the community level are unique in their purpose and are likely to lead to different strategies than other types of interventions. Community level interventions aim to reduce risky behaviors by changing attitudes, norms, and practices through health communications, social (prevention) marketing, community mobilization and organization, and community-wide events. The primary goals of these programs are to improve health status, to promote healthy behaviors, and to change factors that affect the health of community residents. The community may be defined in terms of a neighborhood, region, or some other geographic area, but only as a mechanism to capture the social networks that may be located within those boundaries. These networks may be changing and overlapping, but should represent some degree of shared communications, activities, and interests. Community level interventions are designed to promote community support of prevention efforts by working with the social norms or shared beliefs and values held by members of the community. Specific activities include:

- Identifying and describing (through needs assessments and ongoing feedback from the community) structural, environmental, behavioral, and psychosocial facilitators and barriers to risk reduction in order to develop plans to enhance facilitators and minimize or eliminate barriers.
- Developing and implementing, with participation from the community, culturally competent, developmentally appropriate, linguistically specific, and sexual- identity-sensitive interventions to influence specific structural, environmental, behavioral, and psychosocial factors thought to promote risk reduction.
- Persuading community members who are at risk of acquiring or transmitting HIV infection to accept and use HIV prevention measures.

D. Street and Community Outreach Interventions are defined by their locus of activity and by the content of their offerings. Street and community outreach programs reach persons at high risk, individually or in small groups, on the street or in community settings, and provide them prevention messages, information materials, and other services, and assist them in obtaining primary and secondary HIV-prevention services such as HIV-antibody counseling and testing, HIV risk-reduction counseling, STD and TB treatment, substance abuse prevention and treatment, family planning services, tuberculin testing, and HIV medical intervention. Street and Community Outreach is an activity conducted outside a more traditional, institutional health care setting for the purpose of providing direct HERR services or referrals. The fundamental principle of these outreach activities is that the outreach worker establishes face-to-face contact with the client in his or her own environment to provide HIV/AIDS risk reduction information, services, and referrals.

Program Requirements

A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides financial assistance and substantial Federal programmatic involvement with the recipient during the performance of the project. In a cooperative agreement, CDC and the recipient of Federal funds share roles and responsibilities. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. below; CDC will be responsible for activities under B. below.

*A. Recipient Activities*

1. Conduct a health education and risk reduction intervention(s) for individuals, groups or communities at high risk of becoming infected or transmitting HIV to others. The following four HERR interventions will be funded in FY 1997: Individual Level, Group Level, Community Level, and Street and Community Outreach. Each recipient must conduct at least one of these priority HERR interventions.

2. As needed, refer high-risk clients, both HIV negative and HIV positive, and assist them in gaining access to HIV antibody counseling and testing; HIV medical care or early medical intervention; STD screening, testing, and treatment; psychosocial support; mental health services; substance abuse treatment; TB prevention and treatment; reproductive health; and other supportive services.

3. Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the target populations in the local area. This includes participation in the HIV Prevention Community Planning Process. Participation may include involvement in workshops; attending meetings; if nominated and selected, membership on the group; reporting on program activities; or commenting on plans.

4. Evaluate all major program activities and services supported with CDC HIV prevention funds.

Further guidance on these recipient activities is available in the application kit.

*B. CDC Activities*

1. Provide consultation and technical assistance in planning, operating, and evaluating prevention activities. CDC will provide consultation and technical assistance both directly and indirectly through prevention partners such as health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

2. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

3. Assist in the evaluation of program activities and services.

4. Assist recipients in collaborating with State and local health departments, community planning groups, and other federally-supported HIV/AIDS recipients.

5. Facilitate the transfer of successful prevention interventions and program models to other areas through convening meetings of grantees, workshops, conferences, newsletters, and communications with project officers.

6. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

7. Facilitate exchange of program information and technical assistance between community organizations, health departments, and national and regional organizations.

Review and Evaluation Criteria

Eligible applications will be evaluated by a two-step process. Step 1 is a review of the merits of the application against the criteria listed in A.1. below. If an exceptionally large number of applications are received, CDC may conduct a two-phased review in which all applications receive a preliminary review (A.1.–A.3. below) and the applications with high ratings receive the second phase of the review (A.1.–A.7.). Step 2 is a predecisional site visit.

CDC-convened Special Emphasis Panels will evaluate each application by the following criteria:

*A. Application*

1. Extent of experience in providing HIV prevention services to the target population; (20 points).
2. Extent of need for the program as evidenced by the comprehensive HIV prevention plan and other needs assessment information provided by the applicant; (10 points).
3. How well the program plan identifies and describes how proposed HERR interventions address prevention gaps related to their proposed priority population(s); (10 points).
4. Degree to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, related to prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan and national HIV prevention goals, and consistent with the applicant organization's overall mission; (15 points).
5. The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives; (20 points).
6. Degree of collaboration and coordination with other organizations serving the same priority population(s). This includes signed work plans, agreements, or other evidence of collaboration that describe previous, current, as well as future areas of collaboration; (15 points) and
7. The potential of the evaluation plan to measure the accomplishment of program objectives. (10 points)

*B. Predecisional Site Visits*

Before final award decisions are made, CDC may make site visits to CBOs whose applications are highly ranked. The purpose of these site visits will be to assess the organizational and financial capability of the applicant to implement the proposed program, review the application and program plans for priority HERR interventions, assess compliance with the jurisdiction's HIV prevention priorities as outlined in the comprehensive plan, and determine any special programmatic conditions and technical assistance requirements of the applicant.

A fiscal Recipient Capability Audit may be required of some applicants prior to the award of funds.

Funding Priorities

In making awards, priority will be given to: (1) ensuring a geographic balance of funded CBOs (the number of funded CBOs may be limited in each eligible area based on the number of reported AIDS cases, e.g., no more than one funded CBO for each 1,000 reported AIDS cases in minority populations in 1993, 1994, and 1995), (2) providing support to racial and ethnic minority CBOs and CBOs serving high risk populations without regard to their racial or ethnic identity, with proven records of effectively reaching their target populations, and (3) supporting activities that address the HIV prevention priorities identified in the jurisdiction's comprehensive HIV prevention plan (if available). Consideration will also be given to ensuring a national balance of funded CBOs in terms of targeted populations and behaviors.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State single point of contact (SPOC) as early as possible to alert them to the prospective applications and receive instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each 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 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, Mail Stop E–15, Atlanta, GA 30305, no later than 60 days after the application deadline date.

CDC does not guarantee to accommodate or explain State 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 to 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 State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Non-Governmental Organization Based.

Other Requirements

*A. HIV Program Review Panel*

Recipients must comply with the terms and conditions included in the document titled Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention (CDC) Assistance Programs (June 1992), a copy of which is included in the application kit. In complying with the program review panel requirements contained in this document, recipients are encouraged to use a current 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 also be an employee or a designated representative of a State or local health department. The names of review panel members must be listed on the Assurance of Compliance Form, CDC 0.1113.

*B. Accounting System*

The services of a certified public accountant licensed by the State Board of Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system

that will record receipts and expenditures of Federal funds in accordance with accounting principles, Federal regulations, and terms of the cooperative agreement.

*C. Audits*

Funds claimed for reimbursement under this cooperative agreement must be audited annually by an independent certified public accountant (separate and independent of the consultant referenced above or recipient's staff certified public accountant). This audit must be performed within 60 days after the end of the budget period, or at the close of an organization's fiscal year. The audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants (AICPA)), governmental auditing standards (established by the General Accounting Office (GAO)), and Office of Management and Budget (OMB) Circular A–133.

*D. 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 (in accordance with the appropriate guidelines and form provided in the application kit) to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee.

*E. Paperwork Reduction Act*

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget under number 0920–0249, ''HIV Prevention Programs in Minority and Other Community-Based Organizations Project Reports,'' Expiration date 8/31/99.

*F. Confidentiality*

All personally-identifying information obtained in connection with the delivery of services provided to any individual in any program supported under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless such an individual provides written, voluntary informed consent.

1. Non-personally-identifying, unlinked information, that preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. Personally-identifying information: Recipients of CDC funds who obtain and retain personally-identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

c. Obtain informed client consent by explaining the possible risks from disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made.

Some projects may require an Institutional Review Board (IRB) approval or a certificate of confidentiality.

Application Submission and Deadline

On or before January 6, 1997, submit the original and two copies of the application (PHS Form 5161–1, OMB Number 0937–0189) 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, Mail Stop E–15, Atlanta, GA 30305. Faxed copies will NOT be accepted. In addition, CDC strongly recommends that all applicants simultaneously submit a copy of the application to their State HIV/AIDS Directors.

*Deadline:* Applications will meet the deadline if they are either received on or before the deadline of 4:30 p.m. (EDST), January 6, 1997, or sent on or before the deadline date and received in time for submission to the review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable proof of timely mailing.)

Applications that do not meet these criteria will be considered late and will not be considered in the current funding cycle. Late applications will be returned to the applicant.

Where to Obtain Additional Information

To receive the application kit, call (404) 332–4561. You will be asked to leave your name, address, and telephone number, and you must refer to Announcement Number 704. You will then receive program announcement 704, required application forms and attachments, a current list of SPOCs, a summary of HIV-related objectives, a list of the State health departments contact, and the HERR guidelines. The announcement is also available through the CDC home page on the Internet. The address for the CDC home page is http://www.cdc.gov.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Maggie Slay, 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, Mail Stop E–15, Atlanta, GA 30305, telephone (404) 842–6797, or INTERNET address, mcs9@ops.pgo1.em.cdc.gov.

Announcement Number 704, ''Cooperative Agreements for Community- Based Human Immunodeficiency Virus (HIV) Prevention Projects,'' must be referenced in all requests for information pertaining to these projects.

Programmatic technical assistance may be obtained by calling Tim Quinn or Sam Taveras in the Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Mail Stop E–58, Atlanta, GA 30333, telephone (404) 639–8317. (Technical assistance may also be obtained from your respective State/local health departments.)

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) 512–1800.

Dated: September 27, 1996.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–25313 Filed 10–2–96; 8:45 am]

BILLING CODE 4163–18–P

## National Institute for Occupational Safety and Health; Draft Document ''Engineering Control Guidelines for Hot Mix Asphalt Pavers''

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control

and Prevention (CDC), Department of Health and Human Services.

**ACTION:** Request for comments.

**SUMMARY:** NIOSH is seeking public comments on the draft document ''Engineering Control Guidelines for Hot Mix Asphalt Pavers'' provided in this announcement.

**DATES:** Written comments to this notice should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio 45226. Comments must be received on or before November 4, 1996.

Comments may also be submitted by email to: dmm2@ NIOSDT1.em.cdc.gov. as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

**FOR FURTHER INFORMATION CONTACT:** Technical information may be obtained from Joann Wess or Ralph Zumwalde, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio 45226, telephone (513) 533–8319.

**SUPPLEMENTARY INFORMATION:** The following is the complete text of the draft document for public comment ''Engineering Control Guidelines for Hot Mix Asphalt Pavers''.

Background

On July 8–9, 1996, NIOSH convened a public meeting in Cincinnati, Ohio, to discuss the scientific and technical issues relevant to the development of recommendations for controlling exposures to asphalt fume during asphalt paving operations. Representatives from labor, industry, and government knowledgeable of current control technologies for asphalt exposure met to discuss the types of remedial action (e.g., engineering controls, work practices) needed to reduce worker exposures. Participants at this meeting included representatives from the Asphalt Institute (AI), the Federal Highway Administration (FHWA), the International Union of Operating Engineers, the Laborers' Health and Safety Fund, the National Asphalt Pavement Association (NAPA), the Occupational Safety and Health Administration (OSHA), manufacturers of hot mix asphalt (HMA) pavers, and asphalt paving contractors.

The participants provided detailed information on state-of-the-art engineering controls currently in use and discussed a draft document on guidelines for engineering controls in the asphalt paving industry that was prepared jointly by labor and industry. The draft guidelines provided in this announcement represent a recommendation of the participants to minimize asphalt fume exposures by developing and installing engineering controls on asphalt pavers and by providing training for workers.

Purpose

The purpose of the document ''Engineering Control Guidelines for Hot Mix Asphalt Pavers'' is to provide information on the use of engineering controls for the reduction of worker exposure to asphalt fumes during hot mix asphalt (HMA) paving operations. NIOSH is soliciting public comments on the completeness and feasibility of the recommendations.

Document for Comment

*Engineering Control Guidelines for Hot Mix Asphalt Pavers*

On July 8–9, 1996, the National Institute for Occupational Safety and Health (NIOSH) convened a public meeting in Cincinnati, Ohio, to discuss recommendations for controlling exposures to asphalt fume during asphalt paving operations. Participants at the meeting included representatives from the Asphalt Institute (AI), the Federal Highway Administration (FHWA), the International Union of Operating Engineers, the Laborers' Health and Safety Fund, the National Asphalt Pavement Association (NAPA), the Occupational Safety and Health Administration (OSHA), manufacturers of hot mix asphalt (HMA) pavers, and asphalt paving contractors. This meeting culminated in the development of these guidelines that provide information about the use of engineering controls (i.e., local exhaust ventilation systems) to reduce worker exposures to asphalt fumes during HMA paving operations.

1. New HMA Pavers

a. Paver manufacturers should develop and install ventilation systems with controlled indoor-capture efficiencies of at least 80% (as determined by the tracer gas method described in Appendix A) on the following equipment:

- All new self-propelled HMA pavers weighing 16,000 pounds or more and manufactured after July 1, 1997.
- All new self-propelled HMA pavers weighing less than 16,000 pounds with slat conveyors or with augers detached from the hoppers and manufactured after July 1, 1998.

b. Paver manufacturers should test the ventilation systems for all HMA paver models and certify that the systems meet the minimum capture efficiency of 80% as specified in Section 1.a. To assure performance of the ventilation systems, manufacturers should install an indicator device on each HMA paver to monitor the system flow rate. Each HMA paver manufacturer shall provide a plate attached to the paver that shows:

- schematic of the ventilation system;
- acceptable operating range for the indicator device; and
- list of operator maintenance procedures.

c. Manufacturers should develop and implement quality control plans to ensure that ventilation systems on these models comply with the minimum capture efficiency specified in Section 1.a.

2. Existing HMA Pavers

By July 1, 1998, paver manufacturers should make retrofit packages available for all self-propelled HMA pavers weighing 16,000 pounds or more and manufactured after July 1, 1987. These retrofit packages should be installed by July 1, 1999. Retrofit packages for self-propelled pavers weighing less than 16,000 pounds with slat conveyors or augers detached from the hopper should be available by July 1, 1999, and should be installed by July 1, 2000. Manufacturers should test and certify that all retrofit packages installed according to the manufacturer's instructions meet the minimum capture efficiency of 80% for a specific model or equivalent class design configuration (as determined by the tracer gas method described in Appendix A). To assure system performance, manufacturers should include in the retrofit package an indicator device to monitor the system flow rate.

3. Inspection and Maintenance

Owners of HMA pavers with ventilation systems should inspect and maintain the systems according to the manufacturer's recommendations. Each manufacturer should provide an operator manual containing detailed sketches and performance criteria for contractors to use in their annual assessment of ventilation systems. Annual performance inspections should be recorded in the operator's manual.

4. Training Program

The National Asphalt Pavement Association (NAPA), unions, and equipment manufacturers should develop specific training criteria/materials (i.e., separate document) on the operation, maintenance, and repair of HMA pavers.

5. Glossary of Terms

*Asphalt Paver:* A self-propelled construction machine (either rubber-tired or crawler-mounted) specifically designed to receive, convey, distribute,

profile, and compact paving material by the free-floating screed method.

*Auger:* A screw conveyor used to transversely distribute paving material ahead of the screed.

*Automatic Feeder Control:* A system for automatically controlling the flow of paving material to the screed.

*Conveyor:* A device for transferring paving material from the hopper to the auger.

*Conveyor Flow Gate:* A device for regulating the height of paving material being transferred by the conveyor.

*Feeder System:* The combined conveyor and auger components which transfer paving material from the hopper and distribute it in front of the screed.

*Hopper:* That section of the paver which receives the paving material from an external source.

*Material Feed Sensor:* A device used to detect a quantity of paving material in front of the screed.

*Operator:* The person whose primary function is to control the paver's speed and direction.

*Screed:* The device which is towed behind the tractor to strike off, compact, contour, and smooth the paving material.

*Screed Arm:* The attachment by which the screed is connected to and towed by the tractor.

*Screed End Plate:* A vertically adjustable plate at the outboard end of the screed, to retain the paving material and form the edge of the mat.

*Screed Extension:* A fixed or adjustable attachment to the screed for paving at widths greater than the main screed.

*Tow Point:* The point at which the screed arm is attached to the tractor.

*Tractor:* That portion of a paver which provides propulsion and may also receive, convey, and distribute paving material.

*Tunnel:* The passageway through which paving material moves from the hopper to the auger/screed.

## Appendix A

### Laboratory/Factory Test Procedure

Engineering controls (i.e., ventilation systems) for HMA pavers will be evaluated in a laboratory setting (i.e., manufacturers' plant, shop, or warehouse) in which ventilation control efficiency will be measured using smoke and tracer gas tests. The smoke test will be used as a qualitative test to visualize airflow patterns around the paver and ventilation system, and to ensure appropriate testing conditions for conducting the tracer gas tests. The tracer gas test will be used to quantitatively measure the volumetric airflow rate and capture efficiency of the ventilation system.

Ventilation systems will be evaluated in a large bay area at the manufacturing plant or testing shop. The paver will be parked with the screed and rear half of the tractor positioned in the bay area (referred to as the testing area) and with the front half of the tractor and engine exhaust ducts positioned outside the building. An overhead garage door or other barrier can be used to separate the two areas. A garage door can be lowered to rest on top of the tractor, and the remaining doorway openings around the tractor can be sealed to isolate the paver's front and rear halves. The screed will rest on the ground with edger plates extended one foot on each side of the screed. The flow gates at the back of the hopper should be closed as far as possible and the remaining tunnel opening should be blocked off. During the performance evaluations the idle speed for the paver, which can affect the exhaust rate of the ventilation system, will be set near the typical revolutions per minute (rpm) that are maintained during normal paving operations.

### Safety

Following are safety precautions for each test:

- Handle smoke generating equipment that can be hot with appropriate caution.
- Make sure that the smoke generators do not set off fire sprinklers or create a false alarm.
- Avoid direct inhalation of smoke from the smoke generators because the smoke may act as an irritant.
- Transport, handle, and store all compressed gas cylinders in accordance with the safety recommendations of the Compressed Gas Association.
- Store the compressed cylinder outdoors or in a well-ventilated area.
- Stand back and let the tank pressure come to equilibrium with the ambient environment if a regulator malfunctions or some other major accidental release occurs.

### Smoke Test

A smoke generator is used to produce theatrical smoke as a surrogate contaminant. The smoke is released through a perforated distribution tube traversing the width of the auger area between the tractor and the screed and supported above the ground under the augers. The smoke test helps to identify failures in the integrity of the barrier separating the front and rear portions of the paver. After sealing leaks within this barrier, smoke is again released to verify the integrity of the barrier system, to identify airflow patterns within the test area, and to visually observe the ventilation system's performance.

The sequence of a typical smoke test is outlined below:

- Position paving equipment within door opening and lower the overhead door.
- Seal the remaining door opening around the tractor.
- Place the smoke distribution tube directly underneath the auger.
- Connect the smoke generator to the distribution tube (PVC pipe, 2-inch diameter, 10 feet long, capped on one end, ¼-inch diameter holes every 6 inches on-center).
- Activate video camera if a record is desired.
- Activate the ventilation system and the smoke generator.
- Inspect the separating barrier for integrity failures and correct as required.
- Inspect the ventilation system for unintended leaks.
- De-activate the ventilation system for comparison purposes.
- De-activate the smoke generator and wait for smoke levels to subside.
- Disassemble test equipment.

### Tracer Gas

The tracer gas test is designed to: (1) calculate the total volumetric exhaust flow of the prototype design; and (2) evaluate the effectiveness in capturing and controlling a surrogate contaminant under the ''controlled'' indoor conditions. Sulfur hexafluoride ($SF_6$) will be used as the surrogate contaminant. A real-time $SF_6$ detector should be calibrated in the laboratory prior to the test. There are several methods for calibrating the $SF_6$ detector. The least labor-intensive method requires the use of multiple compressed gas cylinders with known concentrations of $SF_6$. The $SF_6$ concentrations should include at least four concentrations ranging from zero to 50 ppm $SF_6$ in nitrogen. An industrial hygiene sampling bag such as a 12-liter Milar® bag can be filled from each cylinder, then the bag can be hooked to the detector, and the response of the detector can be recorded for each concentration.

Another method for calibrating the $SF_6$ detector requires the use of two compressed gas cylinders, one with pure nitrogen and another with 50 ppm (or higher concentration) $SF_6$ in nitrogen. Four different concentrations of $SF_6$ are made by mixing different volumes of fluid from the two cylinders into sampling bags. The bags are mixed, hooked to the detector, and the response of the detector is recorded for each concentration.

The sampling bags should be clearly marked with the appropriate concentration of $SF_6$ that each contains. Bags can be reused; however, they should be emptied prior to reuse and they should only be filled with approximately the same concentration of $SF_6$. A bag used to hold 50 ppm $SF_6$ in a previous test should not be used to hold the 2 ppm $SF_6$ sample in the next test because of the possibility of residual gas causing an incorrect calibration point.

Using either calibration method or an equivalent method, a calibration curve, not necessarily a straight line, can then be calculated to fit the data and convert the detector's response to an actual $SF_6$ concentration.

To increase the likelihood of independence for each $SF_6$ concentration reading, program the $SF_6$ detector to a minimum sampling interval of 30 seconds. Larger intervals may be required based on the model of $SF_6$ detector and the experimental setup.

*100% Capture (to quantify exhaust volume):* A known volumetric flow rate (0.90 liters per minute) of $SF_6$ is released into the ventilation system. The release point must be upstream of the ventilation system's fan and downstream of the ventilation system's hood to ensure 100% capture of the released gas. The supply tank of pure $SF_6$ is connected to the release point via a pressure regulator, flow controller, and ¼-inch tubing.

A ¼-inch diameter hole is placed in the ventilation system's exhaust duct half way between the fan and the outlet of the exhaust dust. A 12-inch long and ¼-inch outside diameter stainless steel tube (sampling probe) is inserted into this exhaust-duct hole perpendicular to the exhaust air flow. The sampling probe should be sealed at the end and have several ⅛-inch diameter holes, one inch on-center along one side. The number of holes depends on the diameter of the exhaust duct. An 8-inch exhaust duct would require use of a sampling probe with six ⅛-inch holes. These holes should be positioned perpendicular to the exhaust air flow and must all be inside the duct when sampling. The tubing connecting the sampling probe to the detector should be airtight to ensure that the sample is pulled from within the exhaust duct and not from the surrounding area. The exhaust volume is then calculated using the following equation:

where

Q(exh)=volume of air exhausted through the ventilation system (lpm or cfm) (To convert from liters per minute (lpm) to cubic feet per minute (cfm), divide lpm by 28.3.)

$Q(SF_6)$=volume of $SF_6$ (lpm or cfm) introduced into the system

$C^*(SF_6)$=Concentration of $SF_6$ (parts per million) detected in exhaust and the * indicates 100% capture of the released $SF_6$.

If there is more than one ventilation system exhaust duct, then the above procedure should be repeated for each. Sufficient time should be allowed between tests for the background readings to drop to below 0.2 ppm $SF_6$. Background readings must be subtracted from the detector response before calculating the exhaust volume.

To quantify capture efficiency, $SF_6$ is released through a distribution plenum located under the augers between the tractor and the screed. A discharge hose feeds pure $SF_6$ at a flow rate of 0.90 lpm from the pressure regulator, through a mass flow controller (precision rotameter), and into the distribution plenum. Accuracy of the flow controller will greatly affect the accuracy of the test and should be #3% or better. The plenum is ten feet long and is designed to release the $SF_6$ evenly throughout its length. The same multi-port sampling wand, sampling location, and detector, as used in the 100% capture test, is also used in this test.

At least five consecutive measurements will be taken and an average value will be calculated. If the $SF_6$ volumetric flow rate is the same for both the 100% capture test and capture efficiency test, then the capture efficiency is calculated using the following equation:

where

$\eta$=capture efficiency

$C(SF_6)$=Concentration of $SF_6$ (parts per million) detected in exhaust

$C^*(SF_6)$=Concentration of $SF_6$ from 100% capture test

If the $SF_6$ volumetric flow rate is not the same for both the 100% capture test and the capture efficiency test, then the capture efficiency is calculated using the following:

where $C(SF_6)$ and $Q(SF_6)$ refer to the values obtained during the capture efficiency test and Q(exh) was calculated from the 100% capture test.

A total of four pairs of the 100% capture tests and capture efficiency tests will be performed with the ventilation system's overall capture efficiency determined from the average of all four trials.

Between each test (after a pair of 100% capture test and capture efficiency test), the paver should be shut down and background $SF_6$ measurements should be monitored to determine if any $SF_6$ had accumulated in the test area. If $SF_6$ has accumulated (>2.0 ppm), the integrity of the barrier system should be checked and the test area should be well ventilated before proceeding. Sufficient time should be allowed between tests for the background readings to drop to below 0.2 ppm of $SF_6$. Background readings must be subtracted from the detector response before calculations are made.

The sequence for a typical test run is outlined below:

- Position paving equipment and seal openings as outlined above.
- Calibrate (outdoors) flow meters at approximately 0.9 lpm of $SF_6$.
- Drill an access hole in the ventilation system's exhaust duct for insertion of the detector's sampling probe and position the sampling probe into the exhaust duct.
- With the ventilation system activated, begin monitoring for $SF_6$ to determine background interference levels.
- While maintaining the $SF_6$ tanks outdoors or in a well-ventilated area, run the discharge tubing from the mass flow meter to well within the exhaust hood to create 100% capture conditions.
- Initiate flow of $SF_6$ through the flow meter and allow it to reach steady-state (should take only a minute).
- Continue monitoring until 5 readings are recorded.
- Deactivate the flow of $SF_6$.
- Remove the discharge tubing to an outdoor location.
- End the 100% capture test. (Leave the tractor engine running.)
- Initiate monitoring to establish background interference until levels drop to <0.2 ppm.
- Locate an $SF_6$ distribution plenum under the auger area and connect the discharge tubing of the flow meter.
- Initiate $SF_6$ flow through the mass flow meters and monitor until approximate steady-state conditions appear (about one minute) and take at least 5 readings.
- Discontinue $SF_6$ flow and quickly remove the distribution plenum and discharge tubing from the auger area and remove to an outside location.
- Continue monitoring to determine the general area concentration of $SF_6$ which escaped into the test area.
- Discontinue monitoring when concentration decay is complete.
- Turn off the ventilation system and paver engine; calculate the capture efficiency.
- Repeat four times.

*Example Test Run and Calculations*

The paver was positioned and smoke was used to visually test the system.

Smoke was seen coming in the top of the overhead door. The opening in the overhead door was sealed and the smoke test revealed no other problems.

For simplicity of example, the $SF_6$ detector was calibrated and adjusted to read directly $SF_6$ in ppms. The $SF_6$ flow meter was calibrated using a bubble meter.

| Trial No. | Flow rate, lpm |
|---|---|
| 1 | 0.903 |
| 2 | 0.908 |
| 3 | 0.899 |
| 4 | 0.900 |

The mean flow rate was ((0.903 + 0.908 + 0.899 + 0.900)/ 4)) 0.903 liters per minute (lpm).

The sampling probe was placed in the exhaust duct of the ventilation system and background samples were registered by the detector. The tubing (pure $SF_6$ outlet) from the flow meter was placed through the hood and into the duct of the ventilation system (upstream of the fan). Readings were as follows:

| Task | Reading No. | Detector reading, ppm of $SF_6$ |
|---|---|---|
| Background | 1 | 0.0051 |
| | 2 | 0.0062 |
| | 3 | 0.0048 |
| | 4 | 0.0050 |
| | 5 | 0.0066 |
| | 6 | 0.0062 |
| | 7 | 0.0058 |
| Start $SF_6$ | 8 | 6.3 |
| | 9 | 22.0 |
| | 10 | 21.8 |
| | 11 | 21.9 |
| | 12 | 21.7 |
| | 13 | 21.8 |
| End | 14 | 21.9 |

At least five consecutive measurements are needed; in this case, the last six data points were used. The eighth reading (6.3 ppm) does not reflect steady-state and was not used in determining the average. The mean concentration of $SF_6$ is 21.85 ppm (the average of those six points). The mean background value is 0.0057 ppm. These values were used to calculate the volumetric flow rate from Equation 1.

Q(exh)+0.903 / 28.3 / (21.85 − 0.0057) * 106 = 1460 cfm.

The average background value, 0.0057 ppm, was subtracted from the average 100% capture value, 21.85 ppm. In this case, the background value was negligible.

The same flow meter and $SF_6$ flow rate were used for the capture efficiency test. The tubing was removed from the ventilation system hood and connected to the 10-foot distribution plenum. Readings were as follows:

| Task | Reading No. | Detector reading, ppm $SF_6$ |
|---|---|---|
| Background | 1 | 0.092 |
| | 2 | 0.084 |
| | 3 | 0.078 |
| Start $SF_6$ | 4 | 28.1 |
| | 5 | 18.8 |
| | 6 | 19.6 |
| | 7 | 19.7 |
| | 8 | 20.9 |
| | 9 | 17.3 |
| | 10 | 19.4 |
| | 11 | 18.9 |
| | 12 | 19.6 |

At least five consecutive measurements are needed; in this case, the last eight will be used. The fourth reading (28.1 ppm) was high; in this case it reflects the flow controller overshooting the set point during the startup of $SF_6$ flow, and this point is not used in determining the average. The mean concentration of $SF_6$ is 19.28 ppm; the average background concentration was 0.0847 ppm.

Because we used the same $SF_6$ flow rate in both the exhaust volume test and the capture efficiency test, the calculations are simplified. From Equation 2, the capture efficiency is (19.28 − .0847) / (21.85 − 0.0057)* 100 = 87.9%.

This procedure was done four times with the following results:

| Trial No. | 100% capture, ppm $SF_6$ | Capture efficiency, ppm $SF_6$ | Capture efficiency, % |
|---|---|---|---|
| 1 | 21.84 | 19.20 | 87.9 |
| 2 | 21.67 | 19.95 | 92.1 |
| 3 | 21.74 | 18.10 | 83.3 |
| 4 | 21.93 | 19.01 | 86.7 |

*Statistics*

Calculate the overall average of the means:

m = (87.9 + 92.1 + 83.3 + 86.7) / 4 = 87.5%

Calculate the estimated standard deviation:

s={((87.9 − 87.5)2 + (92.1 − 87.5)2 + (83.3 − 87.5)2 + (86.7 − 87.5)2) / (4 − 1)}0.5

={ (0.16 + 21.16 + 17.64 + 0.64) / 3}0.5 = 3.63

If the number of trials, n, is different from 4, then (n-1) is used in the denominator of this calculation and the numerator is the sum of all n squared differences, rather than just 4. Choose the number t (from the Student's t-distribution table at the 95th percentile) from the following table, based on the value of n:

t: 6.31 (n=2) 2.92 (n=3) 2.35 (n=4) 2.13 (n=5) 2.02 (n=6) 1.94 (n=7) 1.90 (n=8) 1.86 (n=9) 1.83 (n=10)

Calculate a test statistic (T):

T=m − t*s / n0.5

For this example: T = 87.5 − 2.35 * 3.63 / 40.5 = 83.2.

If T > 80.0, then decide (with 95% confidence) that efficiency is greater than 80%. In this example, we are 95% confident that the efficiency is greater than 80%.

If T ≤ 80.0, then the conclusion that the efficiency is greater than 80% cannot be made from these data.

*Equipment*

Smoke Test

Smoke generator
2 inch x 10 foot Schedule-40 PVC perforated distribution pipe

Tracer Gas Tests

Compressed cylinder of 99.98% $SF_6$ with regulator
Flow controller such as a precision rotameter
⅛-inch ID x 20-foot Teflon tubing and snap valves for $SF_6$ distribution
Primary Flow Calibrator
½-inch ID x 10-foot Copper tubing with 1/32-inch holes every 12 inches $SF_6$ distribution plenum
Gas monitor calibrated for $SF_6$
Calibration gases, nitrogen and at least one $SF_6$ concentration in nitrogen
12-liter Mylar gas sampling bags

Ventilation System Evaluation

Air Velocity Meter
Micro manometer w/Pitot Tube

Dated: September 27, 1996.

Linda Rosenstock,

*Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–25314 Filed 10–2–96; 8:45 am]

BILLING CODE 4163–19–P

## Food and Drug Administration

**[Docket No. 94M–0404]**

## Thermo Cardiosystems, Inc.; Premarket Approval of the HeartMate® IP LVAS

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Thermo Cardiosystems, Inc., Woburn, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of HeartMate® IP LVAS. After reviewing

the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1994, of the approval of the application.

**DATES:** Petitions for administrative review by November 4, 1996.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Rhona Shanker, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262.

**SUPPLEMENTARY INFORMATION:** On March, 30 1992, Thermo Cardiosystems, Inc., Woburn, MA 01888, submitted to CDRH an application for premarket approval of the HeartMate® IP LVAS. The device is a left ventricular assist device and is indicated for use in patients, who are on the cardiac transplant list, as temporary mechanical circulatory support for nonreversible left ventricular failure as a bridge to cardiac transplantation. The patient should meet all of the following criteria: (1) Be an approved cardiac transplant candidate; (2) be on inotropes; (3) be on an intra-aortic balloon pump (if possible); and (4) have left atrial pressure or pulmonary capillary wedge pressure ≥ 20 mmHg with either: a. systolic blood pressure ≤ 80 mmHg, or b. cardiac index of ≤ 2.0 $1/min/m^2$.

On December 13, 1993, the Circulatory Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 4, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 20, 1996.

Joseph A. Levitt,

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 96–25260 Filed 10–2–96; 8:45 am]

**BILLING CODE 4160–01–F**

## Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (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.

Proposed Project: 1997 Inventory of Mental Health Services in Juvenile Justice Facilities—New—This survey will gather information for the first time about the availability of mental health services in the universe of approximately 3,100 juvenile justice facilities nationwide. State and national information will be collected about the organization of mental health services, characteristics of youth receiving these services, and mental health staffing patterns and costs. Automated collection techniques are not cost-effective for this survey. The total annual burden estimate is shown below.

| | No. of respondents | No. of responses per respondent | Average burden per response (hrs.) | Total annual burden (hrs.) |
|---|---|---|---|---|
| Juvenile Justice Facilities | 3,100 | 1 | 1.5 | 4,650 |

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 26, 1996.

Richard Kopanda,

*Executive Officer, SAMHSA.*

[FR Doc. 96–25312 Filed 10–2–96; 8:45 am]

**BILLING CODE 4162–20–P**

## Substance Abuse and Mental Health Services Administration (SAMHSA)

### Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council and Center for Substance Abuse Treatment (CSAT) National Advisory Council in October 1996.

Substantive program information may be obtained from the individual listed below as Contact person by name and telephone number.

The SAMHSA National Advisory Council meeting will include an open portion to include discussions of SAMHSA's appropriation, budget and reorganization. There will also be a status report on the Agency's Knowledge Development and Application Programs and an update on the Agency's managed care activities. In addition, there will be a discussion on issues of funding for the National Household Survey on Drug Abuse and the Drug Abuse Warning Network. Public comments are welcome during the open session. Please communicate with the individual listed as contact below for guidance. Attendance by the public will be limited to space available.

The meeting will also include the presentation and discussion of information about the Agency's procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3) and 5 U.S.C., App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

*Committee Name:* Substance Abuse and Mental Health Services Administration, National Advisory Council.

*Meeting Date:* October 22, 1996.

*Place:* Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

*Closed:* October 22, 1996, 9:00 a.m. to 9:30 a.m.

*Open:* October 22, 1996, 10:00 a.m. to 4:30 p.m.

*Contact:* Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

The CSAT National Advisory Council will hold a teleconference meeting. The meeting will include the review, discussion and evaluation of individual contract proposals. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c) (3), (4) and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Joann Exline, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–4946.

*Committee Name:* Center for Substance Abuse Treatment, National Advisory Council.

*Meeting Date:* October 22, 1996.

*Place:* Center for Substance Abuse Treatment, 5515 Security Lane, Rockwall II Building, Suite 615, Rockville, Maryland 20852.

*Closed:* October 22, 1996, 2:00 p.m.–3:00 p.m.

*Contact:* Marjorie M. Cashion, Rockwall II Building, Suite 840, Telephone: (301) 443–3821 or FAX: (301) 480–6077.

Dated: September 27, 1996.

Jeri Lipov,

*Committee Management Officer Substance Abuse and Mental Health Services Administration.*

[FR Doc. 96–25377 Filed 10–2–96; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. FR–4150–N–01]**

### The Performance Review Board

**AGENCY:** Office of the Secretary, Department of Housing and Urban Development.

**ACTION:** Notice of appointments.

**SUMMARY:** The Department of Housing and Urban Development announces the appointments of Emelda P. Johnson, Lawrence L. Thompson, and Dominic A. Nessi as members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708–1381. (This is not a toll free number.)

Dated: September 25, 1996.

Henry G. Cisneros,

*Secretary, Department of Housing and Urban Development.*

[FR Doc. 96–25299 Filed 10–2–96; 8:45 am]

**BILLING CODE 4210–32–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*):

*Applicant:* Walter H. White, Cable, WI, PRT–820007

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Megan Boulton, Mundelein, IL, PRT–820020

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* PanAmerican Marketing, San Antonio, TX, PRT–817540

The applicant requests a permit to export 3 male and 2 female captive-born tiger (*Panthera tigris*) and one pair of captive-born snow leopard (*Uncia uncia*) to Promotora Zoofari, Cuernavaca, Morelos, Mexico for the purpose of enhancement of the species through breeding and conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 27, 1996.

Mary Ellen Amtower,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 96–25270 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–55–P**

## Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on 1.68 Acres on 6800–3 Whitecliff Road, Austin, Travis County, TX

**SUMMARY:** Earlynn G. McIntyre (applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT–818877. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of one single family residence on 1.68 acres on 6800–3 Whitecliff Road, Austin, Travis County, Texas.

This action will eliminate less than one-half acre and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The applicant proposes to compensate for this loss of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

A determination of whether jeopardy to the species will occur or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before November 4, 1996.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston or Mary Orms, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the above Austin address. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, at the Austin Ecological Services Field Office at the address above. Please refer to permit number PRT–818877 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Johnston or Mary Orms at the above Austin Ecological Service Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler.

However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Dated: September 23, 1996.

Frank S. Shoemaker,

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 96–25311 Filed 10–02–96; 8:45 am]

**BILLING CODE 4510–55–P**

## Garrison Diversion Unit Federal Advisory Council Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–0294, May 12, 1986). The meeting is open to the public. Interested persons may be oral statements to the council or may file written statements for consideration.

**DATES:** The Garrison Diversion Unit Federal Advisory Council will meet from 8:00 a.m. to 5:00 p.m. on Thursday, October 10 and from 8:00 a.m. to 11:00 a.m. on Friday, October 11, 1996.

**ADDRESSES:** The meeting will be held at the Bureau of Reclamation's Office, Highway 1 South, Oakes, North Dakota.

**FOR FURTHER INFORMATION CONTACT:** Dr. Grady Towns, ND/SD/RW, at (303) 236–8145, extension 644.

**SUPPLEMENTARY INFORMATION:** The Garrison Diversion Unit (GDU) Federal Advisory Council will consider and discuss subjects such as the Kraft Slough status and acquisition, alternatives and field review, Garrison Diversion Unit project update and wildlife budget, Garrison Diversion Conservancy District's Legislative proposal, Oakes Test Area, Lonetree update, Arrowwood mitigation planning and Environmental Impact Statement, Audubon National Wildlife Refuge and Wildlife Management Area Mitigation Plan and the GDU Fish and Wildlife Resource Commitment Report, and the North Dakota Wetlands Trust.

Dated: September 25, 1996.

Ralph O. Morgenweck,

*Regional Director.*

[FR Doc. 96–25303 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–55–M**

## Klamath River Basin Fisheries Task Force; Notice of Meeting

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

**DATES:** The Klamath River Basin Fisheries Task Force will meet from 8:00 a.m. to 5:00 p.m. on Thursday, October 10, 1996, and from 8:00 a.m. to 2:30 p.m. on Friday, October 11, 1996.

**PLACE:** The meeting will be held at the Brookings Inn, Highway 101, Brookings, Oregon, 97415.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box

1006 (1215 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

**SUPPLEMENTARY INFORMATION:** The principal agenda items at this meeting will be; (1) an Update on Ecosystem Restoration Issues Before Congress; (2) an Update on the Flow Studies for the Klamath River Basin; (3) a Report on 5-year Review and RFP Development; (4) a Task Force Decision on a Final FY 1997 Work Plan; (5) a Task Force Decision to Comment on Proposed Hatfield Legislation; and (6) a Decision on Whether or How to Proceed with the Upper Basin Amendment and Assignments.

For background information on the Klamath River Basin Fisheries Task Force, please refer to the notice of their initial meeting that appeared in the Federal Register on July 8, 1987 (52 FR 25639).

Dated: September 23, 1996.

Donald V. Friberg,

*Acting Regional Director.*

[FR Doc. 96–25302 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–55–M**

## Bureau of Land Management

**[OR–130–1030–00; GP6–0282]**

## Establishment of Supplementary Rules

**AGENCY:** Bureau of Land Management, Spokane District, Interior.

**NOTICE:** Notice of Supplementary Rules for management and protection of Bureau of Land Management (BLM) administered land located in San Juan County, Washington.

**ACTION:** Establishment of supplementary rules for Bureau of Land Management (BLM) administered land in San Juan County, Washington.

**SUMMARY:** The purpose of establishing this supplementary rule is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various users of those lands and the adjacent landowners. The various tracts of land in San Juan County, WA administered by BLM are narrow and are not safely suited for the discharge of rifles.

In accordance with 43 CFR 8365.1–6; the following supplementary rule is hereby established for all BLM lands in San Juan County, Washington.

43 CFR 8365.1–6

(a) On all public lands administered by BLM in San Juan County, WA; unless otherwise authorized, no person shall:

(1) Use or discharge any rifle for any purpose including hunting. This supplementary rule does not prohibit the otherwise legal uses of shotguns, handguns or archery equipment.

**EFFECTIVE DATE:** This supplementary rule is effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer.

**FOR FURTHER INFORMATION CONTACT:** District Ranger, Bureau of Land Management, Spokane District Office, 1103 North Fancher, Spokane, Washington, 99212–1275; or call (509) 536–1200.

**SUPPLEMENTARY INFORMATION:** The authority for this supplementary rule is provided in 43 CFR 8365.1–6. Violation of this rule is punishable by fine and/or imprisonment.

Dated: September 25, 1996.

Cathy L. Harris,

*Acting District Manager.*

[FR Doc. 96–25077 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–33–P**

## National Park Service

## Notice of Inventory Completion for Native American Human Remains From Unalakleet, AK, in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK.

A detailed assessment of the human remains was made by Bureau of Land Management and University of Alaska Museum professional staff in consultation with representatives of the Native Village of Unalakleet.

During the summer of 1990, human remains representing one individual were recovered from site UKT–023 during a legally authorized salvage project. No known individuals were identified. No associated funerary object are present. Site UKT–023 has been identified as a 19th century Eskimo habitation site based on architecture and written accounts of the area from the 1860s. Oral history presented by representative of the Native Village of Unalakleet, in addition to the traditional Eskimo name for this site area, indicates this site is associated with the Village of Unalakleet.

Based on the above mentioned information, Bureau of Land Management officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Bureau of Land Management officials have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Unalakleet.

This notice has been sent to officials of the Native Village of Unalakleet. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599; telephone: (907) 271–5510, before November 4, 1996. Repatriation of the human remains to the Native Village of Unalakleet may begin after that date if no additional claimants come forward.

Dated: September 30, 1996,

C. Timothy McKeown,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–25349 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion for Native American Human Remains From Hooper Bay, AK, in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK.

A detailed assessment of the human remains was made by Bureau of Land Management and University of Alaska Museum professional staff in consultation with representatives of the Native village of Hooper Bay.

In 1950, human remains representing one individual were recovered from the Old Sealing Camp site by Mr. Wendell

Oswalt. No known individuals were identified. No associated funerary objects are present. The Old Sealing Camp site has been identified as a habitation site from late precontact times based on oral history. The circumstances in which the human remains were recovered suggest a 19th century context. Consultation evidence presented by representative of the Native Village of Hooper Bay indicates this site has been traditionally associated with the Village of Hooper Bay during and prior to the 19th century.

In 1964, human remains representing two individuals were recovered from an older section of the Native Village of Hooper Bay by Mr. Otto Geist. No known individuals were identified. No associated funerary object are present. The circumstances in which the human remains were recovered suggest a 19th century context. Consultation evidence presented by representative of the Native Village of Hooper Bay indicates this site has been traditionally associated with the Village of Hooper Bay during and prior to the 19th century.

Based on the above mentioned information, Bureau of Land Management officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Bureau of Land Management officials have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Hooper.

This notice has been sent to officials of the Native Village of Hooper Bay. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599; telephone: (907) 271–5510, before November 4, 1996. Repatriation of the human remains and associated funerary objects to the Native Village of Hooper Bay may begin after that date if no additional claimants come forward.

Dated: September 30, 1996,

C. Timothy McKeown,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–25350 Filed 10–2–96; 8:45 am]

BILLING CODE 4310–70–F

## Notice of Inventory Completion for Native American Human Remains From Hawaii in the Possession of the California Academy of Sciences, San Francisco, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Hawaii in the possession of the California Academy of Sciences, San Francisco, CA.

A detailed assessment of the human remains was made by California Academy of Sciences professional staff in consultation with representatives of the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawaii Nei, and the Maui/Lanai Island Burial Council.

On April 2, 1902, Stanford University faculty member, J. O. Snyder recovered a skull and mandible representing one individual from a sand beach burial on Lanai Beach, Lanai Island, Hawaii. Documentation from the time of the recovery states that the human remains were originally buried with its hands clasping its knees. The human remains were donated by Stanford University to the California Academy of Sciences about 1985. No known individuals were identified and no associated funerary objects accompanied these human remains. The geographic location of the human remains and method of burial preparation are typical of Native Hawaiian burials.

Based on the above mentioned information, officials of the California Academy of Sciences have determined that, pursuant to 43 CFR 10.2 (d) (1), the human remains listed above represent the physical remains of one (1) individual of Native American ancestry. Officials of the California Academy of Sciences have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native Hawaiian human remains and the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawaii Nei, and the Maui/Lanai Island Burial.

This notice has been sent to officials of the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawaii Nei, and the Maui/Lanai Island Burial Council. Representatives of any other Native Hawaiian group or organization that believes itself to be culturally affiliated with these human remains should contact Russell P. Hartman, California Academy of Sciences, Golden Gate Park, San Francisco, CA 94118, Telephone: 415/750-7162, e-mail: [rhartman@calacademy.org], before [*thirty days from publication of this notice in the* Federal Register]. Repatriation of the human remains to the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawaii Nei, and/or the Maui/Lanai Island Burial Council may begin after that date if no additional claimants come forward.

Dated: September 30, 1996,

C. Timothy McKeown,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–25352 Filed 10–2–96; 8:45 am]

BILLING CODE 4310–70–F

## Notice of Inventory Completion for Native American Human Remains From Hawaii in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs.

The human remains consist of 387 human teeth representing a minimum of 17 individuals that are strung on coconut fibre cord as two separate necklaces. Museum accession records state that ''The necklaces were brought from the Hawaiian Islands by Dr. Frank Carpenter, physician there at the time of King Kalakaua (1883–1893). They were presented to him with great ceremony after he had cured a native child. The necklaces are said to have been native family heirlooms dating from the time when it was customary for the women to go out and collect the teeth of slain enemies after a battle''. Representatives of *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs confirm the Native Hawaiian nature of necklaces of this kind. The necklaces were donated to the museum by Miss Nettie M. Guiwits in 1942. No known individuals were identified.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 17 individuals of Native Hawaiian ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 25 U.S. C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native Hawaiian human remains and *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs.

This notice has been sent to officials of the *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Margaret Ann Hardin, Los Angeles County Museum of Natural History, 900 Exposition Blvd. Los Angeles, CA 90007; telephone: (213) 744–3382, before November 4, 1996. Repatriation of the human remains to *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: September 30, 1996,

C. Timothy McKeown,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–25353 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion for Native American Human Remains From White Pine County, NV, and Churchill County, NV, in the Control of the Nevada State Office, Bureau of Land Management, Reno, NV

**AGENCY:** National Park Service, Interior

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the control of the Nevada State Office, Bureau of Land Management, Reno, NV.

A detailed inventory and assessment of the human remains has been made by the Nevada State Museum professional staff and Bureau of Land Management officials in consultation with the Fallon-Shoshone Paiute Tribe and the Elko Band of the Te-Moak Tribe of Western Shoshone.

In 1940, human remains representing two individuals were recovered during legally authorized excavations from the Grimes Point Site. No known individuals were identified. No associated funerary objects were present.

The Grimes Point Site has been identified as a the Late Archaic Period (after 1000 AD) occupation based on projectile point morphology. Historical documents and ethnographic sources indicate that the Paiute people have occupied this area since precontact times. Oral tradition presented by tribal representatives during consultation further supports this evidence.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Fallon-Shoshone Paiute Tribe.

In 1990, human remains representing one individual were turned over to the Bureau of Land Management by the White Pine County Coroner. These remains were recovered from public lands without authorization by a private citizen. No known individuals were identified. No associated funerary objects are present.

The remains were found approximately seven miles north of Antelope Summit in White Pine County, Nevada. This site was not archaeologically recorded and the remains have been dated to the Historic Period (after 1800 AD) based on the condition of the recovered bone and tooth morphology. Historical documents and ethnographic sources indicate that Western Shoshone people have occupied this area since precontact times. Oral tradition presented by tribal representatives during consultation supports this evidence.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Duck Valley Shoshone-Paiute Tribal Council, the Ely Shoshone Tribe, the Goshute Tribal Council, the Battle Mountain Band of the Te-Moak Band of Western Shoshone; the Elko Band of the Te-Moak Tribe of Western Shoshone, the South Fork Band of the Te-Moak Tribe of Western Shoshone; the Wells Band of the Te-Moak Tribe of Western Shoshone, the Yomba Shoshone Tribe, and the Timbisha Shoshone Band.

This notice has been sent to officials of the Pyramid Lake Paiute Tribe, the Fallon Paiute-Shoshone Business Council, the Yerington Paiute Tribe, the Walker River Paiute Tribe, the Lovelock Indian Colony, Summit Lake Paiute Tribe, the Fort McDermitt Paiute-Shoshone Tribe, the Duck Valley Tribal Council, the Ely Shoshone Tribe, the Goshute Tribal Council, the Battle Mountain Band of the Te-Moak Band of Western Shoshone; the Elko Band of the Te-Moak Tribe of Western Shoshone, the South Fork Band Council of the Te-Moak Tribe of Western Shoshone; the Wells Band of the Te-Moak Tribe of Western Shoshone, the Yomba Shoshone Tribe, and the Timbisha Shoshone Band. Representatives of any other Indian tribe which believes itself to be culturally affiliation with these human remains should contact Cynthia Ellis-Pinto, Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89520, telephone (702) 785–6469 before November 4, 1996 Repatriation of the two human remains from the Grimes Point site to the Fallon-Shoshone Paiute Tribe and repatriation of the human remains from White Pine County to the Duck Valley Shoshone-Paiute Tribal Council, the Ely Shoshone Tribe, the Goshute Tribal Council, the Battle Mountain Band of the Te-Moak Band of Western Shoshone; the Elko Band of the Te-Moak Tribe of Western Shoshone, the South Fork Band of the Te-Moak Tribe of Western Shoshone; the Wells Band of the Te-Moak Tribe of Western Shoshone, the Yomba Shoshone Tribe, and the Timbisha Shoshone Band may begin after this date if no additional claimants come forward.

Dated: September 30, 1996

C. Timothy McKeown,

*Acting, Departmental Consulting Archeologist,*

*Acting Chief, Archeology and Ethnography Program.*

[FR Doc. 96–25351 Filed 10–2–96; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF JUSTICE

### Office of the Assistant Attorney General for Civil Rights; Certification of the State of Texas Accessibility Standards Under the Americans With Disabilities Act

**AGENCY:** Department of Justice.

**ACTION:** Notice of certification.

**SUMMARY:** The Department of Justice has certified that the State of Texas Accessibility Standards meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

**DATES:** October 3, 1996.

**ADDRESSES:** Inquiries may be addressed to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738.

**FOR FURTHER INFORMATION CONTACT:** John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738.

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

**SUPPLEMENTARY INFORMATION:**

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. § 12188(b)(1)(A)(ii); 28 CFR § 36.601 *et seq*. Certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated November 17, 1994, the Texas Department of Licensing and Regulation requested that the Department of Justice (Department) certify that the State of Texas Accessibility Standards, effective April 1, 1994, as adopted pursuant to Texas Civil Statutes, Article 9102, as amended effective September 1, 1993, and the Architectural Barriers Administrative Rules, Chapter 68, as amended effective June 1, 1994 (Texas Standards), meet or exceed the new construction and alterations requirements of title III of the ADA.

The Department analyzed the Texas Standards, and made a preliminary determination that they meet or exceed the new construction and alterations requirements of title III of the ADA. By letter dated May 10, 1996, the Department notified the Texas Department of Licensing and Regulation of its preliminary determination of equivalency.

On May 28, 1996, the Department published notices in the Federal Register announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on July 29, 1996. In addition, the Department held public hearings in Austin, Texas on June 25, 1996, and in Washington, DC on August 1, 1996.

Fourteen persons submitted comments. Commenters included disability-rights advocates, design professionals, and interested individuals, including individuals with disabilities. The Department has analyzed the testimony submitted at the hearings and has consulted with the U.S. Architectural and Transportation Barriers Compliance Board.

The vast majority of the comments supported certification of the Texas Standards. Two individuals testified in opposition to certification of the Texas Standards because they objected to the coverage of churches under the Texas Standards. However, because coverage of churches is neither required nor prohibited by the ADA, such coverage does not preclude certification. One other commenter complained that Texas accessibility requirements were too vigorously enforced against public schools. Because certification does not apply to title II facilities, such as public schools, and does not address enforcement efforts, this comment also does not affect certification.

Based on these comments, the Department has determined that the Texas Standards are equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Texas Standards.

Effect of Certification

The certification determination is limited to the version of the Texas Standards that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Texas Standards that are not addressed by the ADA Standards for Accessible Design, such as the provisions for children's facilities in the Texas Standards.

Finally, certification does not apply to variances or waivers granted under the Texas Standards by the Commissioner of Licensing and Regulation. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Texas Standards for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Dated: September 26, 1996.

Deval L. Patrick,

*Assistant Attorney General for Civil Rights.*

[FR Doc. 96–25332 Filed 10–2–96; 8:45 am]

BILLING CODE 4410–01–M

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Coaters, Inc. and Fibre Leather Manufacturing Corporation*, Civil Action No. 3:96CV01945(JBA), was lodged on September 20, 1996, with the United Stated District Court for the District of Connecticut. The Proposed decree resolves the United States' claims under CERCLA against defendants Coaters, Inc. and Fibre leather Manufacturing Corporation with respect to the Solvent Recovery Service Superfund Site, in Southington, Connecticut. The Defendants are alleged generators that arranged for the treatment or disposal of hazardous substances at the Site. Under the terms of the proposed decree, the Coaters, Inc. will pay $115,000 and Fibre Leather Manufacturing Corporation will pay $30,000 in reimbursement of past and future response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Coaters, Inc. and Fibre Leather Manufacturing Corporation,* DOJ Ref. #90–7–1–23H.

The proposed consent decree may be examined at the office of the United

States Attorney, 157 Church Street, 23rd Floor, New Haven, Connecticut 06510; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, N.W., Fourth Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–25271 Filed 10–2–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act (''CERCLA'')

In accordance with Section 122(d) of the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9622, as amended, and Departmental policy 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *General Electric Company*, Civil Action No. 3:96–CV–406–P was lodged on September 19, 1996 with the United States District Court for the Western District of North Carolina. This agreement resolves a judicial enforcement action brought by the United States against the settling defendant pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The United States seeks reimbursement for response costs and injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at and from the General Electric/Shepherd Farm Superfund Site, in Hendersonville, North Carolina.

The settlement requires the defendant to perform and fund the soil and groundwater remediation as set forth in the Record of Decision issued on September 29, 1995 by the Regional Administrator for Region IV of the United States Environmental Protection Agency. The settlement also requires GE to pay $1,028,776 to the United States for past response costs incurred at the Site and to pay all future response costs related to the remedy, including oversight costs. The Consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA and under Section 7003 of the Resource conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *General Electric Company*, DOJ Ref #90–11–3–1561. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney, Rm. 207, U.S. Courthouse, 100 Otis St., Asheville, North Carolina 28801; the Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia, 30365; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $25.00 (100 pages at 25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

*Deputy Chief, Environmental Enforcement Section Environment and Natural Resources Division.*

[FR Doc. 96–25333 Filed 10–2–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Antitrust Division

## Notice Pursuant to the National Cooperative Research and Production Act of 1993; the Ohio Aerospace Institute; Metal Matrix Composite Cooperative

Notice is hereby given that, on September 4, 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''), The Ohio Aerospace Institute's Metal Matrix Composite Cooperative (''MMC'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture 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 Ohio Aerospace Institute, Brook Park, OH; Williams International Co., L.L.C., Walled Lake, MI; Allied Signal, Phoenix, AZ; Allison, Indianapolis, IN; GE Aircraft Engines, Cincinnati, OH; and Pratt & Whitney, West Palm Beach, FL. MMC is a research and development venture formed to develop a damage tolerant MMC life prediction system for use in aircraft engine production component design by 1998. Specifically, computer-coded modules to predict metal matrix component damage behavior from creep-to-failure will be developed.

Membership in this consortium remains open, and MMC intends to file additional written notification disclosing all changes in membership. Information regarding membership may be obtained from Eileen Pickett, Ohio Aerospace Institute, Cleveland, OH.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–25334 Filed 10–2–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice Pursuant to the National Cooperative Research and Production Act of 1993 the Ohio Aerospace Institute Collaborative Core Research Program

Notice is hereby given that, on September 4, 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''), the Ohio Aerospace Institute's Collaborative Core Research Program (''CCRP'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture 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 Caterpillar Inc., Peoria, IL; CyberOptics, Golden Valley, MN; Intelligent Automation Systems, Cambridge, MA: Allison Engine Company, Indianapolis, IN; Atkins & Pearce Technology Division, Covington, KY; Alcoa, Alcoa Center, PA; Allied

Signal, Phoenix, AZ; American Gas Association Research, Cleveland, OH; Parker Hannifin Corporation, Irvine, CA; BF Goodrich Aerospace, Brecksville, OH: The Cleveland Clinic Foundation, Cleveland, OH; Brown & Sharpe, North Kingstown, RI; Picker International, Highland Heights, OH; TRW, Inc., Redondo Beach, CA; GE Aircraft Engines, Cincinnati, OH; Williams International Co., L.L.C., Walled Lake, MI; Aircraft Braking Systems Corporation, Akron, OH: Lockheed Martin Tactical Defense, Akron, OH; Eaton Corporation, Willoughby Hills, OH; Hughes Research Laboratories, Malibu, CA; Pratt & Whitney, West Palm Beach, FL; Cleveland State University, Cleveland, OH; Ohio University, Athens, OH; University of Toledo, Toledo, OH; the University of Cincinnati, Cincinnati, OH; University of Dayton, Dayton, OH; The University of Akron, Akron, OH; Case Western Reserve University, Cleveland, OH; The Ohio State University, Columbus, OH; Wright State University, Dayton, OH; NASA Lewis Research Center, Cleveland, OH; and Wright Patterson Air Force Base, WPAFB, OH.

The objective of CCRP is to facilitate collaborative research and development projects among industry, universities and federal laboratories to develop new or tailor existing technology to the commercial interests of industry. CCRP pools industry, state, and federal dollars to competitively award funding for such projects.

Membership in this consortium remains open, and CCRP intends to file additional written notification disclosing all changes in membership. Information regarding membership may be obtained from Eileen Pickett, Ohio Aerospace Institute, Cleveland, OH.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–25335 Filed 10–2–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993; Wilfred Baker Engineering, Inc., Explosion Hazards and Protective Structure Designs

Notice is hereby given that, on September 5, 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''), Wilfred Baker Engineering, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of a cooperative research agreement. 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, Aramco Services Company, Houston, TX, has joined the joint venture.

No other changes have been made in either the membership or planned activities of the joint venture.

On March 14, 1995, Wilfred Baker Engineering, Inc., filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 11, 1995 (60 FR 25252). The last notification was filed on March 20, 1996. A notice was published in the Federal Register on May 2, 1996 (61 FR 19639).

Constance K. Robinson,

*Director of Operations Antitrust Division.*

[FR Doc. 96–25272 Filed 10–2–96; 8:45 am]

BILLING CODE 4410–01–M

## Parole Commission

## Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Monday, September 23, 1996 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one appeal from the National Commissioners' decision pursuant to 28 CFR Section 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carrier, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Jasper Clay, Jr., John R. Simpson, and Michael J. Gaines.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: September 23, 1996.

Edward F. Reilly, Jr.,

*Chairman, U.S. Parole Commission.*

[FR Doc. 96–25562 Filed 10–1–96; 8:45 am]

BILLING CODE 4410–01–M

## NATIONAL BANKRUPTCY REVIEW COMMISSION

### Meeting

**AGENCY:** National Bankruptcy Review Commission.

**ACTION:** Notice of public meeting and public hearing.

*Time and Date:* Friday, October 18, 1996; 8:30 a.m. to 4:30 p.m.; and Saturday, October 19, 1996; 8:15 a.m. to 5:00 p.m.

*Place:* The Commission will hold its Public Meeting and Hearing at the San Diego Marriott Hotel and Marina, 333 West Harbor Drive, San Diego, California 92101–7700. The Meeting and Hearing room location will be posted at the Hotel.

*Status:* The Meeting and Hearing will be open to the public.

*Matters To Be Considered:* At its Public Meeting, the Commission will consider general administrative matters, including substantive agenda; Commission working groups will consider the following substantive matters: Government as creditor or debtor; small businesses/single asset real estate cases; improving jurisdiction and procedure; consumer bankruptcy; and mass torts and future claims. The Public Hearing will provide an open forum for public participation which will be held on Saturday, October 19, 1996, from 1:00 p.m. to 5:00 p.m.

**SUPPLEMENTARY INFORMATION:** The Public Hearing will be open to any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities. The Public Hearing is being held in conjunction with the National Conference of Bankruptcy Judges Annual Meeting in San Diego, California at the San Diego Marriott and Marina, 333 West Harbor Drive, San Diego, California. Persons who would like to make an oral presentation to the Commission at the Public Hearing may register in advance by calling the National Bankruptcy Review Commission at (202) 273–1813 no later than Wednesday, October 16, 1996, before 5:00 p.m. EST and providing name, organization (if applicable), address and phone number, or register in person at the National Bankruptcy Review Commission registration desk at the San Diego Marriott Hotel and Marina by providing, name, organization (if applicable), address and phone number. If the volume of requests to speak to the Commission at the

Public Hearing exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Suite G–350, Washington, DC 20544. Written submissions are not subject to any limitations.

**CONTACT PERSONS FOR FURTHER INFORMATION:** Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Suite G–350, Washington, DC 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

*Deputy Counsel.*

[FR Doc. 96–25403 Filed 10–2–96; 8:45 am]

**BILLING CODE 6820–36–P**

## NATIONAL LABOR RELATIONS BOARD

### Sunshine Act

**AGENCY HOLDING THE MEETING:** National Labor Relations Board.

**TIME AND DATE:** 2:00 p.m., Thursday, September 25, 1996.

**PLACE:** Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 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, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, D.C., September 26, 1996.

By direction of the Board.

John J. Toner,

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 96–25563 Filed 10–1–96; 3:32 pm]

**BILLING CODE 754–4501–M**

## NATIONAL SCIENCE FOUNDATION

### Proposed Data Collection: Common Request; Title of Proposed Collection: National Survey of Recent College Graduates

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on: (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.

*Proposed Project:* The National Survey of Recent College Graduates (NSRCG), formerly called the New Entrants Survey, has been conducted biennially since 1974. For the 1997 cycle, bachelor's and master's degree recipients in science and engineering from the academic years 1994–95 and 1995–96 will be surveyed. The purpose of the study is to provide national estimates describing the relationship between education and employment for new science and engineering graduates. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), formerly called the Scientific and Technical Personnel Data System (STPDS). In 1997, the NSRCG survey effort will also include a Follow-up panel survey of graduates that received their degrees between 1991 and 1994, inclusive. The purpose of the Follow-up panel survey is to create a historical data set on the same individuals permitting longitudinal analysis.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The National Survey of Recent College Graduates is designed to comply with these mandates by providing information on the supply and utilization of newly qualified scientists and engineers. Collected data will be used to produce estimates of the characteristics of new graduates entering the science and engineering labor force. They will also provide necessary input into the SESTAT labor force model, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women and Minorities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD-ROM and on the World Wide Web.

To conduct the study, lists of 1994–95 and 1995–96 science and engineering bachelor's and master's degree recipients will be collected from a nationally representative sample of 275 institutions awarding such degrees. The United States Department of Education's Family Policy Compliance Office has reviewed the study's goals and procedures and concluded that postsecondary institutions may provide these lists without violating the Family Education Rights and Privacy Act of 1976 (FERPA). From the collected lists, a sample of approximately 13,500 graduates will be selected for the NSRCG and 14,000 graduates will be selected for the Follow-up panel survey. The sample design includes oversampling of minority graduates and varying sampling rates to represent specific fields of science and engineering. Sample members will be requested to complete a 30 minute interview conducted by telephone and/or mail. The survey will be collected in conformance with the Privacy Act of 1974. Each graduate's participation will be entirely voluntary. NSF will insure that all information collected will be keep strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

The graduate sample size for the NSRCG for two academic years covered by this survey cycle (1994–95 and 1995–96) is estimated to be 13,500. An unweighed graduate response rate of 85 percent is anticipated (86 percent was obtained on the previous cycle). The graduate sample size for the Follow-up panel survey is estimated to be 14,000. An unweighted graduate response rate

of 95 percent is anticipated for the Follow-up panel survey. The amount of time required to complete the questionnaire is estimated to be 30 minutes for both the NSRCG and the Follow-up panel survey.

Send comments to Herman Fleming, National Science Foundation Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230.

Written comments should be received by December 1, 1996.

Dated: September 30, 1996.

Herman G. Fleming,

*NSF Clearance Officer.*

[FR Doc. 96–25346 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Proposed Data Collection: Comment Request; Title of Proposed Collection: National Survey of College Graduates

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on (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.

Proposed Project: The National Survey of College Graduates (NSCG), formerly called National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970's. In the 1997 NSCG, persons identified as trained and/or working in science and engineering, who responded to the 1995 survey, will be contacted again. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), formerly called the Scientific and Technical Personnel Data System (STPDS), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The National Survey of College Graduates is designed to comply with these mandates by providing information on the supply and utilization of nation's scientists and engineers. The NSCG provides the majority of records into the SESTAT data system. The NSF uses this information to prepare congressionally mandated reports such as Science and Engineering Indicators and Women and Minorities in Science and Engineering. A public release file of collected data, edited to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF through an interagency agreement. Respondents from the 1995 NSCG, who had at least a bachelor's degree in science engineering as of 1990 Decennial Census, or who worked in science and engineering jobs as of April 1993, will be contacted in 1997. The sample design included oversampling of minority college graduate population and varying sampling rates to represent specific fields of science and engineering. Sample members will be sent mail questionnaires, and non-respondents to the mail questionnaire will be followed up by telephone or personal visit interview.

The 1997 NSCG sample size will be about 53,000 and an unweighted response rate of 95 percent is anticipated (94 percent was obtained on the previous cycle). The amount of time required to complete the questionnaire may vary depending on individuals' circumstances but on the average, it will take about 25 minutes. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey will be entirely voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Send comments to Herman Fleming, National Science Foundation Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230.

Writen comments should be received by December 1, 1996:

Dated: September 30, 1996.

Herman G. Fleming,

*NSF Clearance Officer.*

[FR Doc. 96–25347 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Proposed Data Collection: Comment Request; Title of Proposed Collection: Survey of Doctorate Recipients

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on (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.

Proposed Project: The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. For the 1997 cycle, a sample of individuals under the age of 76 who have earned doctoral degrees in science and engineering from U.S. institutions will be surveyed. The purpose of the study is to provide national estimates describing the relationship between education and employment for Ph.D. recipients in science and engineering. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), formerly called the Scientific and Technical Personnel Data System (STPDS).

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering

resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The Survey of Doctorate Recipients is designed to comply with these mandates by providing information on the supply and utilization of doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force model, which produces estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women and Minorities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, is expected to be made available to researchers on CD–ROM and on the World Wide Web.

The survey sample design includes oversampling of recent Ph.D. recipients and minority recipients and varying sampling rates to represent specific fields of science and engineering. A total of approximately 58,000 individuals is expected to be sampled for the survey. Sample members will be requested to complete a 30 minute interview conducted by computer-assisted telephone interviewing (CATI) or mail. An unweighted response rate of 85 percent is anticipated. The survey will be collected in conformance with the Privacy Act of 1974. Each sample member's participation will be entirely voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Send comments to Herman Fleming, National Science Foundation Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230.

Written comments should be received by December 1, 1996.

Dated: September 30, 1996.

Herman G. Fleming,

*NSF Clearance Officer.*

[FR Doc. 96–25348 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Extragalactic Astronomy and Cosmology Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on October 24–25 (5). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, from 8:30 a.m. to 5:00 p.m. each day.

**CONTACT PERSON:** Dr. Jane Russell, Program Director, Extragalactic Astronomy and Cosmology, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1827.

**REASON FOR CLOSING:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25389 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Advisory Panel for Cognitive, Psychological & Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings.

*Name:* Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

*Date and Time:* Octoer 21–22, 1996; 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

*Contact Person:* Dr. Joseph L. Young, Program Director for Human Congition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

*Agenda:* To review and evaluate human cognition and perception proposals as part of the selection process for awards.

*Date and Time:* November 7–8, 1996; 9:00 a.m.–5:00 p.m.

*Place:* National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

*Contact Person:* Dr. Fernanda Ferreira, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

*Agenda:* To review and evaluate social psychology proposals as part of the selection process for awards.

*Date and Time:* November 20–22, 1996; 9:00 a.m.–5:00 p.m.

*Place:* National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

*Contact Person:* Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995 Arlington, VA 22230. Telephone: (703) 306–1728.

*Agenda:* To review and evaluate linguistics proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (5) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25395 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Advisory Panel for Development Mechanisms; 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:* Advisory Panel for Development Mechanisms (1141).

*Date and Time:* October 23–25, 1996, 8:30 a.m. to 5:00 p.m.

*Place:* Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

*Type of Meting:* Part-Open.

*Contact Person:* Dr. Judith Plesset and Dr. Lynn Zimmerman, Program Directors, Developmental Mechanisims, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 Telephone: (703) 306–1417.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact persons listed above.

*Agenda:* Open Session: October 24, 1995; 2:00 p.m. to 2:30 p.m., to discuss goals and assessment procedures.

*Closed Session:* Octover 23, 9:00 a.m. to 5:00 p.m; October 24, 1996, 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 2:00 p.m. and 2:30 p.m. to 5:00 p.m., October 25, 1995, 8:30 a.m. to

12:00 p.m.; To review and evaluate Developmental Mechanism proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25382 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Proposal Review Panel in Earth 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:* Proposal Review Panel in Earth Sciences (1569).

*Date and Time:* October 23–25, 1996; 8:30 a.m. to 5:00 p.m.

*Place:* GSA Headquarters Building, Boulder, CO 80301.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1559.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25392 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Proposal Review Panel in Earth 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:* Propsal Review Panel in Earth Sciences (1569).

*Date and Time:* Thursday, Oct 24–Saturday, Oct 26, 1996; 8:30 a.m.–6:00 p.m.

*Place:* University NAVSTAR Consortium Headquarters, Boulder, CO.

*Type of Meeting:* Closed.

*Contact Person:* Russell C. Kelz, Assistant Program Director, Instrumentation and Facilities Program, Division of Earth Sciences, Rm. 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1558.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Instrumentation and Facilities proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25393 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Proposal Review Panel in Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Proposal Review Panel in Earth Sciences (1569).

*Date and Time:* October 24–26, 1996; 8:30 a.m. to 6:00 p.m.

*Place:* UNAVCO/UCAR, 3450 Mitchell Lane, Boulder, CO 80301.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1558.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25394 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

# NATIONAL SCIENCE FOUNDATION

## Special Emphasis Panel in Elementary, Secondary and Informal Education; 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 of Committee:* Teacher Enhancement Program.

*Date and Time:*

October 24, 1996; 5:00 p.m. to 9:00 p.m.

October 25, 1996; 8:00 a.m. to 5:00 p.m.

October 26, 1996; 8:00 a.m. to 3:00 p.m.

*Place:* Marriott, Metro Center, 775 12th Street, N.W., Washington, D.C. 20005.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joyce Evans, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1613.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25381 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Federal Networking Council Advisory Committee

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Federal Networking Council Advisory Committee Meeting (1177).

*Date and Time:* October 21, 1996; 1:00 p.m. to 6:00 p.m. and October 22, 1996; 8:30 a.m. to 6:00 p.m.

*Place:* Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Ms. Julie Walker, Coordinator, Federal Networking Council, DynCorp, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 284–8227, Fax: (703) 522–7161. Internet: walkerj@snap.org.

*Purpose of Meeting:* The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the

National Research and Education Network (NREN) Program.

*Agenda:* Network Transition and Scalability, Internet Privacy and Security, Education, and International Networking.

*Luncheon:* There is no fee to attend this meeting. However, attendees who register in advance may order refreshments and/or a box lunch for which there will be a charge. To obtain a registration form, contact Ms. Walker by telephone, fax or electronic mail at the number or address above. Forms must be received by October 15, 1996.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25388 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Special Emphasis Panel in Information, Robotics and Intelligent Systems; 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 Information, Robotics and Intelligent Systems #1200.

*Date and Time:* October 24, 25, 28, 1996; 8:30 a.m. to 5:30 p.m.

*Place:* The River Inn, 924 25th Street NW., Washington, DC 20037.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Interactive Systems Stimulate proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25390 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Advisory Panel for Neuroscience; 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:* Advisory Panel for Neuroscience (1158).

*Date and Time:* October 21 & 22, 1996; 9:00 a.m. to 6:00 p.m.

*Place:* Room 310, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Persons:* Dr. Raymon Glantz, Program Director, Neuronal and Glial Mechanisms; Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1416.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact persons listed above.

*Agenda:* Open Session: October 22, 1996; 3:00 p.m. to 4:00 p.m., to discuss research trends and opportunities in Neuronal and Glial Mechamisms. Closed Session: October 21, 1996; 9:00 a.m. to 6:00 p.m.; October 22, 1996, 9:00 a.m. to 3:00 p.m., 4:00 p.m. to 6:00 p.m.; to review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b,(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25383 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name:* Advisory Panel for Neuroscience (1158).

*Date and Time:* October 23–25, 1996; 9:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, Rm. 680, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Susan Volman, Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1423.

*Purpose of Meeting:* To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: October 24, 1996; 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. Closed Session: October 23, 1996; 9:00 a.m. to 5:00 p.m., October 24, 1996, 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m., and October 25, 1996, 9:00 a.m. to 5:00 p.m. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25384 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Special Emphasis Panel in Physics; 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 Physics (#1208).

*Date:* October 22–24, 1996.

*Place:* Room 351 West Bridge, California Institute of Technology, 1201 E. California Boulevard, Pasadena, California.

*Type of Meeting:* Closed.

*Contact Person:* Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

*Purpose of Meeting:* To review the technical aspects and management of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.

*Agenda:* An overview of the project. Detailed examination of the technical aspects of the project and the management of the technical systems.

*Reason for Closing:* The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25391 Filed 10–2–96; 8:45 am]

**BILLING CODE 7555–01–M**

## Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation (NSF) announces the following meeting.

*Date and Time:* October 21 and 22, 1996, 8:00 a.m.–6:00 p.m.

*Place:* Room 380, 4201 Wilson Boulevard, Arlington, Virginia 22230.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Elvira Doman and Dr. Stacia Sower, Program Directors, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1421.

*Minutes:* May be obtained from the contact persons listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Open Session: October 22, 2:00 p.m.–3:00 p.m.: Discussion with Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences. To discuss research trends and opportunities in biology.

*Closed Session:* October 21, 8:00 a.m.–6:00 p.m., October 22, 8:00 a.m.–2:00 p.m., 3:00 p.m.–6:00 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25385 Filed 10–2–96; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Physiology and Behavior; 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*: Advisory Panel for Integrative Plant Biology.

*Date and Time*: October 23–25, 1996, 8:30 a.m. to 5:00 p.m.

*Place*: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

*Type of Meeting*: Part-Open.

*Contact Person*: Dr. Hans J. Bohnert, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22203. Telephone: (703) 306–1422.

*Minutes*: May be obtained from the contact person listed above.

*Purpose of Meeting*: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda*: To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards. *Open Session*: October 23, 1996, 3:30 to 4:30 pm—To discuss research trends and opportunities in Integrative Plant Biology. *Closed Session*: October 23, 1996, 8:30 am to 3:30 pm, 4:30 pm to 5:30 pm, October 24, 1996, 8:30 am to 5:30 pm and October 25, 1996, 8:30 am to 1:00 pm—To review and evaluate Integrative Plant Biology proposal as part of the selection process for awards.

*Reason for Closing*: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25386 Filed 10–2–96; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Advisory Panel for Physiology and Behavior (Ecological and Evolutionary Physiology).

*Date and Time:* October 28–30, 1996; 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, Room 370, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. John Andy Phillips, Program Director, Ecological and Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda: Open Session:* October 30, 1996; 10:00 a.m. to 11:00 a.m.—for a discussion re: Integrative Biology and Neuroscience on research trends and opportunities assessment procedures in Ecological and Evolutionary Physiology.

*Closed Session:* October 28 and 29, 8:30 a.m. to 5:00 p.m.; October 30, 8:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. To review and evaluate Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–25387 Filed 10–2–96; 8:45 am]

BILLING CODE 7555–01–M

## Membership of National Science Foundation's Senior Executive Service Performance Review Board

**AGENCY:** National Science Foundation.

**ACTION:** Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

**SUMMARY:** This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

**ADDRESSES:** Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Wilkinson, Jr. at the above address or (703) 306–1180.

**SUPPLEMENTARY INFORMATION:** The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Joseph Bordogna, Acting Deputy Director, Chairperson

Mary E. Clutter, Assistant Director for Biological Sciences

Linda P. Massaro, Director, Office of Information and Resource Management

Luther S. Williams, Assistant Director for Education and Human Resources

Dated: September 30, 1996.

John F. Wilkinson, Jr.,

*Director, Division of Human Resource Management.*

[FR Doc. 96–25380 Filed 10–2–96; 8:45 am]

BILLING CODE 7555–01–M

# NUCLEAR REGULATORY COMMISSION

## Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Wisconsin

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of

Wisconsin. The MOU provides the basis for mutually agreeable procedures whereby the State of Wisconsin may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Wisconsin. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register, Vol. 57, No. 28, February 11, 1992.

**EFFECTIVE DATE:** This MOU is effective August 9, 1996.

**ADDRESSES:** Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6383 or (301) 415–7559.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Wisconsin to provide data related to plant conditions during emergencies at commercial nuclear power plants in Wisconsin.

Dated at Rockville, Maryland, this 27th day of September, 1996.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

*Director, Office for Analysis and Evaluation of Operational Data.*

Agreement Pertaining to the Emergency Response Data System between the State of Wisconsin and the U.S. Nuclear Regulatory Commission

*I. Authority*

The U.S. Nuclear Regulatory Commission (NRC) and the State of Wisconsin, herein after referred to as Wisconsin, enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Wisconsin recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

*II. Background*

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on ''Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities'' (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Wisconsin fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the ''State of Wisconsin Radiological Incident Response Plan''.

*III. Scope*

A. This Agreement defines the way in which NRC and Wisconsin will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in Wisconsin.

B. It is understood by the NRC and Wisconsin that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, Wisconsin, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of Wisconsin on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon Wisconsin authority to (1) Interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

*IV. NRC's General Responsibilities*

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for Wisconsin during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within Wisconsin. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

*V. Wisconsin's General Responsibilities*

A. Wisconsin will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Wisconsin will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Wisconsin agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS specific data will be pursued through the NRC.

*VI. Implementation*

Wisconsin and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Wisconsin and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Wisconsin agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in

the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Wisconsin will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Wisconsin by the NRC. Wisconsin may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Wisconsin will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

*VII. Contacts*

A. The principal senior management contacts for this Agreement will be the Director, Incident Response Division, Office for Analysis and Evaluation of Operational Data, and the Director, Bureau of Public Health, Division of Health, Department of Health and Family Services, State of Wisconsin. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Wisconsin staff members on technical and other day-to-day activities.

*VIII. Resolution of Disagreements*

A. If disagreements arise about matters within the scope of this Agreement, NRC and Wisconsin will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Incident Response Division management.

C. Differences which cannot be resolved in accordance with Sections VII. A and VII. B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

*IX. Effective Date*

This Agreement will take effect after it has been signed by both parties.

*X. Duration*

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

*XI. Separability*

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: August 9, 1996.

James M. Taylor,

*Executive Director for Operations.*

For the State of Wisconsin.

Dated: August 9, 1996.

Kenneth Baldwin,

*Director, Bureau of Public Health.*

[FR Doc. 96–25342 Filed 10–2–96; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–309]**

## Maine Yankee Atomic Power Company Maine Yankee Atomic Power Station; Receipt of Petition for Director's Decision Under 10 CFR § 2.206

Notice is hereby given that by Petition dated August 19, 1996, Patrick M. Sears (Petitioner) has requested that the U. S. Nuclear Regulatory Commission (NRC) take action with regard to the Maine Yankee Atomic Power Station and all users of the RELAP computer code for emergency core cooling systems analyses. The Petitioner requests that the NRC fine Maine Yankee Atomic Power Company and Yankee Atomic Electric company (YAEC) if records have not been kept in accordance with YAEC's computer code quality assurance procedures, and that the NRC inspect all users of RELAP and fine those users not operating within required computer code verification procedures.

As the basis for his request, the Petitioner states: that the May 5, 1989, statement of Steve Nichols of Maine Yankee that RELAP5YA was ''operable'' and would be used for subsequent reloads was false; no computer code inspections were performed by the NRC before a 1992 inspection at YAEC by the Petitioner when he was an NRC employee and not again until 1995; the Petitioner was told not to do any more computer code inspections; RELAP is widely used; RELAP has been shown to have serious deficiencies; and the RELAP problem is not confined to the Maine Yankee Atomic Power Plant but is endemic to the industry as a whole.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. A copy of the Petition is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the local public document room located at the Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 24th day of September 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–25344 Filed 10–2–96; 8:45 am]

BILLING CODE 7590–01–P

## Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses: Availability of NUREG

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a single comprehensive repository called the Materials Electronic Library (MEL). Draft NUREG–1541, ''Process and Design for Consolidating and Updating Materials Licensing Guidance,'' describes the approach and conceptual design of MEL.

Volume 1 of draft NUREG–1556, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Portable Gauge Licenses,'' is the first program-specific guidance developed for the new process and may serve as a template for subsequent program-specific guidance. It is

intended for use by applicants, licensees, and NRC staff. It combines the guidance now found in Draft Regulatory Guide DG–0008, ''Applications for the Use of Sealed Sources in Portable Gauging Devices,'' dated May 1995, and the guidance for licensing staff now found in Policy and Guidance Directive PG 2–07, ''Standard Review Plan for Applications for the Use of Sealed Sources in Portable Gauging Devices,'' dated September 1994. Comments received on DG–0008 were considered in the preparation of this report.

As described in draft NUREG–1541, this draft NUREG takes a risk-informed, performance-based approach to licensing portable gauges, i.e., it reduces the amount of information needed from an applicant seeking to possess and use a relatively safe device. These portable gauges containing sealed sources incorporate features engineered to enhance their safety. NRC's considerable experience with these licensees indicates that radiation exposures to workers are generally low and the sealed sources have not been damaged even when run over by heavy construction equipment.

This document is strictly for public comment and NOT for use in preparation or review of applications for portable gauge licenses until the document is published in final form.

NRC is requesting comments on this draft NUREG such as whether a risk-informed, performance-based approach to licensing is valid, as well as comments on the information requested in support of a license application. In addition, to support NRC's efforts to streamline the materials licensing process, NRC is soliciting comments and suggestions about the document's content, format, usefulness, etc., to make the document more ''user-friendly.'' Please submit comments within 90 days of its publication. Comments received after that time will be considered if practicable.

Submit comments on draft NUREG–1556, Volume 1, to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be submitted through the Internet by addressing electronic mail to INTERNET:MTL@NRC.GOV.

A free single copy of draft NUREG–1556, Volume 1, may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: BPR Team, Mail Stop TWFN 8F5, Washington, DC 20555–0001. A copy of draft NUREG–1556, Volume 1, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001. Draft NUREG–1556, Volume 1, is also available electronically by visiting NRC's Home Page (http://www@nrc.gov) and choosing ''Nuclear Materials,'' then ''Business Process Redesign project,'' and then ''Draft NUREG–1556, Volume 1.''

Dated at Rockville, Maryland, this 27th day of September, 1996.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

*Deputy Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 96–25343 Filed 10–2–96; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Procedures for the Settlement of Claims Transferred to the Office of Personnel Management From the General Accounting Office

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims for Federal civilian employees' compensation and leave, claims for deceased employees' accounts, and claims for the proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. The OMB Director subsequently delegated the authority to settle these claims to the Office of Personnel Management. Until superseded by OPM regulations, it is OPM's policy, with one exception, to apply to the administration of any authority transferred from the General Accounting Office (GAO) any applicable GAO regulations in effect at the time of the transfer. The exception to this policy involves claims arising under the Fair Labor Standards Act (FLSA). FLSA claims will continue to be settled in the same manner as complaints under that Act are resolved pursuant to OPM's authority to administer the FLSA for the Federal Government.

**EFFECTIVE DATE:** October 3, 1996.

**ADDRESSES:** Comments may be mailed to the Claims Adjudication Unit, Office of the General Counsel, Office of Personnel Management, Room 7535, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Britner, Attorney-Advisor, Claims Adjudication Unit, 202–606–2233.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions performed by the General Accounting Office (GAO) were transferred to the Director of the Office of Management and Budget. *See* Sec. 211, Pub. L. 104–53, 109 Stat. 535. The Director delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. This order delegated to the Office of Personnel Management the authority to settle claims against the United States involving Federal employees' compensation and leave (31 U.S.C. 3702), deceased employees' accounts (5 U.S.C. 5583), and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries (38 U.S.C. 5122).

Until superseded by OPM regulations, it is OPM's policy, with one exception, to apply to any authority transferred from GAO any applicable GAO regulations in effect at the time of the transfer. The exception to this policy involves claims arising under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* FLSA claims will continue to be settled in the same manner as complaints under that Act are resolved pursuant to OPM's authority to administer the FLSA for the Federal Government pursuant to 29 U.S.C. 204(f).

Non-FLSA claims should sent to: Claims Adjudication Unit, Office of the General Counsel, Office of Personnel Management, Room 7535, 1900 E Street NW., Washington, DC 20514. The telephone number is 202–606–2233.

FLSA claims should be sent to the appropriate address listed below. Information about the procedures applicable to these claims may be obtained by calling the appropriate office.

Address and Jurisdiction telephone:

OPM Atlanta Oversight Division (404) 331–3451, 75 Spring Street, SW., Suite 972, Atlanta, GA 30303–3109

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except as noted below):

OPM Chicago Oversight Division (312) 353–0387, 230 S. Dearborn Street, DPN 30–6, Chicago, IL 60604–1687

Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin:

OPM Dallas Oversight Division (214) 767–0561, 1100 Commerce Street, Room 4C22, Dallas, TX 75242–9968

Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming:

OPM Philadelphia Oversight Division (215) 597–9797, 600 Arch Street, Room 3400, Philadelphia, PA 19106–1596

Connecticut, Delaware, Maine, Maryland (except as noted below), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands:

OPM San Francisco Oversight Division (415) 281–7050, 120 Howard Street, Room 760, San Francisco, CA 94105–0001

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area:

OPM Washington, DC Oversight Division (202) 606–2990, 1900 E Street, NW., Room 7675, Washington, DC 20415–0001

The District of Columbia. In Maryland: the counties of Charles, Montgomery, and Prince George's. In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area not included above.

U.S. Office of Personnel Management,

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96–25202 Filed 10–2–96; 8:45 am]

**BILLING CODE 6325–01–P**

## Prospective Payment Assessment Commission

### Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, October 8 and 9, 1996, at the Madison Hotel, 15th & M Streets, NW, Washington, DC, 202/862–1600.

The Full Commission will convene at 9:00 a.m. on October 8, 1996, and adjourn at approximately 5:00 p.m. On Wednesday, October 9, 1996, the meeting will convene at 9:00 a.m. and adjourn at approximately 3:30 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open the public.

Donald A. Young,

*Executive Director.*

[FR Doc. 96–25376 Filed 10–2–96; 8:45 am]

**BILLING CODE 6820–BW–M**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for pubic comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Employee's Certification; OMB 3220–140.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested or each respondent.

The RRB proposes a minor editorial change to Form G–346 to incorporate language required by the Paperwork Reduction Act of 1995. The RRB estimates that 5,400 G–346's are completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 450 hours.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

*Clearance Officer.*

[FR Doc. 96–26265 Filed 10–2–96; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–37731; File Nos. SR–OCC–96–04 and SR–NSCC–96–11]**

### Self-Regulatory Organizations; The Options Clearing Corporation and National Securities Clearing Corporation; Order Approving Proposed Rule Changes Relating to an Amended and Restated Options Exercise Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation

September 26, 1996.

On February 6, 1996, and April 6, 1996, The Options Clearing Corporation (''OCC'') and the National Securities Clearing Corporation (''NSCC''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–OCC–96–04 and SR–NSCC–96–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule changes was published in the Federal Register on June 17, 1996.[2] On July 10, 1996, NSCC filed an amendment to its proposed rule change to attach as Exhibit A to its original filing a copy of the Third Amendment and Restated Options Exercise Settlement Agreement (''Third Restated Agreement'').[3] Because the Third Restated Agreement had previously been filed as an exhibit to File No. SR–

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37298 (June 10, 1996), 61 FR 30650.

[3] Letter from Julie Beyers, Associate Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (July 10, 1996).

OCC–96–04, no notice of filing of NSCC's amendment was required. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

## I. Description of the Proposals

The purpose of the proposed rule changes is to put into effect the Third Restated Agreement [4] between OCC and NSCC providing for the settlement of exercises and assignments of equity options.[5] The proposals also seek to make related changes to OCC's Rules, primarily to Rule 601 which sets forth the calculation of margin requirements for equity options, and to make related changes in NSCC's clearing fund formula in order to exclude from the clearing fund calculation trades for which NSCC has protection under the terms of the Third Restated Agreement.

In 1977, OCC entered into an Options Exercise Settlement Agreement with Stock Clearing Corporation (NSCC's predecessor), with MMC, and with SCCP. In 1991, OCC entered into a Restated Options Exercise Agreement (''Restated Agreements'') with each of NSCC, MCC, and SCCP. The Restated agreements never became effective because in 1993, prior to Commission approval of proposed rule changes pertaining to these Restated Agreements, OCC entered into a Second Restated Options Exercise Agreement (''Second Restated Agreements) with each of NSCC, MCC, and SCCP.[6] The Commission approved the proposed rule changes pertaining to the Second Restated Agreements.[7] However, after the proposals were approved the parties to the Second Restated Agreements agreed to suspend the effectiveness of those agreements because OCC's proposed implication to a two group margin system would have caused increases in the margin requirements far in excess of the increase which had been anticipated when the Second Restated Agreements were originally proposed. The Second Restated Agreements never became effective.

### *A. Changes Made by the Third Restated Agreements*

The Third Restated Agreement alters the provisions of the Second Restated Agreement between OCC and NSCC principally to establish a two-way guarantee between OCC and NSCC and to change the guarantee formulas. In the Second Restated Agreement, OCC guaranteed compensation to NSCC for losses incurred by NSCC in closing out the exercise and assignment activity (''E&A activity'') of a defaulting OCC clearing member, and NSCC agreed to guarantee settlement of pending stock trades arising from E&A activity commencing at the same time that it guaranteed regular-way settlements of ordinary stock transactions (*i.e.*, at midnight of T+1). However, the Second Restated Agreement did not require NSCC to return to OCC any net value remaining from the liquidation of the E&A activity of a defaulting clearing member. As a result, OCC provided for a two product group margin system for equity options to ensure that OCC gave no margin credit for net positive values of a clearing member's E&A activity that would be unavailable to OCC if NSCC were to liquidate the clearing member's positions at NSCC arising from its E&A activity.

The Third Restated Agreement provides for a two-way guarantee between OCC and NSCC. Thus, if NSCC suspends a common member [8] and incurs a loss, OCC would owe NSCC an amount determined in accordance with the formula described below, and if OCC suspends a common member and insures a loss, NSCC would owe OCC an amount determined in accordance with the formula described below.

The guarantee of each clearing corporation to the other in the Third Restated Agreement is unconditional in that each clearing corporation's guarantee is not dependent on the ability of the clearing corporation to use assets of its suspended member to make a guarantee payment. Therefore, OCC and NSCC believe that the trustee for a bankrupt OCC clearing member or for a bankrupt NSCC member should not be able to successfully attack either OCC's or NSCC's right to receive guarantee payments from each other or their right to make guarantee payments to each other in accordance with the provisions of the Third Restated Agreement. OCC or NSCC would seek recovery of the amount of any guarantee payment which either made to the other from the assets of the suspended clearing member whose failure necessitated the payment. OCC and NSCC believe that their authority to do so would be within the special provisions of the Bankruptcy Code that protect the close-out activities of securities clearing agencies.[9]

### *B. Guarantee Formulas*

The Second Restated Agreement between NSCC and OCC provided that OCC would compensate NSCC for losses incurred by NSCC in closing out the E&A activity of a defaulting participating member [10] reported by OCC to NSCC. The amount that OCC guaranteed to NSCC would be the smallest of three quantities referred to in the Second Restated Agreement as the net options loss, the net overall loss, and the maximum guarantee.[11] The

---

[4] A copy of the executed Third Restated Agreement is attached as Exhibit A to OCC's and to NSCC's filings. A copy of each of the filings and all exhibits is available for copying and inspection in the Commisssion's Public Reference Room or through OCC or NSCC, respectively.

[5] OCC has provided Stock Clearing Corporation of Philadelphia (''SCCP'') with a Third Restated Agreement which has terms substantially parallel to the terms of the Third Restated Agreement between OCC and NSCC. OCC has advised SCCP that it is prepared to execute a Third Restated Agreement with SCCP if and when SCCP wishes to do so. Because Midwest Clearing Corporation (''MCC'') has withdrawn from the clearance and settlement business, OCC plans to propose entering into a termination agreement with MCC to formally terminate the Second Restated Agreement between OCC and MCC.

[6] The three Second Restated Agreements were filed by OCC with the Commission in Amendment No. 2 to File No. SR–OCC–5, and also were filed by NSCC, SCCP and MCC in amendments to File Nos. SR–NSCC–91–07, SR–SCCP–92–01, and SR–MCC–92–02, respectively.

[7] Securities Exchange Act Release No. 33543 (January 28, 1994), 54 FR 5639 [File Nos. SR–OCC–92–05, SR–NSCC–91–07, SR–NSCC–91–07, SR–SCCP–92–01 and SR–MCC–92–02] (order approving proposed rule changes relating to revised options exercise settlement agreements).

[8] In the Third Restated Agreement, the term common member refers to an OCC clearing member that also is an NSCC member and that has designated NSCC as its designated clearing corporation for purposes of effecting settlement of its E&A activity. Under the Third Restated Agreement, like the Second Restated Agreement, three alternatives are available to a clearing member that does not want to become a member of NSCC or SCCP but wants to settle its E&A activity through another entity which is a member of NSCC or SCCP. A clearing member may appoint (1) another OCC clearing member (an ''appointed clearing member''), (2) a member of NSCC (a ''nominated correspondent''), or (3) if the OCC clearing member is a Canadian clearing member, the Canadian Depository for Securities. These three alternative settlement arrangements are described in detail in Amendment No. 2 to File No. SR–OCC–92–5. This notice of filing describes the provisions of the Third Restated Agreement with respect to an OCC clearing member that is a common member, but the provisions of the Third Restated Agreement are designed also to apply to each of the alternative settlement arrangements.

[9] 11 U.S.C. §§ 555.

[10] As defined in the Second Restated Agreement, the term participating member generally refers to an entity that is an OCC clearing member and also is a participant in a correspondent clearing corporation (''CCC'') (*i.e.*, NSCC, MCC, or SCCP) or an entity that is a party to any of the three alternative arrangements for effecting settlement through a CCC as provided under the Second Restated Agreement.

[11] The net options loss was essentially the actual net loss incurred by NSCC in closing out the E&A activity with respect to which NSCC was unconditionally obligated at the time of the default. The net overall loss was essentially the actual net loss incurred by NSCC in closing out all transactions of the defaulting participating member with respect to which NSCC was unconditionally obligated at the time of the default. The maximum guarantee amount was essentially the sum of the mark-to-market amounts, positive and negative, for all E&A activity with respect to which NSCC was

Third Restated Agreement between OCC and NSCC sets forth a revised formula for the calculation of the amount which OCC would owe NSCC if NSCC were to suspend a participating member.[12] It also provides an analogous formula for the calculation of the amount which NSCC would owe OCC if OCC were to suspend a participating member.

Pursuant to the Third Restated Agreement, the formula for payment by OCC under its guarantee to NSCC provides that if NSCC were to suspend a common member, OCC would owe NSCC the lesser of the common member's (i) net member debit to NSCC or (ii) calculated margin requirement. The formula for payment by NSCC under its guarantee to OCC provides that if OCC were to suspend a common member, NSCC would owe OCC the lesser of the common member's (i) net member debit to OCC or (ii) calculated margin credit.[13] The term net member debit to NSCC is defined to mean the actual net overall debit or loss, if any, realized by NSCC from its close-out of the common member (*i.e.*, the debit or loss after application of all assets available to NSCC including the common member's contribution to NSCC's clearing fund).[14] The term net member debit to OCC is defined to mean the actual net overall debit or loss, if any, realized by OCC from its close-out of the common member (*i.e.*, the debit or loss after application of all assets available to OCC including the common member's margin deposits and contribution to OCC's clearing fund). The term calculated margin credit is defined to mean the algebraic sum of the mark-to-market amounts [15] calculated by OCC's margin system relating to settlements arising from E&A activity with respect to which NSCC has become unconditionally obligated to settle and the mark-to-market amounts calculated by NSCC's system for offsetting activity in NSCC's system in the same underlying stocks if the algebraic sum is positive (*i.e.*, if the sum represents a net positive value of the settlements). The term calculated margin requirement is defined to mean the same algebraic sum if the algebraic sum is negative (*i.e.*, if the sum represents a net negative value of the settlements).[16]

The calculation of the calculated margin requirement or calculated margin credit will take into account the value of offsetting deliver and receive obligations at NSCC including fails but excluding free deliver and receive obligations in the underlying stocks in which each common member has E&A activity. NSCC will give OCC a report of offsetting deliver and receive obligations in its system on a daily basis prior to 8:00 P.M. Central Time.

The calculation of the calculated margin requirement or calculated margin credit is perhaps best illustrated with an example prepared by OCC and NSCC. Suppose that ABC is a common member of NSCC and OCC, that ABC is assigned the exercise of 100 XYZ June 85 call options, that the closing price of XYZ on the day after the exercise (''E+1'') is 90, and that ABC had no other E&A activity. IF ABC also has no non-E&A settlements in XYZ at NSCC, the calculated margin requirement for ABC would be $50,000 (90 minus 85 equals $5.00 per share for each of 10,000 shares). If ABC's non-E&A activity at NSCC in XYZ netted to a right to receive 5000 shares at a weighted average price of 87 and if NSCC gave OCC notice to that effect prior to 8:00 p.m. on E+1, then the $15,000 in-the-money value of those shares would be taken into account as an offsetting obligation, and the calculated margin requirement for ABC would be $35,000 commencing at the time on E+2 when OCC is scheduled to make regular daily money settlement with ABC.[17] If ABC's non-E&A activity at NSCC in XYZ instead netted to a right to receive 15,000 shares at a weighted average price of 87 and if NSCC gave OCC notice to that effect prior to 8:00 p.m. on E+1, the value of only 10,000 of those shares (*i.e.*, the amount on the opposite side of the market from the obligation to deliver created by the assigned call) would be taken into account in calculating the calculated margin requirement. Those 10,000 shares would have an in-the-money value of $30,000, and the calculated margin requirement for ABC would be $20,000 commencing at the time on E+2 when OCC is scheduled to make regular daily money settlement with ABC.

OCC reports E&A activity to NSCC each night. Offsetting positions information reported back to OCC by NSCC on the evening of E+1 would be

---

unconditionally obligated at the time of the default. The term mark-to-market amount was defined in the Second Restated Agreement to mean the difference between the exercise price of an option and the closing price of the underlying stock on the trading day immediately preceding the then most recently completed regular morning settlement with OCC of the participating member.

[12] Under the Third Restated Agreement the term participating member specifically refers to (1) a common member, (2) an NSCC clearing member that (i) has been appointed as an appointed clearing member by an OCC clearing member that is an appointing clearing member and (ii) has designated NSCC as its designated clearing corporation for the settlement of its E&A activity, (3) an OCC clearing member that (i) is a nominating clearing member, (ii) has appointed a nominated correspondent that is an NSCC member, and (iii) has designated NSCC as its designated clearing corporation for the settlement of its E&A activity, and (4) an OCC clearing member that is a Canadian clearing member. The terms appointing clearing member, appointed clearing member, nominating clearing member, and nominated correspondent are defined in Article I of OCC's By-Laws.

[13] Generally, if either NSCC or OCC suspended a common member, the other would also suspend the common member. OCC's Rule 1102(a) entitles OCC to suspend a clearing member which had been suspended by its designated clearing corporation (Securities Exchange Act Release No. 33543 (January 28, 1994) 59 FR 5639 [File No. SR–OCC–92–05]). However, the two formulas under the Third Restated Agreement would require at most a payment by one of the two clearing corporations to the other and not a payment by each clearing corporation to the other. This is true because the suspended common member's E&A activity in settlement at NSCC would generate either a calculated margin requirement or a calculated margin credit but not both. Thus, the application of at least one of the two formulas would result in a guaranteed amount equal to zero.

[14] The net member debit to NSCC concept is similar to the net overall loss concept under the Second Restated Agreement. However, the concepts differ in that the net overall loss was the net loss resulting from the close-out of all of a suspended member's settlement activity at NSCC whereas the net member debit to NSCC is the net debit remaining after application of all of a suspended member's assets that are available to NSCC. The difference in these concepts reflects a judgment on the part of the two clearing corporations that the guarantee of each by the other should not obligate either to make any payment to the other if the other in fact has sufficient assets of the suspended member to make itself whole without recourse to the clearing fund deposits of its other members.

[15] Under the Third Restated Agreement, the term mark-to-market amount is defined to mean: (i) with respect to any option exercise or assignment position, the difference between the value of the position calculated using its exercise price and its closing price on the preceding trading day and (ii) with respect to any other position at NSCC, the difference between the value of the position calculated using its trade price and its closing price on the preceding trading day.

[16] The calculated margin requirement concept is similar to the maximum guarantee amount concept under the Second Restated Agreement. The concepts differ in that the maximum guarantee amount did not take into account offsetting activity in NSCC's system in the same underlying stocks. OCC and NSCC have concluded that the calculated margin requirement and calculated margin credit concepts render the net options loss concept under the Second Restated Agreement superfluous. Thus, there is no counterpart in the guarantee formula in the Third Restated Agreement to the net options loss concept in the Second Restated Agreement.

[17] OCC currently collects from clearing members who owe OCC a net dollar amount in regular daily settlement at 9:00 a.m. and pays clearing members who are entitled to receive a net dollar amount in regular daily settlement at 10:00 a.m. In the example in the text, OCC would be obligated to take the in-the-money value of ABC's non-E&A activity into account in calculating ABC's calculated margin requirement if NSCC suspended ABC after 10:00 a.m. (at the latest) even if ABC in fact failed to make money settlement with OCC on E+2. After discussing with NSCC staff the question of when offsetting non-E&A activity should be taken into account, OCC staff has concluded that the time of regular daily money settlement is an appropriate time to incorporate the information in the preceding evening's report from NSCC into calculations of the calculated margin requirement or calculated margin credit.

taken into account in the calculation of the calculated margin requirement or calculated margin credit and would be reflected in OCC's regular morning settlement on the morning of E+2. Information reported back to OCC by NSCC on the evening of E+2 would be taken into account in any calculation of the calculated margin requirement or calculated margin credit and would be reflected in OCC's regular morning settlement on the morning of E+3.

Although NSCC will provide OCC with reports of offsetting deliver and receive obligations in its system on a daily basis and although OCC will monitor these reports for unusual position concentrations, OCC will not actually use the information in the reports in its margin calculations for its members.[18]

OCC's guarantee is the Third Restated Agreement is similar to its guarantee in the Second Restated Agreement in that the guarantee does not cover the exposure of NSCC to loss from exercise settlements that would result if a participating member transfers settlements from its account at NSCC to the account of any other member of NSCC (even another participating member or another member that is an affiliate of the participating member) and that second member defaults on its obligations to NSCC with respect to those settlements.

*C. Delivery of Stock Held in Escrow*

The Second Restated Agreement between NSCC and OCC contemplated that OCC would, if necessary, deliver to NSCC stock held in lieu of margin to cover a suspended clearing member's short call positions against payment by NSCC of the exercise price for the positions and that the value of any such covered short position would not be taken into account in determining the amount guaranteed by OCC to NSCC. In contrast, the Third Restated Agreement does not contemplate that OCC will deliver stock held to cover short call positions because, as described above, the Third Restated Agreement provides for taking the value of offsetting deliver and receive obligations at NSCC into account in the calculation of the calculated margin requirement or calculated margin credit.

*D. Amendments to OCC Rule 601*

Because of the guarantee extended by NSCC to OCC, OCC proposes to amend Rule 601 to enable OCC to give margin credit for long option positions in firm and market-maker accounts that have been reported to NSCC for settlement. As a result, OCC will be able to calculate margin for equity options in one product group. The amendments to Rule 601 essentially reverse changes which were proposed in File No. SR–OCC–92–5.[19]

*E. Amendment to OCC Rule 1107*

OCC proposes to amend Rule 1107 to provide that OCC will liquidate securities deposited to cover assigned short call positions and will use the proceeds to reimburse itself for the incremental amount, if any, which OCC is obligated to pay to the designated clearing corporation by reason of the covered short positions as well as for the exercise price of the covered options and for any costs associated with the liquidation.

*F. Amendment to NSCC's Clearing Fund Formula*

NSCC proposes to amend its clearing fund formula in order to exclude from the calculation trades for which NSCC has protection under the terms of the Third Restated Agreement.[20]

OCC and NSCC believe the proposed rule changes are consistent with the purposes and requirements of Section 17A of the Act because the proposals (i) will enhance the system used by OCC to effect settlement of exercises and assignments of equity options by providing for a two-way guarantee between OCC and NSCC thereby permitting OCC to return to a one product group margin system and (ii) will enhance NSCC's ability to protect itself and its members against loss.

II. Discussion

Section 17A(b)(3)(F)[21] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. As set forth below, the Commission believes OCC's and NSCC's proposed rule changes are consistent with their obligations under Section 17A(b)(3)(F).

The Commission believes the proposals are consistent with OCC's and NSCC's obligations to assure the safeguarding of securities and funds in their custody or control because the proposed rule changes should further reduce OCC's and NSCC's risk exposure by including cross-guarantees for transactions effected through NSCC's and OCC's settlement link. The guarantees, among other things, should reduce the risk of loss to OCC and NSCC resulting from a failed common member's equity options exercise and assignment activity.

The Commission also believes because the Third Restated Agreement establishes a two-way guarantee to better protect both OCC and NSCC against the risk of loss resulting from the default of a common member, the proposals are consistent with OCC's and NSCC's obligation to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–OCC–96–04 and SR–NSCC–96–11) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–25278 Filed 10–2–96; 8:45 am]

BILLING CODE 8010–01–M

[18] Unlike NSCC, OCC employs three types of accounts for its members: customer accounts, market-maker accounts, and firm accounts. Separate margin calculations are made with respect to each type of member account. Therefore, in order to use the information in NSCC's reports in OCC's margin calculations, OCC would have to disaggregate the information received from NSCC on an account-by-account basis. This disaggregation, even if possible, could not be done without major changes in both OCC's and NSCC's systems.

[19] *Supra* note 6.

[20] The complete text of the amendments to NSCC's clearing fund formula is set forth in NSCC's filing. A copy of the filing is available for copying and inspection in the Commission's Public Reference Room or through NSCC.

[21] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[22] 17 CFR 200.30–3(a)(12) (1996).

---

**[Release No. 34–37736; File No. SR–PSE–96–07]**

## Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval To Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to the General Reorganization and Revision of the Exchange's Membership Rules

September 26, 1996.

I. Introduction

On March 5, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') 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 reorganize and revise PSE Rule 1, *Membership*, and to make conforming changes to PSE rules 2, 4, 5, and 9.

The proposed rule change was published for comment in the Federal Register on April 11, 1996.[3] No comments were received concerning the proposal. On September 23, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

## II. Description of the Proposal

PSE Rule 1 is being revised because much of its language is outdated, inapplicable, or both. Revised PSE Rule 1 more accurately reflects the current procedures and requirements of the Exchange's membership department. While many of the provisions of existing PSE Rule 1 have been kept, they have been reorganized so that the provisions concerning Exchange membership are presented in a more logical and chronological order to enable readers to quickly identify the provisions related to a particular membership issue. In addition, much of PSE Rule 1's language has been rephrased to enhance the readers' comprehension.

As part of its review of the existing provisions of PSE Rule 1, the Exchange's staff also reviewed the membership rules of other exchanges. As described more particularly below, certain provisions from the New York Stock Exchange, Inc. (''NYSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), and the Chicago Stock Exchange, Incorporated (''CHX'') are incorporated in Revised Rule 1.

The Exchange also is proposing to make conforming changes to certain provisions in PSE Rules 2, 4, 5, and 9. A summary of the most significant changes, organized by reference to the proposed section numbers, is set forth below.[5]

### *Rule 1.1: Definitions*

A ''Definitions'' section was added to Revised Rule 1 to provide an explanation of the terms used by the PSE in relation to its membership rules. Many of the definitions already were contained in the PSE Constitution and PSE Rule 4, but the Exchange determined that it would be more practical to place these definitions in alphabetical order at the beginning of Revised Rule 1. In addition, the Exchange added a definition of ''wholly owned subsidiary'' that is based on a Commission definition of that term.[6]

### *Rule 1.2: Public Securities Business*

Revised Rule 1.2, *Public Securities Business*, is new to the PSE. This new language was included to require members to use their memberships for trading, either directly or indirectly through the execution of lease agreement. This provision is designed to assist the Exchange in addressing problems associated with unassigned memberships.

### *Rules 1.4 to 1.9: Qualifications and Application for Membership*

The existing provisions relating to qualification and application for membership were completely reorganized to set forth the Membership Department's requirements in a more orderly and chronological manner. The reorganization is designed to make the provisions easier to follow and understand. In addition to the PSE's current membership requirements, the proposal also adds Revised Rules 1.4 1.5, 1.7, and 1.8.

Revised Rule 1.4, *Qualifications of Individual Members*, and Revised Rule 1.5, *Qualification of Member Organizations*, establish some of the basic requirements necessary for Exchange membership. They require that all members and member organizations, except ''Inactive Lessors,''[7] must be registered pursuant to Section 15[8] of the Act.[9] In addition, Revised Rule 1.5(b) requires member firms who own or lease a membership to designate a natural person as its member. When a member confers the privileges of membership on a member firm, Revised Rule 1.5(c) requires that member to be the firm's designated representative and prohibits members from representing more than one member organization.

In addition to the authority contained in Current Rule 1.4, Revised Rule 1.7, *Denial of and Conditions to Membership*, grants the Membership Committee greater discretion when reviewing applications. The proposal contains two new grounds for denying or conditioning membership—an applicant, either directly or indirectly, has engaged in conduct that would bring the Exchange into disrepute or any other reasonable cause the Membership Committee may decide. In addition, the PSE clarified the impact that a current member's comments concerning an applicant will have on the application process in Revised Rule 1.7(b)(6) and in the PSE Membership Application.[10] Finally, the proposal grants the Membership Committee the authority to toll the approval process while an applicant is the subject of an investigation by any self-regulatory organization or government agency and may take action against a member if any of the reasons for denying or conditioning membership comes into existence after a member has been approved and its membership has become effective.

Revised Rule 1.8, *Effectiveness of Membership Applications*, requires all approved applications to be activated by the applicant within six months and requires the Exchange to provide all members with notice of all newly effective memberships.

### *Rules 1.10 to 1.20: Requirements of Membership*

This new section pulls together the obligations of members and member organizations from different locations and describes particular requirements for sole proprietors, corporations, partnerships, and limited liability companies.

Revised Rule 1.11 is designed to give the Exchange greater oversight of allied members and approved persons. Revised Rule 1.11(a) provides that allied members and approved persons are subject to Exchange approval and that the Exchange must receive written notice, all applicable fees, and all necessary information before an allied member or approved person will be admitted. Revised Rule 1.11(b) prohibits

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37076 (Apr. 5, 1996), 61 FR 16152 [hereinafter Notice].

[4] *See* letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated Sept. 20, 1996 [hereinafter Amendment No. 1]. Amendment No. 1 made a number of typographical edits; clarified the PSE's policy concerning members giving gifts to employees of other members and employees of the Exchange; clarified that inactive lessors need not register as a broker or dealer to own a membership; added a definition for wholly owned subsidiary; changed the policy concerning changes in documents submitted as part of a membership application from 15 calendar days to 15 business days; and explained the purpose and impact of a member's comments concerning a membership application.

[5] *See* Notice, *supra* note 3, and File No. SR–PSE–96–07 for a more complete description of the proposal.

[6] *See* Amendment No. 1, *supra* note 4; 17 CFR 230.405.

[7] Revised PSE Rule 1.1(h) defines an ''Inactive Lessor'' as a natural person, firm, or other such entity as the PSE Board may approve that owns or inherits a membership for the sole purpose of acting as a lessor.

[8] 15 U.S.C. 78*o*.

[9] *See* Amendment No. 1, *supra* note 4.

[10] *See* Amendment No. 1, *supra* note 4.

a firm from remaining a member firm unless all persons required to be approved are, in fact, approved and the member firm continues to meet all of the prescribed membership requirements. Revised Rule 1.11(c) requires that the Exchange promptly receive written notice of the dissolution of a member firm, as well as written notice of the death, retirement, or other termination of any member, allied member, or approved person.

PSE members are required to keep current all of the documents submitted in connection with their application. When changes to those documents become necessary (*e.g.*, change in member's home address or Form BD), the member has fifteen calendar days to submit an amendment to the Exchange. Revised Rule 1.17(b) changes this policy to fifteen business days.[11]

*Rules 1.21 to 1.25: Purchase, Sale, Transfer, or Lease of Membership*

The provisions relating to the purchase and sale of memberships are essentially unchanged in substance. Of particular note, however, are Revised Rules 1.21(b), 1.22(a), and 1.23 because they either are new to the PSE or modify existing responsibilities.

Revised Rule 1.21(b) requires the Exchange to post the highest bid with the earliest submission date on the Exchange bulletin board for six months. Likewise, Revised Rule 1.22(a) requires the Exchange to post the lowest offer with the earliest submission date on the Exchange bulletin board for six months. When a bid filed in accordance with the provisions of Revised Rule 1.21, *Purchase of Membership*, is matched with an offer filed in accordance with the provisions of Revised Rule 1.22, *Sale of Membership*, neither can be changed or withdrawn.

In addition to the types of transfers already defined in the PSE rules, Revised Rule 1.23, *Transfer of Membership*, adds ''Succession of member organization'' to the list of permissible interfirm transfers. This would allow a membership to be transferred from a member organization to an organization that succeeds through statutory merger, exchange of stock, or acquisition of assets to the business of the transferring membership organization.

*Rules 1.26 to 1.27: Employees of Member Organizations*

Currently, the PSE's rules require that the Exchange and, when relevant, the recipient's employer give their consent before a member can give a gift or gratuity in excess of $100 to an employee of the Exchange or an employee of another member. Revised Rule 1.26(f) modifies this policy by requiring prior Exchange consent only when a member wants to give a gift to an Exchange employee. The Exchange has not been requiring members to obtain the Exchange's prior consent when members were giving gifts to employees of other members.[12] Therefore, the Exchange proposes to conform its rules to its current practice.

In addition, Revised Rule 1.26(f) eliminates a potential loophole by clarifying that the $100 minimum is per calendar year. Hence, a member may not avoid the prior consent requirement of this rule by simply granting consecutive $99 gifts (*i.e.*, when the value of all of the gifts given by a member to an Exchange or another member's employee in one calendar year exceed $100, prior consent must be obtained).

Revised Rule 1.27, *Floor Employees of Member Organizations*, is new to the Exchange. Revised Rule 1.27(a) clarifies that all employees of member organizations seeking admission to the Floor must first be approved by the Exchange. Revised Rule 1.27(c) requires every member organization to take reasonable care to determine the existence of a statutory disqualification.[13] To assist member organizations in fulfilling this duty, Revised Rule 1.27(b) requires all floor employees to submit fingerprints and complete an application form that includes those questions from the Form U–4 that would aid member organizations in determining whether an individual is subject to a statutory disqualification. In addition, the application must be signed by the member firm. Revised Rule 1.27(d) codifies the Exchange's policy requiring a member firm with an employee on one of the PSE's trading floors to have at least one member present on the trading floors at all times. The Exchange believes these provisions will help member organizations and the PSE identify persons who are subject to a statutory disqualification and, in addition, enhance the overall security on the PSE's trading floors.[14]

*Provisions Removed From Existing PSE Rule 1*

In updating the PSE's rules, Revised Rule 1 omits certain requirements that presently are contained in Rule 1. The most significant of thee deletions involves the PSE's fees and the giving of gifts by members to employees of other members.

In order to avoid the confusion caused by having some of the PSE's fees listed in both its rules and in its fee schedule, the Exchange will omit from Rule 1 all references to the fees currently enumerated in Rule 1.10.[15] Also, the fee reductions in Rule 1.10 that pertain to the Options Funding Plan of 1975 are being deleted because they are no longer relevant.[16]

Rules 1.17(f) and 1.17(g) pertain to the giving of gifts and gratuities by members to employees of other members and to employees of the Exchange. The rules currently require that the Exchange and, when relevant, the recipient's employer give their prior consent. The proposal modifies this policy by requiring prior Exchange consent only when a member wants to give a gift to an Exchange employee. The Exchange has not been requiring members to obtain the Exchange's prior consent when members were giving gifts to employees of other members.[17] Therefore, the proposal conforms the PSE's rules to its current practice.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. 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

[11] *See* Amendment No. 1, *supra* note 4.

[12] Telephone conversation between Rosemary A. MacGuinness, Senior Counsel, PSE, and Anthony P. Pecora, Attorney, SEC (Mar. 22, 1996).

[13] *See* 15 U.S.C. 78c(a)(39) (listing categories of people that are statutorily disqualified).

[14] *See* Securities Exchange Act Release No. 33045 (Oct. 14, 1993), 58 FR 54179 (approving File No. SR–NYSE–93–28).

[15] Telephone conversation between Rosemary A. MacGuinness, Senior Counsel, PSE, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Mar. 22, 1996). For example, the initial membership fee in PSE Rule 1.10(a)(i)(A) is ''5 percent of the average purchase price *plus* the *two* preceding seat sales,'' while the fee schedule sets the initial membership fee at ''5 percent of the *average* price of the last *three* membership sales, with a minimum of $1,000 and a maximum of $4,000.'' (Emphasis added). *See also* PSE Rule 1.10(c)(i) (no minimum or maximum); PSE Rule 1.10(c), cmt. 01 ($350 minimum and $3,500 maximum).

[16] Telephone conversation between Rosemary A. MacGuinness, Senior Counsel, PSE, and Glen Barrentine, (then) Team Leader, Division of Market Regulation, SEC (Nov. 24, 1995).

[17] Telephone conversation between Rosemary A. MacGuinness, Senior Counsel, PSE, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Mar. 22, 1996).

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 PSE. All submissions should refer to File No. SR–PSE–96–07 and should be submitted by October 24, 1996.

IV. Commission's Findings and Order Granting Approval to the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest and the Section 6(d)[19] and Section 6(b)(7)[20] requirements that the rules of an exchange provide a fair procedure for the denial of membership to any person seeking membership therein.

The Commission supports the PSE's efforts to continue to review the form and substance of its membership regulations in response to changes in market structure and to eliminate requirements that no longer serve a meaningful regulatory purpose. For example, consolidating the Exchange's fees into a single fee schedule should eliminate a source of confusion among the PSE's members without raising any regulatory concerns. The Commission also believes the proposed rule changes should be helpful in updating the PSE's membership rules, should facilitate transactions in securities, should clarify certain obligations already contained in the rules and, in general, further the purposes of the Act.

The Commission notes that the new rules grant a certain amount of discretion to the PSE in the standards for evaluating an application for membership. For example, Revised PSE Rule 1.6(b) requires the PSE Membership Department to post the name of an applicant on the bulletin board of the trading floors of the Exchange for ten calendar days. The PSE represents that the purpose of this posting is to provide current members an opportunity to comment on an applicant. Comments may include an objection from a member claiming that the applicant owes the member money. If the applicant agrees with the member's assertion, the Exchange will require the applicant to pay the debt in full or work out a payment schedule with the member before the PSE will take any further steps to process the application. If the applicant disputes the member's claim, the Exchange will continue to process the application without coming to any conclusions concerning this unadjudicated dispute. If the application is approved and activated, however, the newly approved member will become subject to the provisions of PSE Rule 12, *Arbitration*, thereby enabling the objecting member to request that the dispute be submitted to arbitration.[21]

Although the Commission understands the PSE's need to solicit comment from its members concerning an applicant and the importance of this input in the decision making process, the Commission urges the PSE to be judicious in processing membership applications where claims of debts are raised. In this regard, the Commission believes the existence of an unadjudicated, disputed debt, by itself, may not be a sufficient basis to deny an application. Furthermore, the Commission emphasizes that the Exchange must exercise its discretion in a fair and impartial manner in accordance with the goals of the Act.[22]

In addition to these concerns, the Commission expects the PSE to resolve the conflict that exists between provisions in the PSE Constitution and in the new rules regarding the membership application process.[23] Due to the potential for confusion among applicants, members, and regulators, the Commission encourages the PSE to rectify this situation before November 1, 1996.[24]

The Commission finds good cause for approving Amendment No. 1 prior to the thirteenth day after the date of publication of notice thereof in the Federal Register. All of the changes contained in Amendment No. 1 simply correct typographical errors, the PSE's rules, or otherwise do not raise any significant regulatory concerns. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 6 and Section 19(b)(2) of the Act.[25]

V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–PSE–96–07) is approved, including Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–25279 Filed 10–2–96; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(d).

[20] 15 U.S.C. 78f(b)(7).

[21] PSE Rule 12.1(a) states ''Any dispute, claim or controversy between parties who are members, member organizations or associated persons *arising in connection with the securities business of such parties* shall, *at the request of any such party*, be submitted for arbitration in accordance with this Rule.'' (Emphasis added.) The Commission emphasizes that either party to a claim within the scope of PSE Rule 12 may request arbitration of that claim. Although the language in Revised Rule 1.7 and Item 16 of the Exchange's membership application only refers to what action an objecting member may take, this language does not preclude the applicant, once he becomes a member, from requesting that the disputed debt be submitted to arbitration.

[22] The Commission has taken appropriate action where it found the membership application process not to conform with the goals set forth in the Act. *See, e.g.*, Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (imposing remedial sanctions on the National Association of Securities Dealers, Inc.); SEC, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Stock Market (Aug. 8, 1996).

[23] Revised Rule 1.8(a) conflicts with Article VI, Section 3, of the PSE Constitution. The new rule states that approved applications must be activated by the applicant within six months, while the PSE Constitution provides that admission to membership automatically becomes effective after an approved application has been posted for 10 days.

In addition, Revised Rule 1.6(b) conflicts with Article VI, Section 2, of the PSE Constitution. The PSE Constitution requires that the name of the applicant be posted after it has been approved. The rule, however, requires the name of all applicants to be posted within a reasonable time after receipt and before being approved.

The Exchange anticipates rectifying this situation by having its members vote to amend the PSE Constitution in September 1996. Telephone conversation between Rosemary A. MacGuinness, Senior Counsel, PSE, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Mar. 22, 1996).

[24] The PSE represented that it anticipates submitting a rule filing that conforms the PSE Constitution to the provisions contained in this proposal in October 1996. Telephone conversation between Erin E. Cosgrove, Vice President, Membership and Corporate Secretary, PSE, and Ivette López, Assistant Director, Division of Market Regulation, SEC (Sept. 12, 1996).

[25] 15 U.S.C. 78f and 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

## UNITED STATES SENTENCING COMMISSION

### Rules of Practice and Procedure

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed rules of practice and procedure. Request for public comment.

**SUMMARY:** Pursuant to its authority under 995(a)(1) of title 28, United States Code, the Sentencing Commission is considering the promulgation of internal rules of practice and procedure. Proposed rules were published on July 29, 1996 with comment due on November 1, 1996. 61 FR 39493–39496. Pursuant to the same authority, the Commission is considering additional provisions to those rules that are set forth below. The Commission invites comment on these proposed rules.

**DATES:** Written comment on the previously published draft rules and these revised supplemental provisions should be submitted to Michael Courlander, Public Information Specialist, no later than December 16, 1996. It should be noted that this deadline represents an extension of time for comment on the draft rules published in July.

**ADDRESSES:** Comments should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, South Lobby, Washington, D.C. 20002–8002, Attention: Public Information.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

**SUPPLEMENTARY INFORMATION:** Section 995(a)(1) of title 28 authorizes the U.S. Sentencing Commission, an independent agency in the judicial branch of the United States Government, to establish general policies and promulgate rules and regulations for the Commission as necessary to carry out the purposes of the Sentencing Reform Act of 1984.

The new provisions contained herein address moving to a two-year cycle for guideline amendments, rules for decisions on retroactivity of proposed amendments, and reconsideration of amendments. The entire set of rules of practice and procedure are designed to facilitate public understanding and participation in the work of the Sentencing Commission. For the most part, these rules do not represent a substantive change in the way the Commission has traditionally conducted its business. These rules are not intended to enlarge the rights of any person sentenced under the guidelines promulgated by the Commission or otherwise create any private right of action.

Authority: 28 U.S.C. 995(a)(1).

Richard P. Conaboy,

*Chairman.*

Revised Rules of Practice and Procedure

The following are the previously published draft rules that are proposed to be modified. Changes are noted in italics.

*Rule 2.2 Voting Rules for Action by the Commission*

Except as otherwise provided in these rules or by law, action by the Commission requires the affirmative vote of a majority of the members at a public meeting at which a quorum is present. A quorum shall consist of a majority of the members then serving. Members shall be deemed present and may participate and vote in public meetings from remote locations by electronic means, including, but not limited to, telephone, satellite and video conference devices.

Promulgation of guidelines, policy statements, official commentary, and amendments thereto shall require the affirmative vote of at least four members at a public meeting. *See* 28 U.S.C. 994(a).

Publication of proposed amendments to guidelines, policy statements, or official commentary in the Federal Register to solicit public comment shall require the affirmative vote of at least three members at a public meeting. Similarly, the decision to instruct staff to prepare a retroactivity impact analysis for a proposed amendment shall require the affirmative vote of at least three members at a public meeting.

Action on miscellaneous matters may be taken without a meeting based on the affirmative vote of a majority of the members then serving by written or oral communication. Such matters may include, but are not limited to, the approval of budget requests, legal briefs, staff reports, analyses of legislation, and administrative and personnel issues.

A motion to reconsider Commission action may be made only by a Commissioner who was on the prevailing side of the vote for which reconsideration is sought, or who did not vote on the matter. Four votes are necessary to reconsider a Commission vote on any question on which a four-vote majority is required.

*Rule 5.1 Promulgation of Amendments*

The Commission may promulgate and submit to Congress amendments to the guidelines between the beginning of a regular session of Congress and the first day of May that year. Amendments shall be accompanied by a brief explanation or statement of reasons for the amendments. Unless otherwise specified, or unless Congress legislates to the contrary, amendments submitted for review shall take effect on the first day of November of the year in which submitted. 28 U.S.C. 994(p).

The Commission may promulgate amendments at other times pursuant to special statutory enactment (*e.g.*, the ''emergency'' amendment authority under section 730 of the Antiterrorism and Effective Death Penalty Act of 1996).

Amendments to policy statements and commentary may be promulgated and put into effect at any time. However, to the extent practicable, the Commission shall endeavor to include amendments to policy statements and commentary in any submission of guideline amendments to Congress and put them into effect on the same November 1 date as any guideline amendments issued in the same year.

Except as necessary to implement enacted legislation or to address other matters determined by the Commission to be urgent and compelling, the Commission shall, after May 1, 1997, promulgate or amend the guidelines no more frequently than biennially. No amendments shall be issued in the annual amendment cycle beginning on May 2, 1997 except as provided in this rule.

Generally, promulgated amendments will given prospective application only. However, in those cases in which the Commission considers an amendment for retroactive application to previously sentenced, imprisoned defendants, it shall decide whether to make the amendment retroactive at the same meeting at which it decides to promulgate the amendment. Prior to final Commission action on the retroactive application of an amendment, the Commission shall review the retroactivity impact analysis prepared pursuant to Rule 2.2, supra.

*Rule 5.4 Federal Register Notice of Proposed Amendments*

As stated in Rule 2.2, supra, upon the affirmative vote of three voting members, the Commission may authorize publication in the Federal Register of a proposed amendment to a guideline, policy statement, or official commentary. A vote to publish shall be deemed to be a request for public comment on the proposed amendment. At the same time the Commission votes to publish proposed amendments for

comment, it shall request public comment on whether to make any amendments retroactive. As stated in Rule 5.1, supra, generally, amendments will be given prospective application only.

The notice of proposed amendments also shall provide, where appropriate and practicable, reasons for consideration of amendments, a summary of or reference to information that is relevant to the issue(s), and whether the Commission possesses information on the issue(s) that is publicly available. In addition, the publication notice shall include a deadline for public comment and may include a notice of any scheduled public hearing(s) or meetings on the issue(s).

In the case of proposed amendments to guidelines or issues for comment that form the basis for possible guidelines amendments, to the extent practicable, there shall be a minimum period of public comment of at least 60 calendar days prior to final Commission action on the proposed amendments.

[FR Doc. 96–25366 Filed 10–2–96; 8:45 am]

BILLING CODE 2210–01–P

## DEPARTMENT OF STATE

**[Public Notice No. 2447]**

### United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T) Study Group A; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee for Telecommunications Standardization (ITAC–T)'s Study Group A will meet October 24, 1996, Room 1207, 9:30 a.m.–4:00 p.m., to prepare for two upcoming international meetings dealing with standardization activities of the International Telecommunication Union.

U.S. Study Group A will discuss and prepare for issues relating to: (1) Study Group 3's (Accounting and Policy), first meeting in the new cycle of activities for the period 1996–2000. This meeting is scheduled for Geneva November 11–15, 1996; (2) preparations for the Numbering and Routing Working Party of ITU–T Study Group 2 scheduled for London the week of November 18–22, 1996; and (3) initial preparations for the December meeting of COM/CITEL. A more extensive agenda will be developed and distributed by fax or electronic mail to members prior to the announced meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: September 20, 1996.

Earl S. Barbely,

*Chairman, U.S. ITAC for Telecommunication Standardization.*

[FR Doc. 96–25267 Filed 10–2–96; 8:45 am]

BILLING CODE 4710–45–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket Nos. 96–069; Notice 2, 96–070; Notice 2, 96–071; Notice 2, 96–072; Notice 2, 96–074; Notice 2, 96–075; Notice 2, 96–076; Notice 2, 96–077; Notice 2, 96–078; Notice 2, 96–079; Notice 2, 96–081; Notice 2, 96–083; Notice 2, 96–084; Notice 2, 96–089; Notice 2, and 96–090; Notice 2]**

### Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

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

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective October 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry, the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to

this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1996.

Marilynne Jacobs,

*Director, Office of Vehicle Safety Compliance.*

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible For Importation

1. Docket No. 96–069
   Nonconforming Vehicle: 1993 Ferrari 512 TR Passenger Car
   Substantially similar U.S.—certified vehicle: 1993 Ferrari 512 TR
   Notice of Petition published at: 61 FR 36416 (July 10, 1996)
   Vehicle Eligibility Number: VSP–173
2. Docket No. 96–070
   Nonconforming Vehicle: 1986 Honda CP 450 SC Motorcycle
   Substantially similar U.S.—certified vehicle: 1986 Honda CP 450 SC
   Notice of Petition published at: 61 FR 37108 (July 16, 1996)
   Vehicle Eligibility Number: VSP–174
3. Docket No. 96–071
   Nonconforming Vehicle: 1991 Jaguar XJS Passenger Car
   Substantially similar U.S.—certified vehicle: 1991 Jaguar XJS
   Notice of Petition published at: 61 FR 37107 (July 16, 1996)
   Vehicle Eligibility Number: VSP–175
4. Docket No. 96–072
   Nonconforming Vehicle: 1994 Toyota Landcruiser Multi-Purpose Passenger Vehicle
   Substantially similar U.S.—certified vehicle: 1994 Toyota Landcruiser
   Notice of Petition published at: 61 FR 39508 (July 29, 1996)
   Vehicle Eligibility Number: VSP–181
5. Docket No. 96–074
   Nonconforming Vehicle: 1988 Kawasaki ZX1000–B1 Motorcycle
   Substantially similar U.S.—certified vehicle: 1988 Kawasaki ZX1000–B1
   Notice of Petition published at: 61 FR 39509 (July 29, 1996)
   Vehicle Eligibility Number: VSP–182
6. Docket No. 96–075
   Nonconforming vehicles: 1993 Mercedes-Benz 600SEC and 1994–1996 Mercedes-Benz S600 Coupe Passenger Cars
   Substantially similar U.S.—certified vehicles: 1993 Mercedes-Benz 600SEC and 1994–1996 Mercedes-Benz S600 Coupe
   Notice of Petition published at: 61 FR 38796 (July 25, 1996)
   Vehicle Eligibility Number: VSP–185
7. Docket No. 96–076
   Nonconconforming Vehicle: 1994 BMW R1100RS Motorcycle
   Substantially similar U.S.—certified vehicle: 1994 BMW R1100RS
   Notice of Petition published at: 61 FR 38512 (July 24, 1996)
   Vehicle Eligibility Number: VSP–177
8. Docket No. 96–077
   Nonconforming Vehicle: 1993 Bentley Brooklands Passenger Car
   Substantially similar U.S.-certified vehicle: 1993 Bentley Brooklands
   Notice of Petition published at: 61 FR 39507 (July 29, 1996)
   Vehicle Eligibility Number: VSP–186
9. Docket No. 96–078
   Nonconforming vehicles: 1995 BMW 520 Series Passenger Cars
   Substantially similar U.S.-certified vehicles: 1995 BMW 520 Series
   Notice of Petition published at: 61 FR 40069 (July 31, 1996)
   Vehicle Eligibility Number: VSP–183
10. Docket No. 96–079
   Nonconforming Vehicles: 1994 Volvo 960 Sedan and Wagon Passenger Cars
   Substantially similar U.S.-certified vehicles: 1994 Volvo 960 Sedan and Wagon
   Notice of Petition published at: 61 FR 38511 (July 24, 1996)
   Vehicle Eligibility Number: VSP–176
11. Docket No. 96–081
   Nonconforming vehicles: 1990–1993 Mazda Miata (MX–5) Passenger Cars
   Substantially similar U.S.-certified vehicles: 1990–1993 Mazda Miata (MX–5)
   Notice of Petition published at: 61 FR 40068 (July 31, 1996)
   Vehicle Eligibility Number: VSP–184
12. Docket No. 96–083
   Nonconforming vehicles: 1991–1996 Freightliner FLD12064ST Trucks
   Substantially similar U.S.-certified vehicle: 1991–1996 Freightliner FLD12064ST
   Notice of Petition published at: 61 FR 40073 (July 31, 1996)
   Vehicle Eligibility Number: VSP–179
13. Docket No. 96–084
   Nonconforming Vehicle: 1995 Jeep Cherokee Multi-Purpose Passenger Vehicle
   Substantially similar U.S.-certified vehicle: 1995 Jeep Cherokee
   Notice of Petition published at: 61 FR 40074 (July 31, 1996)
   Vehicle Eligibility Number: VSP–180
14. Docket No. 96–089
   Nonconforming Vehicles: 1990–1996 Ken-Mex T800 Trucks
   Substantially similar U.S.-certified vehicles: 1990–1996 Kenworth T800 Trucks
   Notice of Petition published at: 61 FR 40070 (July 31, 1996)
   Vehicle Eligibility Number: VSP–187
15. Docket No. 96–090
   Nonconforming Vehicles: 1991–1996 Freightliner FTLD 112064SD Trucks
   Substantially similar U.S.-certified vehicles: 1991–1996 Freightliner FTLD 112064SD
   Notice of Petition published at: 61 FR 40071 (July 31, 1996)
   Vehicle Eligibility Number: VSP–178

[FR Doc. 96–25359 Filed 10–2–96; 8:45 am]

BILLING CODE 4910–59–P

---

**[Docket No. 96–104; Notice 1]**

## Notice of Receipt of Petition for Decision That Nonconforming 1982 Kawasaki KZ550B Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1982 Kawasaki KZ550B motorcycles are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1982 Kawasaki KZ550B that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is November 4, 1996.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1982 Kawasaki KZ550B motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the version of the 1982 Kawasaki KZ550A that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1982 Kawasaki KZ550B to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1982 Kawasaki KZ550B, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1982 Kawasaki KZ550B is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.- model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* installation of a label that displays the recommended tire size, rim size, and cold inflation pressure.

Standard No. 123 *Motorcycle Controls and Displays*: installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that a certification label will be affixed to the vehicle that meets the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1996.

Marilynne Jacobs,

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 96–25360 Filed 10–2–96; 8:45 am]

**BILLING CODE 4910–59–P**

---

**[Docket No. 96–103; Notice 1]**

## Notice of Receipt of Petition for Decision That Nonconforming 1993 Pontiac Trans Sport Multi-Purpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1993 Pontiac Trans Sport multi-purpose passenger vehicles (MPVs) are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Pontiac Trans Sport manufactured for the German market that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is November 4, 1996.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether a 1993 Pontiac Trans Sport MPV manufactured for the German market is eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 Pontiac Trans Sport that was manufactured for sale in the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Pontiac Trans Sport to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Pontiac Trans Sport, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Pontiac Trans Sport is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1993 Pontiac Trans Sport comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) labeling of the odometer to reflect its calibration in kilometers per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model front and rear sidemarker/reflector assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

The petitioner also states that a certification label must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below. If NHTSA decides that non-U.S. certified 1993 Pontiac Trans Sport MPVs are eligible for importation into the United States, that decision will be made with respect to all such vehicles, and not be limited to those manufactured for the German market.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1996.

Marilynne Jacobs,

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 96–25361 Filed 10–2–96; 8:45 am]

BILLING CODE 4910–59–P

## Surface Transportation Board [1]

**[STB Finance Docket No. 33073]**

## Coach USA, Inc.—Control Exemption—American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K–T Contract Services, Inc.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of filing of petition for exemption.

**SUMMARY:** Coach USA, Inc. (Coach), a noncarrier that controls 10 motor passenger carriers, seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of five other motor passenger carriers.

**DATES:** Comments must be filed by November 4, 1996. Petitioner may file a reply by November 12, 1996.

**ADDRESSES:** Send an original and 10 copies of comments referring to STB Finance Docket No. 33073 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, send one copy of comments to petitioner's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Coach seeks an exemption to acquire stock control over five motor passenger carriers that operate both in interstate and intrastate commerce: American Sightseeing Tours, Inc., d/b/a ASTI (MC–252353) (primarily charter operations from the Miami/Ft. Lauderdale, FL area); California Charters, Inc. (CCI) (MC–241211) (primarily charter operations from the Los Angeles, Long Beach, and San Diego, CA area); Texas Bus Lines, Inc. (TBL) (MC–37640) (primarily charter operations from the Houston, TX area and regular-route service between Houston and Galveston, TX); Gulf Coast Transportation, Inc., d/b/a Gray Line Tours of Houston (GCTI) (MC–201397) (primarily charter operations from Texas); and K–T Contract Services, Inc. (K–T) (MC–218583) (primarily charter operations from the Las Vegas, NV area and regular-route service between Las Vegas and both Phoenix, AZ and Reno/Carson City, NV). TBL and 50% of CCI are owned by one individual, Mr. Scott Keller, and TBL owns 50% of K–T.[2]

Coach states that each of the five carriers accounts for a relatively small market share, and, aside from charter

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board) effective January 1, 1996. This notice relates to a control transaction that is subject to Board jurisdiction under 49 U.S.C. 14303.

[2] The stock of ASTI, CCI, TBL, and GCTI was placed in separate, independent voting trusts with different trustees to avoid any unlawful control. The stock of K–T was left as is because Coach will not acquire the remaining 50% of K–T's stock from Kerrville Bus Company, Inc., unless and until this petition is granted.

and special operations, operates regionally in diverse markets across the United States. While it controls the nation's second largest group of motor passenger carriers,[3] Coach states that there is little competition, and no significant overlap in operations, among the 10 carriers it now controls and the five it seeks to control. It acknowledges that there is some overlap in services, but states that this overlap will have no meaningful effect on the continued availability of competitive transportation.

Following the acquisition of control, the five carriers will continue to operate in their respective markets, each under its own name and in the same basic manner as before. Coach claims that improved service at lower costs will result because of the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Additional information may be obtained from petitioner's representatives.

Decided: September 25, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–25364 Filed 10–2–96; 8:45 am]

**BILLING CODE 4915–00–P**

---

**[STB Finance Docket No. 33003]**

## Louisiana & Delta Railroad, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company

Louisiana & Delta Railroad, Inc. (LDRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41: (1) To lease and operate approximately 8.909 miles of rail line; and (2) to acquire approximately 15 miles of incidental overhead trackage rights owned by Southern Pacific Transportation Company (SPT) and located in the State of Louisiana. The proposed transaction was to be consummated on or after September 10, 1996, the effective date of the exemption.[2]

The lines involved in the acquisition by lease are described as follows: The Breaux Bridge Branch from milepost 0.35 at or near BR Jct. to the end of track at milepost 8.060 at or near Breaux Bridge, and the remaining segment of the St. Martinsville Branch from the switch on the Breaux Bridge Branch near milepost 7.678 at a point on the St. Martinsville Branch near milepost 19.381 to the end of track at milepost 19.680; and the Alexandria Branch from milepost 0.50 at or near Alex Jct. to the end of track at milepost 1.00, and the extension track from milepost 144.90 to milepost 145.30. These lines involve a total distance of approximately 8.909 miles.[3]

The incidental trackage rights involved are described as follows: The extension of existing trackage rights from milepost 131.0 at Ara Spur to milepost 146.0 at the east end of, but not including, Lafayette Yard, a total distance of approximately 15 miles.[4]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33003, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: September 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–25363 Filed 10–2 –96; 8:45 am]

**BILLING CODE 4915–00–P**

---

[3] In *Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.,* STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996), Coach was exempted from the prior approval requirements of 49 U.S.C. 14303(a)(4) to acquire control of Arrow Stage Lines, Inc. (MC–29592); Cape Transit Corp. (MC–161678); Community Coach, Inc. (MC–76022); Community Transit Lines, Inc. (MC–145548); Grosvenor Bus Lines, Inc. (MC–157317); H.A.M.L. Corp. (MC–194792); Leisure Time Tours (MC–142011); Suburban Management Corp. (MC–264527); Suburban Trails, Inc. (MC–149081); and Suburban Transit Corp. (MC–115116).

[1] The ICC Termination Act of 1995, Pub. L. 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 Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] A letter, dated September 9, 1996, requesting that this application be denied was received from Tyrone Boudreaux, for and on behalf of the United Transportation Union-Louisiana State Legislative Board. If Mr. Boudreaux wishes the Board to consider his letter, or to consider a more detailed petition, he must serve a copy of his letter or petition for relief on LDRR's counsel (Eric M. Hocky) and certify to us that he has done so. Because Mr. Boudreaux asserts a nexus between this filing by LDRR and the Board's Decision No. 44 (served August 12, 1996) in Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Mr. Boudreaux should also serve a copy of his letter or petition on the counsel for Southern Pacific Transportation Company (Paul A. Cunningham, Harkins Cunningham, 1300 Nineteenth Street, N.W., Washington, D.C. 20036) and on the counsel for Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (Erika Z. Jones, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006), and certify to us that he has done so. Mr. Boudreaux may wish to supplement his filing or otherwise specify what provisions of the statute or the Board's regulations he maintains are violated by the proposed transaction and what adverse effects he sees resulting from this transaction.

[3] The lease also grants LDRR the right to operate side tracks at mileposts 143.97, 143.55, 141.465 and 140.146, and spurs at mileposts 145.129 and 121.92. SPT states that the right to operate these tracks is not subject to Board jurisdiction.

[4] LDRR states that these trackage rights extend existing trackage rights granted by SPT to LDRR in ICC Finance Docket No. 30958.

---

## DEPARTMENT OF THE TREASURY

## Submission to OMB for Review; Comment Request

September 16, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–0091.
*Form Number:* IRS Form 1040X.
*Type of Review:* Revision.
*Title:* Amended U.S. Individual Income Tax Return.

*Description:* Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate $3 to the presidential election campaign fund. The information is needed to help verify that the individual

has correctly figured his or her income tax.

*Respodents:* Individuals or households, Business or other for-profit, Farms.

*Estimated Number of Respondents/ Recordkeepers:* 1,550,506.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—1 hr., 12 min.

Learning about the law or the form—26 min.

Preparing the form—1 hr., 10 min.

Copying, assembling, and sending the form to the IRS—35 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 5,240,710 hours.

*OMB NUmber:* 1545–1204.

*Form Number:* IRS Form 8823.

*Type of Review:* Revision.

*Title:* Low-Income Housing Credit Agencies Report of Noncompliance.

*Description:* Housing agencies report noncompliance with the low-income housing provisions on Form 8823.

*Respondents:* State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeepers:* 56.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—5 hr., 1 min.

Learning about the law or the form—18 min.

Preparing and sending the form to the IRS—23 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 114,200 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

*OMB Reviewer:* Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–25371 Filed 10–2–96; 8:45 am]

**BILLING CODE 4830–01–M**

## Submission for OMB Review; Comment Request

September 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

*OMB Number:* 1510–0042.

*Form Number:* SF 1055.

*Type of Review:* Extension.

*Title:* Claims Against the U.S. For Amounts Due in Case of a Deceased Creditor.

*Description:* This form is required to determine who is entitled to the funds of a deceased Postal Savings depositor or deceased awardholder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Response:* 1 hour.

*Frequency of Response:* Other (as needed).

*Estimated Total Reporting Burden:* 400 hours.

*Clearance Officer:* Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Department Reports Management Officer.*

[FR Doc. 96–25372 Filed 10–2–96; 8:45 am]

**BILLING CODE 4810–35–M**

## Submission for OMB Review; Comment Request

September 24, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Financial Enforcement Network (FinCEN)

*OMB Number:* 1505–0137.

*Form Number:* TD F 90.22.45.

*Type of Review:* Extension.

*Title:* FinCEN Access Identification Form.

*Description:* This collection will be used to ensure that confidential law enforcement information is provided only to authorized officials of state and local law enforcement agencies. The collected information will allow identities to be efficiently verified for security purposes.

*Respondents:* State, Local or Tribal Governments.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Response:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 43 hours.

*OMB Number:* 1505–0139.

*Form Number:* TD F 90–22.44.

*Type of Review:* Extension.

*Title:* Request for Research.

*Description:* This form allows the efficient intake of requests for investigative support sent to the Financial Crimes Enforcement Network (FinCEN) by Federal, State and local law enforcement. The information provides the information necessary to determine the lawful parameters of data base searches in response to the requests.

*Respondents:* Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 7,500.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* Other (once per request).

*Estimated Total Reporting Burden:* 3,750 hours.

*Clearance Officer:* Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–25373 Filed 10–2–96; 8:45 am]

**BILLING CODE 4810–25–M**

## Submission for OMB Review; Comment Request

September 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

*OMB Number:* 1510–0048.
*Form Number:* FMS Form 3144.
*Type of Review:* Reinstatement.
*Title:* Minority Bank Deposit Program Certification Form for Admission.
*Description:* A financial institution who wants to participate in the MBDP must complete this form. The approved application certifies the institution as minority and is admitted into the program. Once in the program, the institution may receive special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 170.
*Estimated Burden Hours Per Response:* 30 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 85 hours.
*Clearance Officer:* Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–25374 Filed 10–2–96; 8:45 am]

**BILLING CODE 4810–35–M**

## Submission to OMB for Review; Comment Request

September 27, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1028.
*Regulation Project Number:* INTL–941–86 NPRM and INTL–655–87 Temporary.
*Type of Review:* Extension.
*Title:* Passive Foreign Investment Companies.
*Description:* These regulations specify how U.S. persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 275,000.
*Estimated Burden Hours Per Respondent:* 45 minutes.
*Frequency of Response:* Annually, Other (one time only).
*Estimated Total Reporting Burden:* 206,250 hours.

*OMB Number:* 1545–1150.
*Form Number:* IRS Form 990–EZ.
*Type of Review:* Revision.
*Title:* Short Form Return of Organization Exempt From Income Tax Under Section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or Section 4947(a)(1) Nonexempt Charitable Trust.
*Description:* Form 990–EZ is needed to determine that Internal Revenue Code (IRC) section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. IRS uses the information from this form to determine if the filers are operating within the rules of their exemption.
*Respondents:* Not-for-profit institutions.
*Estimated Number of Respondents/Recordkeepers:* 100,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—28 hr., 13 min.
Learning about the law or the form—9 hr., 12 min.
Preparing the form—11 hr., 0 min.
Copying, assembling and sending the form to the IRS—16 min.
*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 4,869,000 hours.

*OMB Number:* 1545–1275.
*Regulation Project Number:* CO–45–91 Final.
*Type of Review:* Extension.
*Title:* Limitations on Corporate Net Operating Loss Carryforwards.
*Description:* Sections 1.382–9 (d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(1)(5). Section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulations retroactively, or revoke a 382(1)(6) election.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 650.
*Estimated Burden Hours Per Respondent:* 31 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 200 hours.
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–25375 Filed 10–2–96; 8:45 am]

**BILLING CODE 4830–01–M**

## Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on October 30 and 31, 1996, of the following debt management advisory committee: Public Securities Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff on October 30, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On October 31, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on April 30 and will be open to the public. The remaining sessions on October 30 and the committee's reporting session on October 31 will be closed to the public, pursuant to 5 U.S.C. App section 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. section 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. section 552b(c)(9)(A). The public interest requires that such meetings be

closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. section 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. section 552b.

Darcy Bradbury,

*Assistant Secretary, Financial Markets.*

[FR Doc. 96–25337 Filed 10–2–96; 8:45 am]

**BILLING CODE 4810–25–M**

## Internal Revenue Service

### Proposed Collection; Comment Request for Form 8850

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8850, Work Opportunity Credit Pre-Screening Notice and Certification Request.

**DATES:** Written comments should be received on or before December 2, 1996, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Work Opportunity Credit Pre-Screening Notice and Certification Request.

*OMB Number:* 1545–1500.

*Form Number:* 8850.

*Abstract:* Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit. Under Internal Revenue Code section 51(d)(11), the work opportunity credit applies only to individuals who begin work for the employer after September 30, 1996, and before October 1, 1997.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 85,000.

*Estimated Time Per Respondent:* 3 hrs. 42 min.

*Estimated Total Annual Burden Hours:* 1,480,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 27, 1996.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 96–25404 Filed 10–2–96; 8:45 am]

**BILLING CODE 4830–01–U**

## UNITED STATES INFORMATION AGENCY

### College and University Affiliations Program

**ACTION:** Notice—request for proposals.

**SUMMARY:** The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a partnership with (a) foreign institution(s) of higher education in specified fields and themes within the humanities, arts, and social sciences.

Proposed projects must be eligible in terms of country(ies)/regions and themes as described in the section entitled ''Guidelines'' below. Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 97 program will also support the establishment and maintenance of internet communication facilities at foreign partner institutions.

The program awards up to $120,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. At this writing, prospects for Congressional appropriations in support of USIA's exchange programs are very uncertain and may result in reduced funding. Subject to the availability of funding, awards will be made under each of the following thematic categories: *Democracy and Human*

*Rights, International Trade Policy and Economic Security,* and the *Environment and Sustainable Development.*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the *Fulbright-Hays Act.*

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

*Announcement Title and Number:* All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–97–01.

*Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, January 17, 1997. Faxed documents will not be accepted, nor will documents postmarked on January 17, 1997, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

*Approximate program dates:* Grants should begin on or about September 1, 1997.

*Duration:* September 1, 1997–August 31, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via internet to: affiliat@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

*To Download a Solicitation Package via Internet:*

The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training Select ''Education and Cultural Exchanges,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify ''College and University Affiliations Program Officer'' on all inquires and correspondence. Prospective applicants should read the complete Federal Register announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, the staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

*Submissions:* Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/ASU–97–01, Office of Grants Management, E/XE, Room 336, 301 4th St., SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary,'' ''Proposal Narrative,'' and budget sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principal both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

**SUPPLEMENTARY INFORMATION:**

Overview

*Objectives*

The CUAP's *short-term goal* is to provide partial funding of linkages between U.S. and foreign institutions of higher education featuring exchanges of faculty and administrators for the purpose of teaching, lecturing, faculty and curriculum development, collaborative research, administrative reform and modernization, and outreach.

The program's *long-term goals* are to:

(1) Advance mutual understanding between the U.S. and other countries or regions by supporting linkages which provide true reciprocity and significant mutual benefit.

(2) Diversify and expand international educational exchanges by:

- Supporting linkages involving academic institutions in various locations throughout the U.S. and abroad;
- Targeting academic disciplines and countries/regions which are not otherwise significantly represented in privately funded exchanges;
- Increasing the participation of two-year/community colleges, small four-year schools, and schools with significant (over 25%) minority student enrollment; and
- Complementing the individual lectureships, research and graduate study fellowships, and training programs available under Fulbright and other Agency auspices.

(3) Foster post-secondary institutional academic development by supporting linkages which promise to develop appropriate expertise and advance scholarship and teaching.

(4) Further U.S. foreign policy objectives by supporting linkages which correspond to the Agency's geographic and thematic programming priorities.

(5) Encourage long-term impact on all partner institutions by supporting linkages which promise sustainability beyond the three-year grant term.

(6) Expand U.S. government/private sector cooperation by leveraging significant cost sharing from both the U.S. and foreign partner(s).

Guidelines

The ideal and most competitive proposal is reciprocal, with mutual goals and benefits for all partner institutions. While the goals and benefits should be mutual, they do not need to be identical for each partner institution or precisely balanced among partner institutions. One-way, technical assistance projects are not acceptable.

The ideal and most competitive proposal includes a series of year-round, faculty and administrator exchange visits involving a well-reasoned combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach. Projects involving administrative reform or modernization, such as distance learning, are also invited. These activities must address and support stated project goals, develop expertise, advance scholarship and teaching, and promote reliable, long-term communication between partner campuses. They may vary in emphasis within the project. For example, collaborative research may play a lesser role than curriculum development. Library support and development should be included if deemed critical to the success and sustainability of the project. The proposal should demonstrate that an internet communication link between partners has been planned or already established; grant funds may be requested to initiate or enhance that link.

Exchange visits should be for a minimum of one month with the exception of planning visits, which may be for a shorter period. The non-planning visits in a competitive proposal range from one month to an academic year in length, preferably including one, quarter or semester-long visit each year from each of the U.S. and the foreign partner(s). Proposals featuring multiple visits of one quarter or semester in length will be more competitive. Visits by the U.S. and foreign project coordinators as well as other key exchanges should be identified and justified in the proposal narrative. An ideal project builds upon previous contacts and interaction between the proposed partners, such as individual faculty or student exchanges, and has the support and the knowledge and encouragement of the relevant USIS post and/or Fulbright commission, to help ensure a solid foundation for the linkage. Acceptable proposals must either establish new institutional affiliations or innovate existing partnerships and must not merely extend projects previously funded by the College and University Affiliations Program (formerly the ''University Affiliations Program''), other USIA or U.S. government linkage programs.

Proposals of feasibility studies to plan affiliations will not be considered.

The ideal and most competitive proposal provides significant institutional support and cost sharing from both the U.S. and foreign institution(s) and promises sustainability beyond the grant term. The U.S. institution(s) should collaborate with the foreign partner(s) in planning and preparation. When planning the project, U.S. and foreign institutions are strongly encouraged to consult with the Cultural Affairs Officer (CAO) or Public Affairs Officer (PAO) at the appropriate U.S. Information Service (USIS) office at the U.S. Embassy or U.S. Consulate and with the Fulbright Commission, if one exists, in the relevant country.

*U.S. Partner and Participant Eligibility*

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty or staff from the participating institution(s) and must be U.S. citizens.

*Foreign Partner and Participant Eligibility*

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be citizens, nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport and U.S. J–1 visa.

*Ineligibility*

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) The length of the proposed project is less than three years;

(4) It is not submitted by the U.S. partner;

(5) One of the partner institutions is ineligible;

(6) The foreign geographic location is ineligible;

(7) The project involves a partnership with more than one country with the exception of trilateral APEC (Asia Pacific Economic Cooperation) projects under *Theme II: International Trade Policy & Economic Security;*

(8) The theme or academic discipline is ineligible;

(9) The amount requested of USIA exceeds $120,000 for the three-year project.

Eligible Themes, Academic Disciplines, and Countries

The FY 97 competition is limited to the following three themes which reflect USIA's foreign policy priorities:

(I) Democracy and Human Rights,

(II) International Trade Policy and Economic Security,

(III) The Environment and Sustainable Development.

Eligible academic disciplines and countries are listed under each theme.

*Inclusion of U.S./Area, Ethnic, and Cultural Studies*

U.S./Area, Ethnic, and Cultural Studies are included as eligible academic disciplines in order to allow for the development of a broader cultural understanding and context in which to pursue a linkage project within one of the stated themes. U.S./Area, Ethnic, and Cultural Studies may be incorporated into a given project but only in conjunction with one or more of the eligible academic disciplines listed under a given theme. U.S./Area, Ethnic, and Cultural Studies includes U.S. and partner country history, literature, and social sciences.

*Bilateral Projects Except for APEC and Canada/Mexico Environment and Sustainable Development Projects*

The program invites proposals for bilateral projects only, involving the U.S. and one foreign country, with the exception of proposals submitted for trilateral projects under *Theme II: International Trade Policy and Economic Security* regarding APEC (Asia Pacific Economic Cooperation) member economies and under *Theme III: The Environment and Sustainable Development* with regard to Mexico and Canada.

Theme I: Democracy and Human Rights

Projects are solicited which promote democracy building and human rights and reinforce U.S. interests overseas. U.S. interests are most secure in a world where accountable governments and rule of law strengthen stability and project both political rights and free market economies.

Within this context, Affiliation projects under Theme I should help

build democratic institutions, promote civic education, and increase expertise in the rule of law and the administration of justice through faculty and curriculum development, teaching and lecturing, and outreach. It is anticipated that college and university faculty, administrators, and students involved in cross-cultural democracy-building partnerships will generate ideas and projects which will contribute to modernization and reform in the university community, public policy arena, NGO's, and the private sector.

Sub Theme: Civics Education

USIA has a particular interest in reviewing proposals whose goal is to nurture the culture of democracy by focusing on the role of civics education in a democratic society.

A linkage project incorporating a focus on civics education might include topics and issues such as the philosophy of democratic institutions; the philosophy and goals of public and private education; the role of citizen behavior and social responsibility in a democracy; the role of volunteerism, public interest groups, and major players such as public and private schools, government, religious institutions, public libraries, private organizations, and parents. A civics education linkage might also address political practices such as the balance of individual rights and group rights; reconciliation and compromise within the democratic process; and the philosophy of majority rule and minority rights.

Projects in civic education may combine one or more of the academic disciplines listed below in order to pursue an affiliation whose objectives are those of the overall College and University Affiliations Program, namely teaching, lecturing, faculty development, curriculum development (e.g. for teacher training), collaborative research, and outreach (e.g. community outreach).

*Eligible Academic Disciplines*

Law (including Conflict Resolution, Intellectual Property Rights) Political Science/Government/Public Policy/ Public Administration Journalism/ Communications

Higher Education/Higher Education Administration U.S./Area, Ethnic, and Cultural Studies (in combination with one or more of the academic disciplines above)

*Eligible Countries*

*Africa:* Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda;

*American Republics:* Argentina, Bolivia, Chile, Colombia, Ecuador, Peru, Venezuela;

*East Asia and Pacific:* Cambodia, China (due to limited funding, China projects are limited to Law and U.S./ Area Ethnic, and Cultural Studies in combination with Law), Vietnam, Mongolia;

*East Europe, Central Europe, and the New Independent States:* Belarus (partnerships are encouraged with private, independent universities there), Bulgaria, Kazakhstan, Romania, Russia (outside Moscow, St. Petersburg, and Nizhniy Novgorod), Slovakia, Ukraine;

*North Africa, Near East, and South Asia:* India, Pakistan, Sri Lanka, Gaza/ West Bank;

*Western Europe:* Turkey.

Theme II: International Trade Policy and Economic Security

Projects are solicited which promote economic reform and the development of market economies, trade, and investment overseas in support of U.S. interests in a global economy through faculty and curriculum development, teaching and lecturing, and outreach.

Affiliation projects under Theme II are anticipated to establish or expand mutually beneficial academic programs in business and economics and promote international investment by strengthening institutional links to the private sector. Similarly, campuses should engage in international business affiliations which make their training, personnel, and research available to government and contribute to the formulation of more open and responsible trade policy.

*Eligible Academic Disciplines*

Economics

Business/Business Administration/ Business Management

Commercial Law (including Intellectual Property Rights)

U. S. Studies/Area, Ethnic, and Cultural Studies (in combination with one or more of the academic fields above)

*Eligible Countries*

*Africa:* Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda;

*American Republics:* Venezuela, Uruguay;

(Note: Chile and Mexico are eligible under the *East Asia and Pacific* trilateral APEC category (below))

*East Asia and Pacific:* The following Asia Pacific Economic Cooperation (APEC) member economies are eligible within a trilateral affiliation between the U.S. and two APEC member economies: Australia, Canada, China, Chile, Hong Kong, Indonesia, Japan, South Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Philippines, Singapore, Taiwan, Thailand, Vietnam;

*Western Europe:*

(Note: Canada is eligible under the *East Asia and Pacific* Trilateral APEC category above)

Theme III: The Environment and Sustainable Development

Projects are solicited which address environmental issues having an impact on U.S. and global interests. Academic exchanges which support responsible management of the Earth's natural resources is a key USIA priority.

Given this priority, the vision for Affiliation projects under Theme III is to establish or expand environmental studies programs through faculty and curriculum development, teaching and lecturing, and outreach. Faculty, administrators, and students involved in international environmental studies ventures should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business. These kinds of environmental linkage activities contribute to sound policy-making and long-term, global environmental sustainability.

*Eligible Academic Disciplines*

Environmental Sciences/Natural Resource Sciences

Environmental Policy and Resource Management

Sustainable Development

U.S. Studies/Area, Ethnic, and Cultural Studies (in combination with one or more of the academic fields above)

*Eligible Countries*

*Africa:* South Africa, Uganda;

*American Republics:* Chile, Mexico (only as a trilateral with Canada);

*Western Europe:* Canada (only as a trilateral with Mexico).

*Visa Requirements*

Programs must comply with J–1 exchange visitor visa regulations. Please refer to program specific guidelines in the Solicitation Package (POGI) for further details.

*Travel*

The assistance award recipient must arrange all travel through their own travel agent.

*Proposed Budget*

No funding award will exceed a total of $120,000 for the three-year grant term. Support for direct administrative costs associated with grant activities will not exceed 15% of the total grant

amount. All indirect costs are unallowable. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive, line-item budget for the entire project. There must be a summary budget as well as a breakdown, by year, reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package (POGI) for complete budget format instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to outside academicians and Agency officers for advisory review. Proposals will also be reviewed by the appropriate regional office, i.e., the USIA Office of African Affairs (AF), Office of American Republics Affairs (AR), Office of East Asian and Pacific Affairs (EA), Office of East European and NIS Affairs (EEN), Office of West European and Canadian Affairs (WEU) and the Office of North African, Near Eastern, and South Asian Affairs (NEA) and relevant USIA posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA contracts officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in proposal evaluation:

*Academic Review Criteria*

Proposals are reviewed by independent academic peer panels, with geographic and disciplinary expertise, which make comments and recommendations to the Agency based on the following criteria:

(1) Reasonable and feasible project objectives which are clearly related to the project plan and activities.

(2) Appropriate and feasible project plans and a detailed schedule which must include a well-reasoned combination of useful and appropriate teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach. The various activities should be clearly related to project objectives, but not need be equally emphasized within the proposal.

(3) Inclusion of exchange visits of a length which will further the project goals and activities. Except for planning visits, stays of one month or more should be balanced with visits of an academic quarter, semester, or year.

(4) Promise of the development of expertise and the advancement of scholarship and teaching in the eligible academic disciplines or themes.

(5) Quality of exchange participants' academic credentials, skills, and experience relative to the goals and activities of the project plan (e.g., language skills).

(6) Institutional resources adequate and appropriate to achieve the project's goals. Relevant factors are: The match between partners; the financial and political stability of the institutions; and availability of a critical mass of faculty willing and able to participate.

(7) Evidence of strong institutional commitment by all participating institutions, including demonstration of relevant and successful prior interactions between institutions and an indication of collaborative proposal planning.

(8) Evidence of a strong commitment to internationalization by participating institutions (i.e., developing other international projects and/or building upon past international activities).

(9) An effective evaluation plan which defines and articulates a list of anticipated outcomes clearly related to the project goals and activities and procedures for on-going monitoring and mid-term corrective action.

*Agency Review Criteria*

(1) Clear indication that the proposal seeks to establish a truly reciprocal and mutually beneficial institutional affiliation overseas or to innovate an existing affiliation. The benefits do not have to be the same for each partner or precisely balanced, but must be essentially mutual.

(2) Positive assessment of program need, feasibility, and potential impact by the relevant USIA post overseas.

(3) Academic quality, reflected in the academic review panel's comments and recommendations.

(4) Institutional and geographic diversity of the U.S. and overseas institutions (i.e., racial, ethnic, and gender composition of student enrollments; small underrepresented institutions, two-year/community colleges, and institutions in underrepresented geographic locations).

(5) The promise of sustainability and long-term impact which should be reflected in a plan for continued, non-U.S. government support and follow-on activities.

(6) Cost-effectiveness (i.e., competitive cost sharing, sufficient number of participant exchanges relative to the project goals and plan).

(7) Institutional track record and ability. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 25, 1996.

Dell Pendergrast,

*Deputy Associate Director for Educational and Cultural Affairs.*

[FR Doc. 96–25041 Filed 10–2–96; 8:45 am]

BILLING CODE 8230–01–M

# Corrections

Federal Register
Vol. 61, No. 193
Thursday, October 3, 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.

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT-59355; FRL 5396-7]**

### Certain Chemicals; Approval of a Test Marketing Exemption

*Correction*

In notice document 96–24601 beginning on page 50297 in the issue of Wednesday, September 25, 1996, make the following correction:

On page 50298, in the first column, under TME-96-9, in the first paragraph, lines three and four reading ''(insert date 15 days after date of publication in the Federal Register)'' should read ''October 10, 1996''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Part 1386

**RIN 0970–AB11**

### Developmental Disabilities Program

*Correction*

In rule document 96–24508 beginning on page 51142, in the issue of Monday, September 30, 1996, make the following correction:

**§ 1386.30 [Corrected]**

On page 51159, in the third column, amendatory instruction number 23 to § 1386.30 should read as set forth below:

''23. Section 1386.30 is amended by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); republishing newly redesignated paragraph (f), introductory text; revising the newly redesignated paragraphs (f)(2), (f)(3), and (f)(4); and adding new paragraphs (c)(3) and (e) to read as follows:''

**BILLING CODE 1505–01–D**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### 1996-97 Allocation of the Tariff-rate Quotas for Raw and Refined Sugar

*Correction*

In notice document 96–25011 appearing on page 51135 in the issue of Monday, September 30, 1996, make the following correction:

In the third column, under Refined Sugar Allocation, in the first paragraph, in the seventh line from the bottom, ''25,00'' shoulld read ''25,000''.

**BILLING CODE 1505–01–D**

Federal Register

Thursday
October 3, 1996

Part II

# Department of Health and Human Services

## Office of the Secretary

**Announcement of the Establishment of the Chronic Fatigue Syndrome Committee and Request for Nominations for Members of the Committee; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Public Health and Science; Announcement of the Establishment of the Chronic Fatigue Syndrome Coordinating Committee and Request for Nominations for Members of the Committee

**AGENCY:** Office of Public Health and Science, HHS.

**ACTION:** Notice.

**SUMMARY:** The Office of Public Health and Science (OPHS) announces the establishment by the Secretary of Health and Human Services, September 5, 1996, of the Chronic Fatigue Syndrome Coordinating Committee (CFSCC). In addition, OPHS requests nominations for representatives to serve on the CFSCC in accordance with its charter. Initial appointments of representatives shall be made for staggered terms of one to four years.

**DATES:** All nominations must be received at the address below by no later than 4:00 p.m. EDT on November 4, 1996.

**ADDRESSES:** All nomination packages shall be submitted to Lillian Abbey, Executive Secretary, National Institutes of Health, National Institute of Allergy and Infectious Diseases, Division of Microbiology and Infectious Diseases, Solar Building, Room 3A18, 6003 Executive Boulevard, Bethesda, Maryland 20892.

**FOR FURTHER INFORMATION CONTACT:** Lillian Abbey at the above address or at (301) 496–1884 between 9:00 a.m. and 3:00 p.m. EDST.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, Public Law 92–493 as amended (5 U.S.C. App. 2), and section 222 of the Public Health Service Act as amended (42 U.S. 217a) the Office of Public Health and Science announces the establishment by the Secretary of Health and Human Services, September 5, 1996, of the following Federal advisory committee:

Purpose

The Committee shall provide advice to the Secretary; the Assistant Secretary for Health; and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitate increased Department and agency awareness of CFS research and educational needs; develop complementary research programs which minimize overlap; identify opportunities for collaborative and/or coordinated efforts in research and education; and develop informed response to constituency groups regarding Department (HHS) and SSA efforts and progress. Authority for this Committee shall expire on September 5, 1998, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, determines that the continuance is in the public interest.

Nominations

Nominations are solicited for representatives in the following categories: (1) Individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to chronic fatigue syndrome (CFS); (2) individuals with expertise in health care services, disability issues, or who are representatives of private health care insurers; and, (3) representatives of voluntary organizations that are concerned with the problems of individuals with CFS.

Information Required

Each nomination shall consist of a package that a minimum includes:

A. A letter of nomination that clearly states the name and affiliation of the nominee, the nominator's basis for the nomination, and the category for which the person is nominated;

B. The name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to contact information;

C. A copy of the nominee's curriculum vitae.

Nominations for membership in the category of representatives of voluntary organizations that are concerned with the problems of individuals with CFS must also include: (1) A comprehensive description of the voluntary organization, including the relationship of the nominee to the organization, and the full legal name, address, and telephone number of the organization and (2) a letter with an original signature from an officer of that organization certifying that the nominee is recognized as the respective organization's representative. Additional descriptive information that is helpful to understanding the nature and scope of the organization (such as the date the organization was founded, number of members, types or categories of members, and subsidiary or parent organizations, if any) should be included.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations cannot be considered. Nomination materials must bear original signatures and facsimile transmissions or copies are not acceptable.

Dated: September 26, 1996.

Philip R. Lee,

*Assistant Secretary for Health.*

[FR Doc. 96–25262 Filed 10–2–96; 8:45 am]

BILLING CODE 4160–17–M

Federal Register

Thursday
October 3, 1996

## Part III

# Department of Housing and Urban Development

**Office of the Secretary**

**24 CFR Part 42, et al.**

**Displacement, Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Programs: Streamlining; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts 42, 91, 92, 570**

**[Docket No. FR–3982–F–01]**

**RIN 2501–AC11**

## Displacement, Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Programs; Streamlining Rule

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations implementing section 104(d) of the Housing and Community Development Act of 1974, including residential antidisplacement and relocation assistance plans, one-for-one replacement requirements, and relocation benefits. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline those regulations by consolidating them into one part. This final rule will make the regulations clearer and more concise.

**EFFECTIVE DATE:** November 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Janice Petty, Relocation Specialist, Relocation and Real Estate Division, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1367 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

This revised part 42 implements section 104(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) (42 U.S.C. 5304(d)(4)), which sets forth requirements governing conversion, demolition, and one-for-one replacement of units removed from the housing stock. Section 104(d) requires residential antidisplacement and relocation assistance plans (RARAPs) for State and local governments receiving funds under the Community Development Block Grant (CDBG) and Urban Development Action Grant (UDAG) programs. This requirement was extended to the HOME Investment Partnerships (HOME) program by section 105(b)(14) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12705(b)(14)). In streamlining these requirements, this final rule also implements the restrictions in 42 U.S.C. 3537c on lump-sum payments for relocation assistance.

On July 1, 1994 (59 FR 34300), HUD published a proposed rule that would have created a new part 43 to replace the current requirements in §§ 92.353(e) and 570.606(c) of title 24. Consistent with its reinvention objectives, HUD is adding the section 104(d) requirements to part 42, rather than creating a detailed new part 43. In doing so, it is retaining some of the current language of part 570. As a result, part 42 will make clear the distinction between the generally applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) (Uniform Relocation Act or URA) and the more targeted requirements of section 104(d) of the HCD Act of 1974 (Section 104(d)).

*Proposed Rule*

Some existing section 104(d) requirements established for the CDBG programs do not work well in the HOME Program. The July 1, 1994, rule proposed section 104(d) policies that would be better tailored to both HOME and CDBG Program policy needs, providing consistent and workable policies for both programs in the same regulation. Such consistency is essential because CDBG and HOME funds may be used in the same project. Portions of the proposed rule necessary to achieve that objective have been incorporated in this final rule. Other parts of the proposed rule, however, are unnecessarily lengthy, complex, or prescriptive. Since adoption of these portions would be inconsistent with HUD's streamlining objectives, HUD has not included them in the final rule.

Two organizations and three other persons submitted comments in response to the proposed rule. Commenters have asked why it is necessary to have a RARAP when there would be no displacement resulting from the project. Section 104(d) of the HCD Act of 1974 states that a grant for a CDBG program ''may be made only if the grantee certifies that it is following'' a RARAP. While HUD cannot bypass this statutory requirement, an acceptable ''plan'' for such circumstances need not be elaborate. Since the RARAP does not need to be revised or readopted annually, but only when the recipient's program necessitates, this requirement should not impose any major burden on program participants.

*Overnight Homeless Shelters and Other Public Facilities*

''Conversion'' (defined in the final rule) is one of the two actions that triggers the requirements of section 104(d). In the past, HUD had stated that a change of lower-income housing into an overnight emergency shelter constituted ''conversion,'' even if the market rent of the shelter housing, upon completion of the project, did not exceed the Section 8 Fair Market Rent (FMR). Questions were raised about the policy applicable to changing lower-income housing into nursing homes, battered spouse shelters, halfway houses, group homes, and transitional housing. The July 1, 1994, proposed rule stated, ''The Department has concluded that such facilities and emergency overnight shelters may contribute to the supply of available lower income housing, and changing conventional housing into such a use does not necessarily trigger a replacement requirement. * * * In other words, the Department would consider the physical structure, rather than whether the tenants are permitted to remain for only a temporary period of time and must vacate to permit use by other tenants.''

In response to public comments, and upon further consideration of the issue, HUD has revised its position. It is HUD's determination that housing that is changed to an emergency shelter, whether it serves homeless persons, battered spouses, or others, is indeed a ''conversion'' of lower-income housing. Changing lower-income housing into nursing homes, halfway houses, group homes and transitional housing, or other forms of permanent or transitional housing, does not constitute a ''conversion'' and, thus, does not trigger a replacement requirement. Accordingly, the final rule revises the definition of conversion at § 42.305(b)(2) to include alteration of a housing unit to be used for an emergency shelter.

*Removal of Dilapidated Housing*

CDBG recipients had been required to replace vacant, dilapidated housing that is not suitable for rehabilitation if the unit was occupied at any time within the period beginning 1 year before the execution of the contract covering the demolition. The proposed rule reduced the 12-month period to 3 months. Two commenters agreed with the proposal. One opposed it, stating that the change was an evasion of the one-for-one housing replacement requirement.

HUD disagrees with the latter comment and remains concerned that the old 1-year rule has had the effect of unduly delaying the demolition of run-down vacant buildings that are a danger to public health and safety. Moreover, the removal of vacant, dilapidated housing that is clearly not occupiable does not effectively diminish the available supply of lower-income housing. Therefore, the final rule definition of ''vacant occupiable dwelling unit'' at § 42.305 adopts the 3-month policy set out in the proposed rule.

Other Matters

*Executive Order 12866*

The Office of Management and Budget reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines and consolidates existing requirements, thereby providing consistency in affected programs. The rule will have no adverse or disproportionate economic impact on small businesses.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

*24 CFR Part 42*

Administrative practice and procedure, Grant programs, Loan programs, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

*24 CFR Part 91*

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 92*

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 570*

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, part 42 of title 24 of the Code of Federal Regulations is revised in its entirety, and parts 91, 92, and 570 are amended as follows:

## PART 42—DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS

1. Part 42 is revised to read as follows:

Subpart A—General

Sec.
42.1 Applicable rules.

Subpart B—[Reserved]

Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

42.301 Applicability.
42.305 Definitions.
42.325 Residential antidisplacement and relocation assistance plan.
42.350 Relocation assistance for displaced persons.
42.375 One-for-one replacement of lower-income dwelling units.
42.390 Appeals.

Authority: 42 U.S.C. 3535(d), 4601, 5304, and 12705(b).

### Subpart A—General

#### § 42.1 Applicable rules.

(a) *URA*. HUD-assisted programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 (URA) (42 U.S.C. 4601), and implementing regulations issued by the Department of Transportation at 49 CFR part 24.

(b) *Section 104(d)*. In addition to the URA, the Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), and HOME Investment Partnerships (HOME) programs are also subject to section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)). The provisions applicable to these programs are set out in subpart C of this part.

(c) *Additional requirements*. Applicable program regulations may contain additional relocation provisions.

### Subpart B—[Reserved]

### Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

#### § 42.301 Applicability.

This subpart applies only to CDBG grants under 24 CFR part 570, subparts D, F, and I (Entitlement grants, HUD-Administered Small Cities, and State programs); grants under 24 CFR part 570, subpart G (Urban Development Action Grants), and Loan Guarantees under 24 CFR part 570, subpart M; and assistance to State and local governments under 24 CFR part 92 (HOME program).

**§ 42.305 Definitions.**

The terms *Fair Market Rent (FMR)*, *HUD*, *Section 8*, and *Uniform Relocation Act (URA)* are defined in part 5 of this title. Otherwise, as used in this subpart:

*Comparable replacement dwelling unit* means a dwelling unit that:

(1) Meets the criteria of 49 CFR 24.2(d)(1) through (6); and

(2) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the ''Total Tenant Payment'' determined under § 813.107 of this title, after taking into account any rental assistance the household would receive.

*Conversion.* (1) This term means altering a housing unit so that it is:

(i) Used for nonhousing purposes;

(ii) Used for housing purposes, but no longer meets the definition of lower-income dwelling unit; or

(iii) Used as an emergency shelter.

(2) A housing unit that continues to be used for housing after completion of the project is not considered a ''conversion'' if, upon completion of the project, the unit is owned and occupied by a person who owned and occupied the unit before the project.

*Displaced person* means a lower-income person who, in connection with an activity assisted under any program subject to this subpart, permanently moves from real property or permanently moves personal property from real property as a direct result of the demolition or conversion of a lower-income dwelling. For purposes of this definition, a permanent move includes a move made permanently and:

(1) After notice by the grantee to move from the property following initial submission to HUD of the consolidated plan required of entitlement grantees pursuant to § 570.302; of an application for assistance pursuant to §§ 570.426, 570.430, or 570.465 that is thereafter approved; or an application for loan assistance under § 570.701 that is thereafter approved;

(2) After notice by the property owner to move from the property, following the submission of a request for financial assistance by the property owner (or other person in control of the site) that is thereafter approved; or

(3) Before the dates described in this definition, if HUD or the grantee determine that the displacement was a direct result of conversion or demolition in connection with an activity subject to this subpart for which financial assistance has been requested and is thereafter approved.

*HCD Act of 1974* means the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

*Lower-income dwelling unit* means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888.

*Lower-income person* means, as appropriate, a ''low and moderate income person'' as that term is defined in § 570.3 of this title, or a ''low-income family'' as that term is defined in § 92.2 of this title.

*Recipient* means CDBG grantee, UDAG grantee, or the HOME participating jurisdiction.

*Standard condition* and *substandard condition suitable for rehabilitation* have the meaning the recipient has established for those terms in its HUD-approved consolidated plan pursuant to 24 CFR part 91. In the case of a unit of general local government funded by a State, either the State's definitions for those terms or the definitions adopted by the unit of general local government for this purpose shall apply.

*Vacant occupiable dwelling unit* means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by the recipient covering the rehabilitation or demolition.

**§ 42.325 Residential antidisplacement and relocation assistance plan.**

(a) *Certification.* (1) As part of its consolidated plan under 24 CFR part 91, the recipient must certify that it has in effect and is following a residential antidisplacement and relocation assistance plan.

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential antidisplacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) *Plan contents.* (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

**§ 42.350 Relocation assistance for displaced persons.**

A displaced person may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24 or assistance under section 104(d) of the HCD Act of 1974, including:

(a) *Advisory services.* Advisory services at the levels described in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19). If the comparable replacement dwelling to be provided to a minority person is located in an area of minority concentration, as defined in the recipient's consolidated plan, if applicable, the minority person must also be given, if possible, referrals to comparable and suitable decent, safe, and sanitary replacement dwellings not located in such areas.

(b) *Moving expenses.* Payment for moving expenses at the levels described in 49 CFR part 24.

(c) *Security deposits and credit checks.* The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(d) *Interim living costs.* The recipient shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with a displacement, including moving expenses and increased housing costs, if:

(1) The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or

(2) The person is displaced from a ''lower-income dwelling unit,'' none of the comparable replacement dwelling units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available in accordance with § 42.375.

(e) *Replacement housing assistance.* Persons are eligible to receive one of the following two forms of replacement housing assistance:

(1) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling

(comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the ''Total Tenant Payment,'' as determined under part 813 of this title. All or a portion of this assistance may be offered through a certificate or voucher for rental assistance (if available) provided under Section 8. If a Section 8 certificate or voucher is provided to a person, the recipient must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Tenant-Based Assistance Existing Housing Program (see part 982 of this title). When provided, cash assistance will generally be in installments, in accordance with 42 U.S.C. 3537c; or

(2) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a payment equal to the capitalized value of 60 times the amount that is obtained by subtracting the ''Total Tenant Payment,'' as determined under part 813 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured financial institution conducting business within the recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

**§ 42.375 One-for-one replacement of lower-income dwelling units.**

(a) *Units that must be replaced.* All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units.

(b) *Acceptable replacement units.* Replacement lower-income dwelling units may be provided by any government agency or private developer and must meet the following requirements:

(1) The units must be located within the recipient's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(2) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient has provided the information required under paragraph (c)(7) of this section.

(3) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit (see definition of ''displaced person'' in § 42.305); and

(ii) The unit was vacant for at least 3 months before execution of the agreement between the recipient and the property owner.

(4) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.

(5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

(c) *Preliminary information to be made public.* Before the recipient enters into a contract committing it to provide funds under programs covered by this subpart for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the recipient must make public, and submit in writing to the HUD field office (or State, in the case of a unit of general local government funded by the State), the following information:

(1) A description of the proposed assisted activity;

(2) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;

(3) A time schedule for the commencement and completion of the demolition or conversion;

(4) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(5) The source of funding and a time schedule for the provision of replacement dwelling units;

(6) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and

(7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

(d) *Replacement not required.* (1) In accordance with 42 U.S.C. 5304(d)(3), the one-for-one replacement requirement of this section does not apply to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area.

(2) The recipient must submit directly to the HUD field office the request for determination that the one-for-one replacement requirement does not apply. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.

(3) A unit of general local government funded by the State must submit the request for determination under this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering

the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

**§ 42.390 Appeals.**

A person who disagrees with the recipient's determination concerning whether the person qualifies as a ''displaced person,'' or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office (or to the State in the case of a unit of general local government funded by the State). If the full relief is not granted, the recipient shall advise the person of his or her right to seek judicial review.

## PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

2. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

3. Section 91.205 is amended to add a new sentence at the end of paragraph (b)(1):

**§ 91.205 Housing and homeless needs assessment.**

* * * * *

(b) * * *

(1) * * * (The jurisdiction must define in its consolidated plan the terms ''standard condition'' and ''substandard condition but suitable for rehabilitation.'')

* * * * *

4. Section 91.305 is amended to add a new sentence at the end of paragraph (b)(1):

**§ 91.305 Housing and homeless needs assessment.**

* * * * *

(b) * * *

(1) * * * (The State must define in its consolidated plan the terms ''standard condition'' and ''substandard condition but suitable for rehabilitation.'')

* * * * *

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d), 12701–12839.

6. Section 92.353(e) is revised to read as follows:

**§ 92.353 Displacement, relocation, and acquisition.**

* * * * *

(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart B.

* * * * *

## PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

7. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

8. Section 570.606(c) is revised to read as follows:

**§ 570.606 Displacement, relocation, acquisition, and replacement of housing.**

* * * * *

(c) *Residential antidisplacement and relocation assistance plan.* The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

Dated: September 23, 1996.

Henry G. Cisneros,

*Secretary.*

[FR Doc. 96–25401 Filed 10–2–96; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday
October 3, 1996

Part IV

# The President

**Executive Order 13019—Supporting Families: Collecting Delinquent Child Support Obligations**

Federal Register
Vol. 61, No. 193
Thursday, October 3, 1996

# Presidential Documents

Title 3—

The President

Executive Order 13019 of September 28, 1996

## Supporting Families: Collecting Delinquent Child Support Obligations

The Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–358 *et seq.),* was enacted into law on April 26, 1996, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. While the primary purpose of the Debt Collection Improvement Act is to increase the collection of nontax debts owed to the Federal Government, the Act also contains important provisions that can be used to assist families in collecting past-due child support obligations.

The failure of some parents to meet their child support obligations threatens the health, education, and well-being of their children. Compounding this problem, States have experienced difficulties enforcing child support obligations once a parent has moved to another State. With this Executive order, my Administration takes additional steps to support our children and strengthen American families by facilitating the collection of delinquent child support obligations from persons who may be entitled or eligible to receive certain Federal payments or Federal assistance.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Administrative Offsets.* (a)(1) The Secretary of the Treasury (''the Secretary''), in accordance with the provisions of the Debt Collection Improvement Act of 1996 and to the extent permitted by law, and in consultation with the Secretary of Health and Human Services and other affected agencies, shall promptly develop and implement procedures necessary for the Secretary to collect past-due child support debts by administrative offset, and shall issue such rules, regulations, and procedures as the Secretary, in consultation with the heads of affected agencies, deems appropriate to govern administrative offsets by the Department of the Treasury and other executive departments and agencies that disburse Federal payments.

(2) The Secretary may enter into reciprocal agreements with States concerning the collection by the Secretary of delinquent child support debts through administrative offsets.

(b) The Secretary of Health and Human Services shall, within 120 days of the date of this order, implement procedures necessary to report to the Secretary of the Treasury information on past-due child support claims referred by States (including claims enforced by States pursuant to cooperative agreements with or by Indian tribal governments) to the Department of Health and Human Services.

(c) The head of each executive department and agency that certifies payments to the Secretary or to another disbursing official shall review each class of payments that the department or agency certifies to determine if any such class should be exempt from offset and, if any class is so identified, submit to the Secretary a request for such an exemption together with the reasons therefor. With respect to classes of payments under means-tested programs existing on the date of this order, such submission shall be made within 30 days of the date of this order. With respect to classes of payments other than payments under means-tested programs existing on the date of this order, such submissions shall be made within 30 days of the date the Secretary establishes standards pursuant to section 3716(c)(3)

of title 31, United States Code. With respect to a class of payments established after the date of this order, such submissions shall be made not later than 30 days after such class is established.

(d) The head of each executive department and agency that certifies payments to the Secretary shall promptly implement any rule, regulation, or procedure issued by the Secretary pursuant to this section.

(e) The head of each executive department and agency that is authorized by law to disburse payments shall promptly implement any rule, regulation, or procedure issued by the Secretary pursuant to this section and shall:

(1) match, consistent with computer privacy matching laws, the payment certification records of such department or agency with records of persons delinquent in child support payments as directed by the Secretary; and

(2) conduct administrative offsets to collect delinquent child support payments.

(f) The Secretary shall, to the extent permitted by law, share with the Secretary of Health and Human Services any information contained in payment certification records of persons who are delinquent in child support obligations that would assist in the collection of such debts, whether or not an administrative offset is conducted.

Sec. 2. *Denial of Federal Assistance.* (a) The Secretary shall, to the extent permitted by law, ensure that information concerning individuals whose payments are subject to administrative offset because of delinquent child support obligations is made available to the head of each executive department and agency that provides Federal financial assistance to individuals.

(b) In conformance with section 2(e) of this order, the head of each executive department and agency shall, with respect to any individuals whose payments are subject to administrative offset because of a delinquent child support obligation, promptly implement procedures to deny Federal financial assistance to such individuals.

(c) The Attorney General, in consultation with the Secretary of Health and Human Services and other affected agencies, shall promptly issue guidelines for departments and agencies concerning minimum due-process standards to be included in the procedures required by subsection (b) of this section.

(d) For purposes of this section, Federal financial assistance means any Federal loan (other than a disaster loan), loan guarantee, or loan insurance.

(e)(1) A class of Federal financial assistance shall not be subject to denial if the head of the concerned department or agency determines:

(A) in consultation with the Attorney General and the Secretary of Health and Human Services, that such action:

(i) is not permitted by law; or

(ii) would likely result in valid legal claims for damages against the United States;

(B) that such action would be inconsistent with the best interests of the child or children with respect to whom a child support obligation is owed; or

(C) that such action should be waived.

(2) The head of each executive department and agency shall provide written notification to the Secretary upon determining that the denial of a class of Federal financial assistance is not permitted by law or should be waived.

(f) The head of each executive department and agency shall:

(1) review all laws under the jurisdiction of the department or agency that do not permit the denial of Federal financial assistance to individuals and whose payments are subject to administrative offset because of a delin-

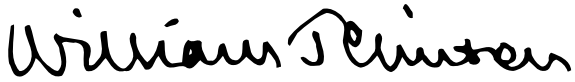
quent child support obligation and, where appropriate, transmit to the Director of the Office of Management and Budget recommendations for statutory changes; and

(2) to the extent practicable, review all rules, regulations, and procedures implementing laws under the jurisdiction of the department or agency governing the provision of any Federal financial assistance to individuals and, where appropriate, conform such rules, regulations, and procedures to the provisions of this order and the rules, regulations, and procedures issued by the Secretary pursuant to section 1 of this order.

Sec. 3. *Reports.* (a) The head of each executive department and agency shall provide to the Secretary such information as the Secretary may request concerning the implementation of this order, the provisions of the Debt Collection Improvement Act of 1996 applicable to delinquent child support obligations, and the rules, regulations, and procedures issued by the Secretary pursuant to section 1 of this order.

(b) The Secretary shall report annually to the President concerning the implementation by departments and agencies of this order and the provisions of the Debt Collection Improvement Act of 1996 applicable to delinquent child support obligations.

Sec. 4. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
*September 28, 1996.*

[FR Doc. 96–25577
Filed 10–2–96; 9:38 am]
Billing code 3195–01–P

# Reader Aids

Federal Register

Vol. 61, No. 193

Thursday, October 3, 1996

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

General Information, indexes and other finding aids **202–523–5227**

**Laws**

Public Laws Update Services (numbers, dates, etc.) **523–6641**
For additional information **523–5227**

**Presidential Documents**

Executive orders and proclamations **523–5227**
**The United States Government Manual** **523–5227**

**Other Services**

Electronic and on-line services (voice) **523–4534**
Privacy Act Compilation **523–3187**
TDD for the hearing impaired **523–5229**

### ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

### FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

## FEDERAL REGISTER PAGES AND DATES, OCTOBER

51205–51348 ..... 1
51349–51574 ..... 2
51575–51766 ..... 3

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
6922 ..... 51205
6923 ..... 51347
**Executive Orders:**
13019 ..... 51763

**5 CFR**

Ch. XIV ..... 51207
550 ..... 51319

**7 CFR**

90 ..... 51349
91 ..... 51349
92 ..... 51349
93 ..... 51349
94 ..... 51349
95 ..... 51349
96 ..... 51349
97 ..... 51349
98 ..... 51349
319 ..... 51208
502 ..... 51210
920 ..... 51575
929 ..... 51353
945 ..... 51354
993 ..... 51356
**Proposed Rules:**
301 ..... 51376
1214 ..... 51378, 51391

**8 CFR**

**Proposed Rules:**
312 ..... 51250

**14 CFR**

39 ..... 51212, 51357
71 ..... 51360, 51361, 51362
**Proposed Rules:**
39 ..... 51250, 51255, 51618, 51619, 51621, 51624
71 ..... 51319
440 ..... 51395

**15 CFR**

Ch. VII ..... 51395
902 ..... 51213
922 ..... 57577

**16 CFR**

24 ..... 51577

**19 CFR**

101 ..... 51363

**21 CFR**

50 ..... 51498
56 ..... 51498
73 ..... 51584
177 ..... 51364
178 ..... 51587
312 ..... 51498
314 ..... 51498
558 ..... 51588
601 ..... 51498
812 ..... 51498
814 ..... 51498
**Proposed Rules:**
330 ..... 51625

**22 CFR**

603 ..... 51593

**24 CFR**

42 ..... 51756
91 ..... 51756
92 ..... 51756
252 ..... 51319
570 ..... 51756
576 ..... 51546
**Proposed Rules:**
570 ..... 51556

**26 CFR**

**Proposed Rules:**
1 ..... 51256

**29 CFR**

270 ..... 51596

**30 CFR**

**Proposed Rules:**
913 ..... 51631

**33 CFR**

120 ..... 51597
128 ..... 51597

**36 CFR**

**Proposed Rules:**
61 ..... 51536
1190 ..... 51397
1191 ..... 51397

**40 CFR**

9 ..... 51365
52 ..... 51214, 51366, 51598, 51599
70 ..... 51368, 51370
86 ..... 51365
180 ..... 51372
300 ..... 51373
**Proposed Rules:**
52 ..... 51257, 51397, 51631, 51638, 51651, 51659
261 ..... 51397
271 ..... 51397
302 ..... 51397
372 ..... 51322, 51330

**42 CFR**

412 ..... 51217
413 ..... 51217, 51611

489.....51217

**43 CFR**

**Proposed Rules:**
2760.....51666
3740.....51667
3810.....51667
3820.....51667

**44 CFR**

62.....51217
64.....51226, 51228

**45 CFR**

46.....51531
1386.....51751

**46 CFR**

501.....51230
502.....51230
514.....51230
583.....51230

**47 CFR**

20.....51233
24.....51233

**48 CFR**

501.....51373
702.....51234
706.....51234
715.....51234
716.....51234
722.....51234
726.....51234
733.....51234
737.....51234
752.....51234

**49 CFR**

106.....51334
107.....51334
171.....51235, 51334
172 .....51236, 51238, 51334
173 .....51238, 51241, 51334, 51495
174.....51334
175.....51334
176.....51334
177.....51334
178.....51334
179.....51334
180.....51334
593.....51334

**Proposed Rules:**
571.....51669

**50 CFR**

216.....51213
679.....51374

**Proposed Rules:**
424.....51398
660.....51670

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT TODAY

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Commodity laboratory testing programs; functions and responsibilities; Federal regulatory reform; published 10-2-96

**ARMS CONTROL AND DISARMAMENT AGENCY**

Privacy Act; implementation; published 10-3-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Ocean and coastal resource management:

Marine sanctuaries--

Cordell Bank National Marine Sanctuary; coordinates correction; published 10-3-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Fuel and fuel additives--

Diesel fuel sulfur requirement exemption; Alaska; published 8-19-96

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; published 10-3-96

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:

New drug applications--

Oxytetracycline Type A medicated articles; published 10-3-96

Food additives:

Adjuvants, production aids, and sanitizers--

Sodium 2,2'-methylenebis (4,6-di-tert-butylphenyl) phosphate; published 10-3-96

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

Immigration:

Alien employment control; employment authorization document (Form I-766) introduction; published 9-4-96

**LABOR DEPARTMENT**

Federal contracting agencies obligations; permanent replacement of lawfully striking employees; CFR part removed; published 10-3-96

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Fluid milk promotion order; comments due by 10-7-96; published 9-6-96

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Horses affected with or exposed to contagious equine metritis (CEM); comments due by 10-10-96; published 9-10-96

Viruses, serums, toxins, etc.:

Veterinary biologics establishment licenses and biological product licenses and permits; comments due by 10-7-96; published 8-22-96

**AGRICULTURE DEPARTMENT**

**Foreign Agricultural Service**

Sugar import licensing:

Refined sugar re-export, sugar-containing products re-export, and polyhydric alcohol programs; participation requirements; comments due by 10-7-96; published 8-6-96

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

Crop insurance regulations:

Almonds; comments due by 10-8-96; published 8-9-96

Walnuts; comments due by 10-8-96; published 8-9-96

**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

Program regulations:

Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; comments due by 10-7-96; published 7-9-96

**AGRICULTURE DEPARTMENT**

**Rural Business-Cooperative Service**

Program regulations:

Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; comments due by 10-7-96; published 7-9-96

**AGRICULTURE DEPARTMENT**

**Rural Housing Service**

Program regulations:

Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; comments due by 10-7-96; published 7-9-96

**AGRICULTURE DEPARTMENT**

**Rural Utilities Service**

Program regulations:

Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; comments due by 10-7-96; published 7-9-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeast multispecies; comments due by 10-7-96; published 9-9-96

Ocean salmon off coasts of Washington, Oregon, and California; comments due by 10-9-96; published 9-25-96

Summer flounder, scup, and black sea bass; comments due by 10-7-96; published 8-21-96

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Certified cost or pricing data requirement; exception; comments due by 10-7-96; published 8-7-96

Immigration and Nationality Act employment provisions; contractor compliance; comments due by 10-7-96; published 8-8-96

Information Technology Management Reform Act of 1996; implementation; comments due by 10-7-96; published 8-8-96

Two-phase design-build construction procedures; comments due by 10-7-96; published 8-7-96

**ENERGY DEPARTMENT**

Acquisition regulations:

Organizational conflicts of interest; comments due by 10-7-96; published 8-6-96

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

National Gas Policy Act:

Interstate natural gas pipelines; secondary market transactions; comments due by 10-7-96; published 8-7-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Tennessee; comments due by 10-7-96; published 9-6-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Wyoming; correction; comments due by 10-7-96; published 9-6-96

Reporting and recordkeeping requirements; comments due by 10-11-96; published 9-11-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 10-7-96; published 9-5-96

National priorities list update; comments due by 10-7-96; published 9-5-96

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Telecommunications Act of 1996; implementation--

Local exchange carriers; tariff streamlining provisions; comments due by 10-9-96; published 9-24-96

Practice and procedure:

Justice Department request that 311 be reserved for use by communities for non-emergency police telephone calls; pleading cycle establishment; comments due by 10-10-96; published 9-17-96

Radio stations; table of assignments:
Louisiana; comments due by 10-7-96; published 8-28-96
Nevada et al.; comments due by 10-7-96; published 8-28-96

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Economically depressed regions; determination; comments due by 10-7-96; published 8-6-96

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

Thrift savings plan:
Federal employees moved to nonappropriated fund instrumentalities of DOD and Coast Guard; comments due by 10-10-96; published 8-9-96

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):
Certified cost or pricing data requirement; exception; comments due by 10-7-96; published 8-7-96
Immigration and Nationality Act employment provisions; contractor compliance; comments due by 10-7-96; published 8-8-96
Information Technology Management Reform Act of 1996; implementation; comments due by 10-7-96; published 8-8-96
Two-phase design-build construction procedures; comments due by 10-7-96; published 8-7-96

Federal property management:
Information and records management and use--
Records management program; FIRMR provisions relocation; comments due by 10-7-96; published 8-7-96
Telecommunications resources management and use--
Government telephone systems, etc.; FIRMR provisions relocation; comments due by 10-7-96; published 8-7-96

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Federal regulatory review:
Food and cosmetic labeling; comments due by 10-10-96; published 8-27-96
Food standards; comments due by 10-10-96; published 9-12-96

Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 10-7-96; published 7-9-96

Medical devices:
Manufacturer and distributor certification and appointment of U.S. designated agents; adverse events reporting requirements; comments due by 10-7-96; published 7-23-96

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Fair housing:
Complaint processing; subpoena provision removed; comments due by 10-7-96; published 8-8-96

**INTERIOR DEPARTMENT**

**Indian Affairs Bureau**

Energy and minerals:
Osage Reservation lands, OK, leasing; mining, except oil and gas; comments due by 10-7-96; published 8-8-96

**INTERIOR DEPARTMENT**

**Land Management Bureau**

Alaska occupancy and use:
Homestead settlements; comments due by 10-10-96; published 9-10-96

Carey Act grants; comments due by 10-10-96; published 9-10-96

Land resource management:
Gifts and acquisition of lands or interests in lands by purchase or condemnation; comments due by 10-11-96; published 9-11-96
National Forest exchanges; comments due by 10-11-96; published 9-11-96

Recreation management:
Wild and scenic rivers; comments due by 10-10-96; published 9-10-96

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

National wildlife refuge system:
Range animals; surplus disposition; comments due by 10-7-96; published 8-7-96

**INTERIOR DEPARTMENT**

**National Park Service**

Special regulations:
Badlands National Park, SD; commercial vehicle traffic; comments due by 10-7-96; published 8-7-96

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:
Colorado; comments due by 10-10-96; published 9-10-96

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

Immigration:
Aliens--
Lawfully present in United States; term definition; comments due by 10-7-96; published 9-6-96
Educational requirements for naturalization--
Exceptions due to physical or developmental disability or mental impairment; comments due by 10-11-96; published 10-1-96

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):
Certified cost or pricing data requirement; exception; comments due by 10-7-96; published 8-7-96
Immigration and Nationality Act employment provisions; contractor compliance; comments due by 10-7-96; published 8-8-96
Information Technology Management Reform Act of 1996; implementation; comments due by 10-7-96; published 8-8-96
Two-phase design-build construction procedures; comments due by 10-7-96; published 8-7-96

**PERSONNEL MANAGEMENT OFFICE**

Prevailing rate systems; comments due by 10-10-96; published 9-10-96

Retirement:
Coverage elections by current and former nonappropriated fund employees; comments due by 10-8-96; published 8-9-96

**SECURITIES AND EXCHANGE COMMISSION**

Securities:
Short-form registration expansion to include companies with non-voting common equity; comments due by 10-10-96; published 9-10-96

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:
Port access routes--
Cape Fear River and Beaufort Inlet, NC; comments due by 10-7-96; published 7-8-96

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
de Havilland; comments due by 10-8-96; published 8-30-96
Airbus; comments due by 10-8-96; published 8-30-96
AlliedSignal Inc.; comments due by 10-11-96; published 8-12-96
Boeing; comments due by 10-7-96; published 8-29-96
British Aerospace; comments due by 10-7-96; published 8-27-96
Fokker; comments due by 10-7-96; published 8-27-96
Industrie Aeronautiche E Meccaniche; comments due by 10-7-96; published 8-12-96
McDonnell Douglas; comments due by 10-7-96; published 8-27-96

Class E airspace; comments due by 10-10-96; published 8-15-96

Jet routes; comments due by 10-7-96; published 8-26-96

Rulemaking petitions; summary and disposition; comments due by 10-11-96; published 8-12-96

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:
Uniform Traffic Control Devices Manual--
Pedestrian, bicycle, and school warning signs; comments due by 10-7-96; published 6-7-96

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

Headlamp aimability; comments due by 10-8-96; published 7-10-96

**TREASURY DEPARTMENT**

**Alcohol, Tobacco and Firearms Bureau**

Alcohol, tobacco, and other excise taxes:

Alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes; exportation; comments due by 10-8-96; published 8-9-96

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Stock disposition loss allocation; comments due by 10-7-96; published 7-8-96

**VETERANS AFFAIRS DEPARTMENT**

Medical benefits:

Informed consent for patient care; comments due by 10-7-96; published 8-7-96

## LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 3675/P.L. 104–205**

Department of Transportation and Related Agencies Appropriations Act, 1997 (Sept. 30, 1996; 110 Stat. 2951)

**H.R. 3816/P.L. 104–206**

Energy and Water Development Appropriations Act, 1997 (Sept. 30, 1996; 110 Stat. 2984)

**H.J. Res. 197/P.L. 104–207**

Waiving certain enrollment requirements with respect to any bill or joint resolution of the One Hundred Fourth Congress making general or continuing appropriations for fiscal year 1997. (Sept. 30, 1996; 110 Stat. 3008)

Last List September 30, 1996