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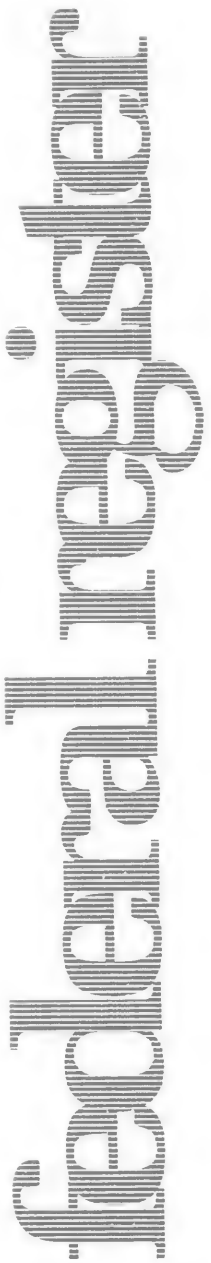

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to: Implement the compensatory damages provision of the Civil Rights Act of 1991, Public Law 102–166, with respect to MSPB cases where certain kinds of discrimination are found; implement the attorney fee provision of the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103–353; implement the attorney fee, consequential damages, and choice of procedures provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994); and amend its rules governing requests for attorney fees to change the time limit for filing and incorporate an evidentiary requirement from the Board's case law. The purpose of these amendments is to provide guidance to the parties to MSPB cases, and their representatives, on how to proceed with respect to requests for attorney fees, consequential damages, and compensatory damages, and to inform them of the statutory requirement regarding choice of procedures in cases involving both an appealable action and a prohibited personnel practice other than discrimination. The Board is also removing an obsolete section of its rules governing mixed cases and making technical changes to its mixed case and enforcement rules to correct a citation. The Board is implementing other provisions of Public Law 103–424 through an amendment to its rules at 5 CFR part 1209, which is being published simultaneously with this amendment.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board previously published an interim rule to: Implement the compensatory damages provision of the Civil Rights Act of 1991, Public Law 102-166, with respect to MSPB cases where certain kinds of discrimination are found; implement the attorney fee provision of the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103–353; implement the attorney fee, consequential damages, and choice of procedures provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994); amend its rules governing requests for attorney fees to change the time limit for filing and incorporate an evidentiary requirement from the Board's case law; and make a technical change to its rules governing mixed cases (62 FR 17041, April 9, 1997). The interim rule requested public comments and allowed 60 days, until June 9, 1997, for receipt of such comments.

Public Comments

Comments were received from two Federal agencies. One commenter made the following recommendations for revisions in the interim rule:

(1) That § 1201.3(c)(1) be amended to reflect the choices among statutory and negotiated grievance procedures involving agencies other than MSPB;

(2) That § 1201.201 be amended to further define "consequential damages" and "compensatory damages;" and

(3) That § 1201.204(a)(1) be amended to require that a request for damages be raised before an arbitrator as early as possible.

The recommendation numbered (1) above asks the Board to amend its regulation at § 1201.3(c)(1), which deals with the choice of procedure for bargaining unit employees between an appeal to MSPB and a grievance under a negotiated grievance procedure (NGP), to specify the additional choices that may be made between a grievance under a NGP and the statutory procedures of an agency other than MSPB, such as filing an equal employment opportunity (EEO) complaint under the Equal Employment Opportunity Commission's regulations or a complaint alleging a violation of 5 U.S.C. 2302(b)(1) with the Special Counsel. While providing this additional information could be useful, it appears to go beyond the scope of the Board's regulatory authority, which is limited to matters within its jurisdiction (5 U.S.C. 1204(h) and 7701(k), and 38 U.S.C. 4331). It is appropriate for the Board's regulations to advise potential appellants where there is a choice between the Board's appellate procedures and another procedure, such as the NGP. It does not appear appropriate, however, for the Board to address choices to be made between a grievance under a NGP and the statutory procedures of another agency.

The recommendation numbered (2) above asks the Board to amend its regulation at § 1201.201 (c) and (d) to further define the terms, "consequential damages" and "compensatory damages." The Board has determined that such definitions should be made through case-by-case adjudication. It believes that the scope of damage awards should be made in the context of an appeal, where the matter can be fully considered in the light of arguments from the parties.

The recommendation numbered (3) above asks the Board to amend its regulation at § 1201.204(a)(1) to include a requirement that a request for damages be raised before an arbitrator as early as possible. Such an amendment, which would involve the Board imposing a requirement on a proceeding before an arbitrator pursuant to a negotiated grievance procedure, would clearly be beyond the scope of the Board's regulatory authority.

After review of these comments, the Board has determined that none of the revisions recommended by this commenter should be made.

The other commenter recommended that in § 1201.203(b)(2) of the interim rule (now § 1201.202(d)(1) in the final rule), the word "appeal" be changed to "action" to conform to the language of 38 U.S.C. § 4324. The Board notes that in chapter 43 of title 38 (Uniformed Services Employment and Reemployment Rights Act, or USERRA), the terms "action" and "complaint" are both used to describe a matter that may be raised before MSPB. The Board's regulations in part 1201 define "appeal" as "(a) request for review of an agency action" (5 CFR 1201.4(f)), and the

regulations use the term "appeal" in a manner that can be applied to any matter processed under the Board's appellate jurisdiction procedures. Furthermore, in its interim rule implementing other provisions of USERRA (62 FR 66813, December 22, 1997), the Board uses the term "appeal" throughout to describe a matter that can be raised before the Board under USERRA. To maintain consistency in its regulations, therefore, the Board has determined that the revision recommended by this commenter should not be made.

Changes to Subpart H

Following an internal review, the Board has determined that several changes should be made in subpart H of part 1201, as added by the interim rule, to simplify and streamline the procedures for deciding requests for consequential damages or compensatory damages and to clarify certain other provisions. These changes are as follows:

(1) The introductory language of § 1201.202(a), which sets forth various authorities for the Board to award attorney fees and, where applicable, costs, expert witness fees, and litigation expenses, is revised to clarify that the listed authorities do not constitute an exclusive list. As explained in the preamble to the interim rule (62 FR 17041–17042, April 9, 1997), some of the newer authorities overlap earlier authorities. Other authorities may be enacted in new legislation. As a result, appellants in certain kinds of cases may be able to proceed with a request for attorney fees under more than one authority.

(2) Section 1201.202(a)(5) is revised by adding 5 U.S.C. 7701(g)(1) as an authority for the Board to award attorney fees in a Special Counsel complaint for corrective action under 5 U.S.C. 1214. This addition reflects the court ruling in *Frazier* versus *MSPB,* 672 F.2d 150, 168–170 (D.C. Cir. 1982), that 5 U.S.C. 7701(g)(1) permits the Board to award attorney fees in a Special Counsel corrective action. Although Public Law 103–424 added a specific authority for an award of attorney fees in such cases in a new provision at 5 U.S.C. 1214(g)(2), an award could also be made under 5 U.S.C. 7701(g)(1), so both of these authorities are cited in the revised § 1201.202(a)(5).

(3) A new paragraph (d) is added to § 1201.202 to provide definitions of a "proceeding on the merits" and an "addendum proceeding." The definition of a "proceeding on the merits" at § 1201.202(d)(1) is the same as that contained in § 1201.203(b)(2) in the interim rule. The definition of an "addendum proceeding" at § 1201.202(d)(2) is based on language that was in §§ 1201.203(b) (1) and (b)(3) in the interim rule. Because these definitions apply to subpart H as a whole, they are more appropriately placed in § 1201.202 than in the attorney fee provisions of § 1201.203.

(4) With the addition of the definitions at § 1201.202(d), § 1201.203(b) is revised to state simply that a request for attorney fees will be decided in an addendum proceeding.

(5) Section 1201.203(c) is revised to clarify where a motion for attorney fees must be filed. Following the publication of the interim rule, the Board published a change in its part 1201 regulations governing procedures for original jurisdiction cases to allow initial decisions to be issued by a judge in the Board's headquarters (62 FR 48449, September 16, 1997). Section 1201.203(c) is revised by replacing the term "decision" in the first sentence with "initial decision." This clarifies that a motion for attorney fees must be filed with the regional or field office where the initial decision in the merits proceeding was issued. The second sentence is revised to clarify that a motion for attorney fees must be filed with the Clerk of the Board where the initial decision was issued at the Board's headquarters, as well as when the only MSPB decision in the merits proceeding is a final decision of the Board.

(6) Section 1201.203(d) in the interim rule is divided into two sections, 1201.203(d), "Time of filing," and 1201.203(e), "Service." Accordingly, § 1201.203 (e) and (f) in the interim rule are redesignated § 1201.203 (f) and (g), respectively. In addition, "Initial decision" is added to the heading of the redesignated § 1201.203(g).

(7) Section 1201.204(a)(1) is revised to conform the time limit for making a request for consequential damages or compensatory damages to the time limit established by § 1201.24(b) for raising a claim or defense not included in the appeal. The time limit may be waived for good cause shown. Under the interim rule, a claim for damages could have been made as late as the time the first pleading with the 3-member Board was filed.

(8) A new provision, "Form and content of request," is added as § 1201.204(b). This provision, which parallels the "Form and content of request" provision for a request for attorney fees at § 1201.203(a), establishes that a request for damages must include both the amount of damages sought and the reasons why, under the applicable statutory standard, an award of damages should be made. Section 1201.204(b) in the interim rule is redesignated § 1201.204(c).

(9) Sections 1201.204(d) and (e) in the final rule replace sections §§ 1201.204(c) through (e) in the interim rule. The new provisions, which parallel the provisions for deciding a request for attorney fees in section § 1201.203 to the extent possible, are intended to provide a more uniform and streamlined procedure for deciding a request for consequential damages or compensatory damages. Section 1201.204(d) provides that a request for damages will be decided in an addendum proceeding. A judge, however, may waive this requirement and consider a request for damages in a merits proceeding where such action is in the interest of the parties and will promote economy and efficiency in adjudication. Section 1201.204(e) prescribes the procedures for initiation of an addendum proceeding on a request for damages after there is a final decision in the merits proceeding. The time limit for filing, place of filing, service, and response requirements are the same as for a request for attorney fees under § 1201.203. A conforming change is made to § 1201.111, as amended by the interim rule.

(10) Section 1201.204(g) is revised by adding "Initial decision" to the heading; by revising the text to state that the judge will issue an initial decision in the addendum proceeding, which shall be subject to a petition for review by the Board; and by removing the language regarding a recommended decision issued by an administrative law judge (§ 1201.204(g)(2) in the interim rule). Under the Board's revised procedures for original jurisdiction cases (62 FR 48449, September 16, 1997), a recommended decision will be issued only in certain Hatch Act cases involving Federal or District of Columbia government employees. Because neither consequential damages nor compensatory damages are available in such cases, there is no longer a need for the language regarding recommended decisions.

(11) Section 1201.204(h) is a new provision that prescribes procedures for consideration of a request for consequential damages or compensatory damages in the first instance by the 3-member Board. Such consideration would occur where a request is first made on petition for review of a judge's initial decision on the merits and the Board waives the time limit for making the request, or where a request is made in a case where the only MSPB proceeding is before the 3-member

Board, as in a request to review an arbitration decision under 5 U.S.C. 7121(d). In such situations, the regulation provides that the Board may: (1) Consider both the merits of the case and the request for damages and issue a final decision; (2) remand the case to the judge for a new initial decision, either on the request for damages only or on both the merits and the request for damages; or (3) where there has been no prior proceeding before a judge, forward the request for damages to a judge for hearing and a recommendation to the Board, after which the Board will issue a final decision on both the merits and the request for damages.

(12) Section 1201.204(h) in the interim rule is redesignated § 1201.204(i).

For the convenience of its customers, the Board is republishing subpart H in its entirety.

Technical Changes

The following changes of a technical nature are also made in this final rule:

(1) The amendments to sections §§ 1201.121 and 1201.131 made by the interim rule were subsequently superseded by amendments made by interim rules issued on September 16, 1997 (62 FR 48449), and December 22, 1997 (62 FR 66813). Therefore, the amendments made to sections §§ 1201.121 and 1201.131 by the interim rule are not adopted in this final rule.

(2) The interim rule made technical amendments to § 1201.163. The Board has since determined that this provision, governing mixed cases that were filed under Reorganization Plan No. 1 of 1978, is obsolete, because all such cases have been completed. Therefore, in lieu of the technical amendments made by the interim rule, § 1201.163 is removed in its entirety.

(3) As a result of the renumbering of § 1201.119 as § 1201.120 by an earlier amendment to the Board's regulations (59 FR 30863, June 16, 1994), three citations to this provision in the Board's regulations have been rendered incorrect. Therefore, the Board is amending §§ 1210.157, 1201.183(a)(4), and 1201.183(b)(3) to change "1201.119" to read "1201.120."

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

Accordingly, the Board adopts as final its interim rule published at 62 FR 17041, April 9, 1997, with the following changes:

1. Section 1201.111(b)(6), as amended by the interim rule, is revised to read as follows:

§ 1201.111 [Amended]

* * * * *

(b) * * *

(6) A statement of any further process available, including, as appropriate, a petition for review under § 1201.114 of this part, a petition for enforcement under § 1201.182, a motion for attorney fees under § 1201.203, a motion to initiate an addendum proceeding for consequential damages or compensatory damages under § 1201.204, and a petition for judicial review.

* * * * *

2. The amendments made to §§ 1201.121(b) and 1201.131 by the interim rule are not adopted. Those sections continue to read as revised by 62 FR 48449, September 16, 1997, and further amended by 62 FR 66813, December 22, 1997.

§ 1201.157 [Amended]

3. Section 1201.157 is amended by removing "§ 1201.119" and by adding in its place "§ 1201.120."

§ 1201.163 [Removed]

4. In lieu of the amendments made by the interim rule, section 1201.163 is removed.

§ 1201.183 [Amended]

5. Section 1201.183 is amended at paragraphs (a)(4) and (b)(3) by removing "§ 1201.119" in each paragraph and by adding in its place "§ 1201.120."

6. Subpart H, as added by the interim rule, is revised to read as follows:

Subpart H—Attorney Fees (Plus Costs, Expert Witness Fees, and Litigation Expenses, Where Applicable), Consequential Damages, and Compensatory Damages

Sec.

Subpart H—Attorney Fees (Plus Costs, Expert Witness Fees, and Litigation Expenses, Where Applicable), Consequential Damages, and Compensatory Damages

§ 1201.201 Statement of purpose.

(a) This subpart governs Board proceedings for awards of attorney fees (plus costs, expert witness fees, and litigation expenses, where applicable), consequential damages, and compensatory damages.

(b) There are seven statutory provisions covering attorney fee awards. Because most MSPB cases are appeals under 5 U.S.C. 7701, most requests for attorney fees will be governed by § 1201.202(a)(1). There are, however, other attorney fee provisions that apply only to specific kinds of cases. For example, § 1201.202(a)(4) applies only to certain whistleblower appeals. Sections 1201.202(a)(5) and (a)(6) apply only to corrective and disciplinary action cases brought by the Special Counsel. Section 1201.202(a)(7) applies only to appeals brought under the Uniformed Services Employment and Reemployment Rights Act.

(c) An award of consequential damages is authorized in only two situations: Where the Board orders corrective action in a whistleblower appeal under 5 U.S.C. 1221, and where the Board orders corrective action in a Special Counsel complaint under 5 U.S.C. 1214. Consequential damages include such items as medical costs and travel expenses, and other costs as determined by the Board through case law.

(d) The Civil Rights Act of 1991 (42 U.S.C. 1981a) authorizes an award of compensatory damages to a prevailing party who is found to have been intentionally discriminated against based on race, color, religion, sex, national origin, or disability. Compensatory damages include pecuniary losses, future pecuniary losses, and nonpecuniary losses, such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

§ 1201.202 Authority for awards.

(a) *Awards of attorney fees (plus costs, expert witness fees, and litigation expenses, where applicable).* The Board is authorized by various statutes to order payment of attorney fees and, where applicable, costs, expert witness fees, and litigation expenses. These statutory authorities include, but are not limited to, the following authorities to order payment of:

(1) Attorney fees, as authorized by 5 U.S.C. 7701(g)(1), where the appellant or respondent is the prevailing party in an appeal under 5 U.S.C. 7701 or an agency action against an administrative law judge under 5 U.S.C. 7521, and an award is warranted in the interest of justice;

(2) Attorney fees, as authorized by 5 U.S.C. 7701(g)(2), where the appellant or respondent is the prevailing party in an appeal under 5 U.S.C. 7701, a request to review an arbitration decision under 5 U.S.C. 7121(d), or an agency action against an administrative law judge under 5 U.S.C. 7521, and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1);

(3) Attorney fees and costs, as authorized by 5 U.S.C. 1221(g)(2), where the appellant is the prevailing party in an appeal under 5 U.S.C. 7701 and the

Board's decision is based on a finding of a prohibited personnel practice;

(4) Attorney fees and costs, as authorized by 5 U.S.C. 1221(g)(1)(B), where the Board orders corrective action in a whistleblower appeal to which 5 U.S.C. 1221 applies;

(5) Attorney fees, as authorized by 5 U.S.C. 1214(g)(2) or 5 U.S.C. 7701(g)(1), where the Board orders corrective action in a Special Counsel complaint under 5 U.S.C. 1214;

(6) Attorney fees, as authorized by 5 U.S.C. 1204(m), where the respondent is the prevailing party in a Special Counsel complaint for disciplinary action under 5 U.S.C. 1215; and

(7) Attorney fees, expert witness fees, and litigation expenses, as authorized by the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4324(c)(4).

(b) *Awards of consequential damages.* The Board may order payment of consequential damages, including medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages:

(1) As authorized by 5 U.S.C. 1221(g)(1)(A)(ii), where the Board orders corrective action in a whistleblower appeal to which 5 U.S.C. 1221 applies; and

(2) As authorized by 5 U.S.C. 1214(g)(2), where the Board orders corrective action in a Special Counsel complaint under 5 U.S.C. 1214.

(c) *Awards of compensatory damages.* The Board may order payment of compensatory damages, as authorized by section 102 of the Civil Rights Act of 1991 (42 U.S.C. 1981a), based on a finding of unlawful intentional discrimination but not on an employment practice that is unlawful because of its disparate impact under the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990. Compensatory damages include pecuniary losses, future pecuniary losses, and nonpecuniary losses such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

(d) *Definitions.* For purposes of this subpart:

(1) A *proceeding on the merits* is a proceeding to decide an appeal of an agency action under 5 U.S.C. section 1221 or 7701, an appeal under 38 U.S.C. 4324, a request to review an arbitration decision under 5 U.S.C. 7121(d), a Special Counsel complaint under 5 U.S.C. section 1214 or 1215, or an agency action against an administrative law judge under 5 U.S.C. 7521.

(2) An *addendum proceeding* is a proceeding conducted after issuance of a final decision in a proceeding on the merits, including a decision accepting the parties' settlement of the case. The final decision in the proceeding on the merits may be an initial decision of a judge that has become final under § 1201.113 of this part or a final decision of the Board.

§ 1201.203 Proceedings for attorney fees.

(a) *Form and content of request.* A request for attorney fees must be made by motion, must state why the appellant or respondent believes he or she is entitled to an award under the applicable statutory standard, and must be supported by evidence substantiating the amount of the request. Evidence supporting a motion for attorney fees must include at a minimum:

(1) Accurate and current time records;

(2) A copy of the terms of the fee agreement (if any);

(3) A statement of the attorney's customary billing rate for similar work if the attorney has a billing practice or, in the absence of that practice, other evidence of the prevailing community rate that will establish a market value for the attorney's services; and

(4) An established attorney-client relationship.

(b) *Addendum proceeding.* A request for attorney fees will be decided in an addendum proceeding.

(c) *Place of filing.* Where the initial decision in the proceeding on the merits was issued by a judge in a MSPB regional or field office, a motion for attorney fees must be filed with the regional or field office that issued the initial decision. Where the decision in the proceeding on the merits was an initial decision issued by a judge at the Board's headquarters or where the only decision was a final decision issued by the Board, a motion for attorney fees must be filed with the Clerk of the Board.

(d) *Time of filing.* A motion for attorney fees must be filed as soon as possible after a final decision of the Board but no later than 60 days after the date on which a decision becomes final.

(e) *Service.* A copy of a motion for attorney fees must be served on the other parties or their representatives at the time of filing. A party may file a pleading responding to the motion within the time limit established by the judge.

(f) *Hearing; applicability of subpart B.* The judge may hold a hearing on a motion for attorney fees and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(g) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, which shall be subject to the provisions for a petition for review by the Board under subpart C of this part.

§ 1201.204 Proceedings for consequential damages and compensatory damages.

(a) *Time for making request.* (1) A request for consequential damages or compensatory damages must be made during the proceeding on the merits, no later than the end of the conference(s) held to define the issues in the case.

(2) The judge or the Board, as applicable, may waive the time limit for making a request for consequential damages or compensatory damages for good cause shown. The time limit will not be waived if a party shows that such waiver would result in undue prejudice.

(b) *Form and content of request.* A request for consequential damages or compensatory damages must be made in writing and must state the amount of damages sought and the reasons why the appellant or respondent believes he or she is entitled to an award under the applicable statutory standard.

(c) *Service.* A copy of a request for consequential damages or compensatory damages must be served on the other parties or their representatives when the request is made.

A party may file a pleading responding to the request within the time limit established by the judge or the Board, as applicable.

(d) *Addendum proceeding.* (1) A request for consequential damages or compensatory damages will be decided in an addendum proceeding.

(2) A judge may waive the requirement of paragraph (d)(1), either on his or her own motion or on the motion of a party, and consider a request for damages in a proceeding on the merits where the judge determines that such action is in the interest of the parties and will promote efficiency and economy in adjudication.

(e) *Initiation of addendum proceeding.* (1) A motion for initiation of an addendum proceeding to decide a request for consequential damages or compensatory damages must be filed as soon as possible after a final decision of the Board but no later than 60 days after the date on which a decision becomes final. Where the initial decision in the proceeding on the merits was issued by a judge in a MSPB regional or field office, the motion must be filed with the regional or field office that issued the initial decision. Where the decision in the proceeding on the merits was an initial decision issued by a judge at the Board's headquarters or where the only decision was a final decision issued by the Board, the motion must be filed with the Clerk of the Board.

(2) A copy of a motion for initiation of an addendum proceeding to decide a request for consequential damages or compensatory damages must be served on the other parties or their representatives at the time of filing. A party may file a pleading responding to the motion within the time limit established by the judge.

(f) *Hearing; applicability of subpart B.* The judge may hold a hearing on a request for consequential damages or compensatory damages and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(g) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, which shall be subject to the provisions for a petition for review by the Board under subpart C of this part.

(h) *Request for damages first made in proceeding before the Board.* Where a request for consequential damages or compensatory damages is first made on petition for review of a judge's initial decision on the merits and the Board waives the time limit for making the request in accordance with paragraph (a)(2) of this section, or where the request is made in a case where the only MSPB proceeding is before the 3-member Board, including, for compensatory damages only, a request to review an arbitration decision under 5 U.S.C. 7121(d), the Board may:

(1) Consider both the merits and the request for damages and issue a final decision;

(2) Remand the case to the judge for a new initial decision, either on the request for damages only or on both the merits and the request for damages; or

(3) Where there has been no prior proceeding before a judge, forward the request for damages to a judge for hearing and a recommendation to the Board, after which the Board will issue a final decision on both the merits and the request for damages.

(i) *EEOC review of decision on compensatory damages.* A final decision of the Board on a request for compensatory damages pursuant to the Civil Rights Act of 1991 shall be subject to review by the Equal Employment Opportunity Commission as provided under subpart E of this part.

§ 1201.205 Judicial review.

A final Board decision under this subpart is subject to judicial review as provided under 5 U.S.C. 7703.

Dated: July 28, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–20447 Filed 7–31–98; 8:45 am]

BILLING CODE 7400–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure for whistleblower appeals to implement the provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994) that: Added a new personnel action and amended another in the statutory provisions governing prohibited personnel practices; and added a requirement that the Board refer its findings to the Special Counsel when it determines in a whistleblower proceeding that a current Federal employee may have committed a prohibited personnel practice. The Board is also amending its rules of practice and procedure for whistleblower appeals to include a cross-reference to subpart H of part 1201 regarding awards of attorney fees and consequential damages. The purpose of these amendments is to provide guidance to the parties to MSPB cases and their representatives regarding the new and amended personnel actions, to refer parties and their representatives to subpart H of part 1201 for the procedures governing requests for attorney fees and consequential damages, and to provide public notice of the requirement that the Board refer certain prohibited personnel practice findings to the Special Counsel. The Board is implementing other provisions of Public Law 103–424 through an amendment to its rules at 5 CFR part 1201, which is being published simultaneously with this amendment.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board previously published an interim rule to: Implement the provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994) that added a new personnel action and amended another in the statutory provisions governing prohibited personnel practices and added a requirement that the Board refer its findings to the Special Counsel when it determines in a whistleblower proceeding that a current Federal employee may have committed a prohibited personnel practice, and to include a cross-reference to subpart H of part 1201 regarding awards of attorney fees and consequential damages (62 FR 17047, April 9, 1997). The interim rule requested public comments and allowed 60 days, until June 9, 1997, for receipt of such comments.

Comments were received from one Federal agency suggesting that the Board amend part 1209 to impose a time limit for bringing an action to the Special Counsel as a pre-condition for later bringing an individual right of action (IRA) appeal to the Board. Although the recommendation does not address any of the changes made by the interim rule, the Board will address it.

The Board has concluded that imposing such a time limit would not be a proper exercise of its regulatory authority. That authority is limited to matters within the Board's jurisdiction (5 U.S.C. 1204(h) and 7701(k), and 38 U.S.C. 4331).

Under 5 U.S.C. 7121(g)(2), an employee who has been affected by a prohibited personnel practice (other than discrimination) may elect among three specified remedies: (1) An appeal to MSPB under 5 U.S.C. 7701, (2) a grievance under a negotiated grievance procedure, or (3) an action under subchapters II and III of chapter 12 of title 5. Subchapter II concerns Special Counsel actions (which may lead to corrective action complaints before the Board), and subchapter III covers IRA appeals. Because the conjunctive is used with regard to the Special Counsel and IRA processes, it appears that Congress intended, without limits other than those specified, to allow complainants to go to the Special Counsel and bring IRA appeals to the Board on the same matter. By limiting the matters that can be brought to the Board under subchapter III to only "timely-raised" matters brought to OSC under subchapter II, as suggested by the commenter, the Board would be adding a limitation to the IRA appeal choice that is not contained in the statute.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

Accordingly, the Board adopts as a final rule, without change, its interim rule published at 62 FR 17047, April 9, 1997.

Dated: July 27, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–20448 Filed 7–31–98; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV98–997–1 IFR and FV98–998–1 IFR]

Domestically Produced Peanuts; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the administrative assessment rate established for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (Agreement) for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton of assessable peanuts. The Committee is responsible for local administration of the Agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the Agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Act). The Act also requires the Department of Agriculture (Department) to impose the same administrative assessment rate on assessable peanuts received or acquired by handlers who have not signed the Agreement. The 1998–1999 crop year covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 4, 1998. Comments received by October 2, 1998, 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax (202) 205–6632. Comments should reference the docket numbers and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, also at the above address, telephone, and fax number.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereafter referred to as the "Act", under Marketing Agreement No. 146 (7 CFR part 998), and under the Peanut Non-Signer Program (7 CFR part 997). The marketing agreement and non-signer program, and the regulations issued thereunder regulate the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers stock peanuts received or acquired by non-signatory handlers and farmers stock peanuts received or acquired by handlers signatory to the Agreement, other than from those described in § 998.31(c) and (d), are subject to the same assessment rate. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1998, and continue in effect until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule decreases the assessment rate established for the Committee and non-signer handlers for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton of assessable peanuts.

The Agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the Agreement program are paid to the Committee and are derived from signatory handler assessments. The Committee members include nine handlers and nine producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have voluntarily signed the Agreement authorizing the expenses that may be incurred and the imposition of assessments.

For the 1996–97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 27, 1998, and unanimously recommended for 1998–99 a reduction in the administrative assessment rate from $0.35 to $0.33 per net ton of assessable peanuts, and administrative expenditures of $495,000. In comparison, last year's budgeted administrative expenditures were $525,000. The assessment rate of $0.33 is $0.02 less than the rate currently in effect.

Major expenditures recommended by the Committee for the 1998–99 crop year compared with those budgeted for 1997–98 (in parentheses) include: $58,000 for executive salaries ($55,000), $43,500 for clerical salaries ($50,000), $129,000 for compliance officers salaries ($125,000), $19,000 for payroll taxes ($18,000), $70,000 for employee benefits, ($65,000), $40,000 for committee members travel ($40,000), $55,000 for compliance officers travel ($60,000), $13,000 for office rent ($19,000), and $10,400 for the audit fee ($10,400).

The Committee discussed alternatives to this rule, including alternative expenditure levels but decided that each of the budgeted expenses was reasonable and appropriate. It also discussed the alternative of not decreasing the assessment rate but decided it needed to decrease the rate to reduce handlers' costs as much as possible. The Committee also discussed an even lower rate, but decided that an assessment rate of less than $0.33 would not generate the income necessary to administer the program.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers stock peanuts. Farmers stock peanuts received or acquired by handlers signatory to the Agreement, other than those peanuts described in § 998.31(c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers stock peanuts are received or acquired by signatory handlers.

Peanut receipts and acquisitions for the year under the Agreement are estimated at 1,500,000 tons, which should provide $495,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is handled by handlers who signed the Agreement. The remaining 5 percent is handled by non-signer handlers.

The Act provides for mandatory assessment of farmers stock peanuts acquired by non-signatory peanut handlers. Section 608b of the Act specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement with signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary. Thus, the assessment rate of $0.33 per net ton of assessable peanuts also applies to non-signatory handlers of domestic peanuts.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate for signatory handlers. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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. There are approximately 80 peanut handlers who are subject to regulation under the Agreement or the non-signer program and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, are 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 having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signer handlers, and most of the producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and to be collected from handlers for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton. The rate is $0.02 less than the 1997–98 rate.

The Committee discussed alternatives to this rule, including alternative expenditure levels but decided that each of the budgeted expenses was reasonable and appropriate. It also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action. The peanut industry has been in a state of economic decline since 1991, with the Committee attempting to cut costs where possible. The Committee's budget for 1998–99 is $495,000, $30,000 less than the amount budgeted for 1997–98. Based on an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1998–99 will be adequate to cover budgeted expenses.

Major expenditures recommended by the Committee for the 1998–99 crop year compared with those budgeted for 1997–98 (in parentheses) include: $58,000 for executive salaries ($55,000), $43,500 for clerical salaries($50,000), $129,000 for compliance officers salaries ($125,000), $19,000 for payroll taxes ($18,000), $70,000 for employee benefits, ($65,000), $40,000 for committee members travel ($40,000), $55,000 for compliance officers travel ($60,000), $13,000 for office rent ($19,000), and $10,400 for the audit fee ($10,400).

The Committee reviewed historical information and preliminary information pertaining to the 1998–99 crop year. The Department reported 1.463 million acres planted in peanuts for the 1998 crop. The Committee projected shipments for the 1998–99 crop year to be 1.5 million net tons. Based on 1997–98 crop figures, the approximately $560,000 in total assessments collected by the Committee as a percentage of the $932,000,000 total peanut crop value was only 0.0006 percent. With a decreased assessment rate, the relationship of total assessment cost as a percentage of total crop value is expected to be even smaller for the 1998–99 crop.

This action decreases the administrative assessment obligation imposed on all domestic peanut handlers, whether signers or non-signers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in deliberations on all issues. Like all Committee meetings, the May 27, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large peanut handlers. As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, 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 action until 30 days after publication in the **Federal Register** because: (1) This action reduces the 1997–98 assessment rate for signer and non-signer handlers; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the Act requires the Department to impose an administrative assessment on assessable peanuts received or acquired for the

account of signatory and non-signatory handlers; (4) the 1998–99 crop year began on July 1, 1998, and the Agreement and the Act require that the rate of assessment for each crop year apply to all assessable peanuts received or acquired during such crop year; (5) signatory handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (6) this interim final rule provides a 60-day comment period, and all written comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR parts 997 and 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 997.101 is revised to read as follows:

§ 997.101 Assessment rate.

On and after July 1, 1998, an administrative assessment rate of $0.33 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

3. Section 998.409 is revised to read as follows:

§ 998.409 Assessment rate.

On and after July 1, 1998, an administrative assessment rate of $0.33 per net ton of farmers stock peanuts received or acquired other than those described in § 998.31(c) and (d) is established for handlers signatory to the Agreement. Assessments are due on the 15th of the month following the month in which the farmers stock peanuts are received or acquired.

Dated: July 28, 1998

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–20641 Filed 7–31–98; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 607

RIN 3052–AB83

Assessment and Apportionment of Administrative Expenses; Technical Change; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a direct final rule with opportunity for comment under part 607 on June 24, 1998 (63 FR 34267) that makes technical amendments to its assessment regulations in order to conform to the recently adopted FCA Board policy statement on its financial institution rating system. The opportunity for comment expired on July 24, 1998. The FCA received no comments and therefore, the final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is August 3, 1998.

EFFECTIVE DATE: The regulation amending 12 CFR part 607 published on June 24, 1998 (63 FR 34267) is effective August 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Andrew D. Jacob, Senior Financial Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Wendy R. Laguarda, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10)).

Dated: July 29, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–20627 Filed 7–31–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–210–AD; Amendment 39–10689; AD 98–16–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires a one-time inspection for missing fasteners of the splice fitting of the forward inner chord of the Body Station (BS) 2598 bulkhead; and corrective actions, if necessary. This amendment is prompted by a report that fasteners were missing from the splice fitting of the forward inner chord. The actions specified in this AD are intended to prevent accelerated fatigue cracking of the inner chords of the BS 2598 bulkhead, which could result in inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the airplane.

DATES: Effective August 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD 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; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that fasteners were missing from the splice fitting of the forward inner chord of the Body Station (BS) 2598 bulkhead on a Boeing Model 747 series airplane. The fasteners missing from the splice fitting resulted in accelerated initiation and propagation of fatigue cracking of both the forward and aft inner chords of the BS 2598 bulkhead. A 0.2-inch crack was found in the forward inner chord, and a 3.0-inch horizontal crack and a 1.0-inch vertical crack were found in the aft inner chord. Such fatigue cracking, if not corrected, could result in inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the airplane.

As a result of the report of missing fasteners, Boeing requested that operators perform inspections on a limited number of delivered airplanes. Sixteen airplanes were inspected, including ten that had been delivered at approximately the same time as the airplane on which cracks were found. The fasteners were found to be installed on all 16 of those airplanes. However, Boeing has not been able to provide justification to limit the inspection for missing fasteners to a specific group of airplanes, so this AD requires an inspection for missing fasteners on all Boeing Model 747 series airplanes that have been delivered.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2423, dated June 11, 1998, which describes procedures for a one-time visual inspection for missing fasteners of the splice fitting of the forward inner chord of the BS 2598 bulkhead; and corrective actions, if any fasteners are missing. The corrective actions include performing a detailed visual inspection and a high frequency eddy current inspection for cracking of the forward and aft inner chords of the BS 2598 bulkhead, on the left and right sides of the airplane; repair, if necessary; and installation of the fasteners.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent accelerated fatigue cracking of the inner chords of the BS 2598 bulkhead, which could result in inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below. This AD also requires that operators report results of inspection findings (findings of missing fasteners only) to the FAA.

Interim Action

This is considered to be interim action. There have been other reports of fatigue cracking of the inner chords of the BS 2598 bulkhead, as well as cracking of repair angles that were installed to correct cracks that were detected previously in the inner chords of the bulkhead. The FAA is currently considering additional rulemaking to further address the unsafe condition of fatigue cracking in the inner chords of the BS 2598 bulkhead. However, the planned compliance time for the corrective actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between This Rule and Alert Service Bulletin

Operators should note that the statement of effectivity in the alert service bulletin does not include the Boeing Model 747 series airplane having line position 1155. That airplane is currently in storage and has not been delivered. Boeing is under contract to accomplish any required inspections prior to delivery of the airplane. Therefore, the applicability statement of this AD includes this airplane.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with Boeing 747 Structural Repair Manual (SRM) 53–10–04, Figure 72; or Boeing 747SP SRM 53–19–02, Figure 41; as applicable; or in accordance with a method approved by the FAA.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM–210-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft,

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

98–16–13 Boeing: Amendment 39–10689. Docket 98–NM–210–AD.

Applicability: Model 747 series airplanes, line positions 1 through 1157; certificated in any category.

Note 1: 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 (c) 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 accelerated fatigue cracking of the inner chords of the Body Station (BS) 2598 bulkhead, which could result in inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the airplane; accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection for missing fasteners of the splice fitting of the forward inner chord of the BS 2598 bulkhead, on the left and right sides of the airplane, in accordance with Boeing Alert Service Bulletin 747–53A2423, dated June 11, 1998.

(1) If all fasteners are present, no further action is required by this AD.

(2) If any fastener is missing, prior to further flight, accomplish a detailed visual inspection and a high frequency eddy current inspection to detect cracking of the forward and aft inner chords of the BS 2598 bulkhead, on the left and right sides of the airplane; in accordance with the alert service bulletin.

(i) If no cracking is detected, prior to further flight, install the fasteners, in accordance with the alert service bulletin.

(ii) If any cracking is detected, prior to further flight, repair the cracking and install the fasteners, in accordance with Boeing 747 Structural Repair Manual (SRM) 53–10–04, Figure 72, or Boeing 747SP SRM 53–19–02, Figure 41; as applicable; or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (findings of missing fasteners only) to the Manager, Seattle Manufacturing Inspection District Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, suite C–2, Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) 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 ACO. 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.

(d) 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.

(e) Except as provided by paragraph (a)(2)(ii) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2423, dated June 11, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1998.

Issued in Renton, Washington, on July 27, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20679 Filed 7–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980331081–8171–02]

RIN 0607–AA22

Foreign Trade Statistics Regulations; Reporting the Value of Foreign Military Sales Shipments

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) by adding a section requiring exporters or their designated agents to include a foreign military sales indicator code on the Shipper's Export Declaration (SED) Form, Automated Export System (AES) Record Layout, and Automated Export Reporting Program (AERP) Record Layout. This will apply whenever a commercial exporter is shipping goods or reporting the repair of military equipment under provisions of the Foreign Military Sales (FMS) program. The Census Bureau is taking this action to assist the Bureau of Economic Analysis (BEA), Department of Commerce, in improving the accuracy and reliability of data collected on the value of exports made under the FMS program. Exports under the FMS program are a component of the U.S. balance of payments accounts and of the U.S. Gross Domestic Product (GDP). The Census Bureau is also taking this action to assist both the Census Bureau and BEA in improving the accuracy and reliability of estimates presented in the Department of Commerce's monthly release "U.S. International Trade in Goods and Services." The BEA has reviewed and approved this proposed rulemaking. The Department of Treasury concurs with the provisions contained in this final rule.

DATES: *Effective:* September 1, 1998. *Compliance date:* Electronic filers will have until November 1, 1998, to implement program changes to meet this requirement.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, by telephone on (301) 457–2255 or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION:

Background

The FMS program is authorized under the provisions of the Arms Export Control Act of 1976 (Pub. L. 90–629, as amended) and predecessor legislation. Under this program, goods and services are transferred directly to foreign governments and international organizations by the U.S. Department of Defense (DOD). The delivery is recorded by the DOD at the time ownership is transferred to the foreign government or international organization. This recording is consistent with balance of payments accounting principles. The transfer may be made abroad, in the United States for shipment abroad, or for use in the United States. In the latter case, although the goods physically remain in the United States (for example, equipment to train foreign personnel), ownership is transferred to a foreign government. Transfers also may be made from stocks at U.S. military installations abroad. The SEDs are not required for FMS transactions by DOD agencies; SEDs are required by commercial exporters, but these SEDs do not separately identify FMS transactions.

Program Requirements

The DOD submits quarterly reports to the BEA under provisions of the Office of Management and Budget's (OMB) Statistical Policy Directive No. 19, "Reports of the Department of Commerce on International Transactions." These reports contain details of FMS deliveries by broad product category, by country of destination, and by military agency (Army, Navy, Air Force, and other DOD agencies). The reports include deliveries carried out by both DOD and commercial exporters. The BEA prepares estimates of FMS deliveries based on these reports for the quarterly balance of payments accounts.

The DOD also submits monthly reports to the Census Bureau that contain detailed statistics on military assistance (Foreign Aid/Grant Aid) shipments made from the United States by the DOD and shipments made under the FMS program by the military agencies. These monthly reports are furnished to the Census Bureau in lieu of the SED in order to facilitate shipments of material under Grant Aid and FMS auspices. However, these reports do not cover FMS deliveries by commercial exporters, which comprise a significant share of FMS deliveries.

In order to reconcile the two sets of data provided by DOD, the Census Bureau is adding an FMS indicator code to the SEDs and the electronic transmissions required from commercial exporters. The addition of this indicator code will assure more accurate identification of FMS transactions in the goods data reported to the Census Bureau and will enable the BEA to make a more accurate estimate of this class of FMS transactions when it removes them from the goods data to avoid counting these transactions twice when it compiles the balance of payments accounts. An FMS indicator code on the SEDs and electronic transmissions from commercial exporters will permit the BEA and the Census Bureau to improve the accuracy and reliability of its balance of payments and GDP estimates, as well as the estimates published in the "U.S. International Trade in Goods and Services" release.

The Census Bureau is amending Section 30.7(p) of the FTSR to add paragraph (5) requiring commercial exporters to identify those exports that represent FMS deliveries with an "M" indicator code in Item (16) on Commerce Form 7525–V and in Item (23) on Commerce Form 7525–V–ALT (Intermodal) on the paper SEDs, with an "FS" Export Information Code on the Commodity Line Item Description (CL1) record on the AES record layout, and with a "3" indicator code in field 2 (Type) of the AERP record layout for participants of the AERP.

Response to Comments

The Census Bureau published a Notice of Proposed Rulemaking and Request for Comments in the **Federal Register** (63 FR 18344) on April 15, 1998. The Bureau of the Census received three letters commenting on the proposed rule. All of the comments received have been addressed and resolved by the Census Bureau. As a result of the comments, one revision was made to the final rule to clarify that the indicator code also applies to FMS shipments financed under the Foreign Military Finance (FMF) Program.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule covers collections of information subject to the provisions of the PRA, which are cleared by the OMB under OMB control number 0607–0152.

This rule will not impact the current response burden requirements as approved under OMB control number 0607–0152 under provisions of the PRA of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 CFR 42765.

Subpart A—General Requirements—Exporter

2. Section 30.7 is amended by adding paragraph (p)(5) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

* * * * *

(p) * * *

(5) *Foreign Military Sales (FMS) indicator.* For any export that represents the delivery of goods or the repair of military equipment under provisions of the FMS program (including those financed under the Foreign Military Finance (FMF) Program), an "M" indicator code should be included in Item (16) on Commerce Form 7525–V and in Item (23) on Commerce Form 7525–V–ALT (Intermodal) of the paper SED, with an "FS" Export Information Code on the Commodity Line Item Description (CL1) field of the Automated Export System (AES) record layout, and a "3" indicator code in field

2 (Type) of the Automated Export Reporting Program (AERP) record layout. This indicator code should be used in lieu of the domestic (D) or foreign (F) indicator code required in those fields on the SED Form, the AES record, and the AERP record. The FMS indicator code will serve to identify more accurately that segment of U.S. exports that represent FMS deliveries in the U.S. export statistics.

* * * * *

Dated: July 16, 1998.

Bradford R. Huther,

Deputy Director, Bureau of the Census.

[FR Doc. 98–20616 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for an approved new animal drug application (NADA) from Ohmeda Pharmaceutical Products Division, Inc., to Baxter Pharmaceutical Products, Inc.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Ohmeda Pharmaceutical Products Division, Inc., Liberty Corner, NJ 07938–0804, has informed FDA that it has transferred the ownership of, and all rights and interests in, approved NADA 135–773 (isoflurane) to Baxter Pharmaceutical Products, Inc., 110 Allen Rd., P.O. Box 804, Liberty Corner, NJ 07938. The new sponsor will retain the drug labeler code for Ohmeda, Pharmaceutical Products, Inc. The agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the new sponsor name.

List of Subject in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

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 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Ohmeda Pharmaceutical Products Division, Inc.," and by alphabetically adding an entry for "Baxter Pharmaceutical Products, Inc., 110 Allen Rd., Liberty Corner, NJ 07938"; and in the table in paragraph (c)(2) in the entry for "010019" by removing the sponsor name "Ohmeda Pharmaceutical Products Division, Inc.," and adding in its place "Baxter Pharmaceutical Products, Inc., 110 Allen Rd.,".

Dated: July 10, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–20531 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor name from Rhone-Poulenc Chemicals, Ltd., to Rhodia Limited.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrews Rd., Avonmouth, Bristol BS119YF, England, UK, has informed FDA of a change of sponsor name to Rhodia, Limited. Accordingly, the agency is amending 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

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 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Rhone-Poulenc Chemicals, Ltd.," and by alphabetically adding an entry for "Rhodia Limited"; and in the table in paragraph (c)(2) in the entry for "059258" by removing the sponsor name for "Rhone-Poulenc Chemicals, Ltd.," and adding in its place "Rhodia Limited".

Dated: July 10, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug EvaluationCenter for Veterinary Medicine.

[FR Doc. 98–20532 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Milbemycin Oxime Tablets

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 Novartis Animal Health US, Inc. The supplemental NADA provides for use of a lower dose of milbemycin oxime in treating dogs and puppies for the prevention of heartworm disease.

EFFECTIVE DATE: AUGUST 3, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, filed supplemental NADA 140–915 that provides for veterinary prescription use of 2.3- and 5.75-milligram (mg) SAFEHEART™ (milbemycin oxime) tablets in dogs and puppies 4 weeks of age or older and 2 pounds (lb) body weight or greater for the prevention of heartworm disease caused by *Dirofilaria immitis* at a minimum dosage of 0.1 mg milbemycin oxime/kilogram (kg) of body weight (0.05 mg/lb). The supplement is approved as of June 4, 1998. FDA is amending the regulations in 21 CFR 520.1445(c) and (d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this supplemental approval for non-food producing animals qualifies for 3 years of marketing exclusivity beginning June 4, 1998, because the supplemental application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for the approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use of milbemycin oxime tablets at 0.1 mg/kg for prevention of canine heartworm disease.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

2. Section 520.1445 is amended by removing and reserving paragraph (c) and by revising paragraph (d) to read as follows:

§ 520.1445 Milbemycin oxime tablets.

* * * * *

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs and puppies*—(i) *Amount.* For hookworm, roundworm, and whipworm, use 0.23 milligram per pound of body weight (0.5 milligram per kilogram). For heartworm, use 0.05 milligram per pound of body weight (0.1 milligram per kilogram).

(ii) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis*, control of hookworm infections caused by *Ancylostoma caninum*, and removal and control of adult roundworm infections caused by *Toxocara canis* and *Toxascaris leonina* and whipworm infections caused by *Trichuris vulpis* in dogs and in puppies 4 weeks of age or greater and 2 pounds of body weight or greater.

(iii) *Limitations.* Do not use in puppies less than 4 weeks of age and less than 2 pounds of body weight. Administer once a month. First dose given within 1 month after first exposure to mosquitoes and continue regular use until at least 1 month after end of mosquito season. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats and kittens*—(i) *Amount.* 0.91 milligram per pound of body weight (2.0 milligrams per kilogram).

(ii) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis* and the removal of adult *Toxocara cati* (roundworm) and *Ancylostoma tubaeforme* (hookworm) infections in cats 6 weeks of age or greater and 1.5 pounds body weight or greater.

(iii) *Limitations.* Do not use in kittens less than 6 weeks of age or 1.5 pounds body weight. Administer once a month. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 10, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–20533 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Milbemycin Oxime/Lufenuron Tablets

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 Novartis Animal Health US, Inc. The supplemental NADA provides for use of a milbemycin oxime/lufenuron flavored tablet formulation for dogs not less than 4 weeks of age and not less than 11 pounds of body weight for prevention of heartworm disease, for prevention and control of flea populations, for control of hookworm, and for removal and control of roundworms and whipworms.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, filed supplemental NADA 141–084 that provides for veterinary prescription use of Sentinel™ (milbemycin oxime/lufenuron) flavor tablets (5.75 and 115 milligrams (mg), 11.5 and 230 mg, and 23 and 460 mg) for dogs not less than 4 weeks of age and not less than 11 pounds of body weight. The tablets are used for the prevention of heartworm disease, for prevention and control of flea populations, for control of adult hookworm, and removal and control of adult roundworm and whipworm infections when used at a minimum dosage of 0.5 milligram/kilogram of body weight (mg/kg) milbemycin with a minimum of 10 mg/kg lufenuron. The supplement is approved as of June 17, 1998. To reflect the approval, FDA is redesignating 21 CFR 520.1446(c) as paragraph (d), reserving paragraph (c), and revising newly redesignated paragraph (d). The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen

in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this supplemental approval for non-food producing animals qualifies for 3 years of marketing exclusivity for the new formulation beginning June 17, 1998, because the supplemental application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for the approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use of the new milbemycin oxime/lufenuron flavored tablets in three tablet sizes.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

2. Section 520.1446 is amended by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraph (d), to read as follows:

§ 520.1446 Milbemycin oxime/lufenuron tablets.

* * * * *

(c) [Reserved]

(d) *Conditions of use*— (1) *Dogs*— (i) *Amount.* 0.5 milligrams of milbemycin and 10 milligrams of lufenuron per kilogram of body weight.

(ii) *Indications for use.* For use in dogs and puppies for the prevention of heartworm disease caused by *Dirofilaria immitis*, for prevention and control of flea populations, control of adult *Ancylostoma caninum* (hookworm), and removal and control of adult *Toxocara canis*, *Toxascaris leonina* (roundworm), and *Trichuris vulpis* (whipworm) infections. Lufenuron controls flea populations by preventing the development of flea eggs and does not kill adult fleas. Concurrent use of insecticides may be necessary for adequate control of adult fleas.

(iii) *Limitations.* Administer tablets once a month, preferably on the same date each time. All dogs in a household should be treated to achieve maximum efficacy. Do not use in dogs less than 4 weeks of age and less than 2 pounds body weight. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: July 14, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–20597 Filed 7–31–98 ; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Florfenicol Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health. The supplemental NADA provides for the subcutaneous use of florfenicol injectable solution in cattle for treatment of bovine respiratory disease, a new dosage, an additional slaughter withdrawal time, and an additional tolerance for residues in food.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1652.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083–1982, is sponsor of NADA 141–063 that provides for veterinary prescription use of Nuflor® Injectable Solution (florfenicol) for intramuscular treatment of cattle for bovine respiratory disease at 20 milligrams per kilogram of body weight, with a second dose after 48 hours, and a 28-day slaughter withdrawal time. Schering-Plough filed a supplemental NADA providing for a single subcutaneous injection at 40 milligrams per kilogram of body weight, and a 38-day slaughter withdrawal time. The supplemental NADA is approved as of June 4, 1998, and the regulations are amended by revising 21 CFR 522.955(d)(1)(i) and (d)(1)(iii) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulation concerning tolerances for residues of florfenicol in food (21 CFR 556.283) is amended to reflect an acceptable daily intake (ADI) of residues of the drug in food and a tolerance for residues in cattle muscle. The ADI is the amount of total drug residue that can be safely consumed daily for a lifetime. Previously, FDA had codified safe concentrations of animal drugs, the ADI corrected for consumption of various food products. Few individuals understood the relationship between safe concentrations, a value representing total drug residues, and tolerance, the part of the drug residue in a given tissue that is detected by an analytical method. To avoid confusion between the tolerance and safe concentration, FDA is codifying ADI's and removing safe concentrations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning June 4, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant. Three years marketing exclusivity is limited to subcutaneous use of the drug in cattle as approved in this supplement.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 522
Animal drugs.
21 CFR Part 556
Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.955 is amended by revising paragraph (d)(1)(i) and the first four sentences of paragraph (d)(1)(iii) to read as follows:

§ 522.955 Florfenicol solution.

* * * * *

(d) * * *

(1) * * *

(i) *Amount.* For intramuscular injection use 20 milligrams per kilogram of body weight (3 milliliters per 100 pounds). A second dose should be given 48 hours later. Alternatively, a single subcutaneous injection of 40 milligrams per kilogram of body weight (6 milliliters per 100 pounds) may be used.

* * * * *

(iii) *Limitations.* For intramuscular or subcutaneous use only. Do not inject more than 10 milliliters at each site. Injection should be given in the neck only. Do not slaughter within 28 days of last intramuscular treatment or within 38 days of subcutaneous treatment.

* * *

* * * * *

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

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

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.283 is revised to read as follows:

§ 556.283 Florfenicol.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of florfenicol is 10 micrograms per kilogram of body weight per day.

(b) *Cattle.* A tolerance of 3.7 parts per million (ppm) for florfenicol amine (marker residue) in liver (target tissue) is established. A tolerance of 0.3 ppm for florfenicol amine in cattle muscle is established.

Dated: July 10, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–20534 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Melengestrol Acetate and Oxytetracycline

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 two original new animal drug applications (NADA's) filed by Pharmacia & Upjohn Co. The NADA's provide for the use of separately approved Type A medicated articles containing melengestrol acetate (dry and liquid form) and oxytetracycline (dry form) to make dry combination drug Type C medicated feeds. The Type C medicated feeds are for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus, and reduced incidence of liver abscesses.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center For Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed original NADA's 46–718 and 46–719 that provide for combining separately approved melengestrol acetate (MGA) (dry and liquid form) and oxytetracycline (dry form) Type A medicated articles to make dry Type C medicated feeds for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and reduced incidence of liver abscesses. The NADA's are approved as of May 6, 1998, and 21 CFR 558.342(d)(8) and 558.450(d)(3)(iii) are added to reflect the approvals.

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

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects 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: 21 U.S.C. 360b, 371.

2. Section 558.342 is amended by adding paragraph (d)(8) to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(d) * * *

(8) *Amount.* Melengestrol acetate, 0.25 to 0.5 milligram per head per day, plus oxytetracycline, 75 milligrams per head per day.

(i) *Indications for use.* For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and reduction of liver condemnation due to liver abscesses.

(ii) *Limitations.* Heifers fed in confinement for slaughter. Add at the rate of 0.5 to 2.0 pounds per head per day a medicated feed (liquid or dry) containing 0.125 to 1.0 milligram of melengestrol acetate per pound to a feed containing 6 to 10 grams of oxytetracycline per ton; or add at the rate of 0.5 to 2.0 pounds per head per day a dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate plus 37.5 to 150 milligrams of oxytetracycline per pound to provide 0.25 to 0.5 milligram of melengestrol acetate and 75 milligrams of oxytetracycline per head per day. Liquid melengestrol acetate may not be mixed

with oxytetracycline in a common liquid feed supplement. Melengestrol acetate as provided by 000009, oxytetracycline by 000069, in § 510.600(c) of this chapter.

3. Section 558.450 is amended by adding paragraph (d)(3)(iii) to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(3) * * *

(iii) Melengestrol acetate as in § 558.342.

Dated: June 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–20535 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 159

[OPP–60010K; FRL–6016–2]

RIN 2070–AB50

Pesticide Reporting Requirements for Risk/Benefit Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Deferral of compliance date; amendment to final rule.

SUMMARY: EPA is amending its recent reporting requirements for risk/benefit information for pesticides to defer the compliance date. EPA is taking this action because it recently published technical corrections to the final rule as well as detailed guidance on reporting procedures. EPA believes that registrants who are required to comply with the rule should have time to adjust their procedures and train personnel to comply with the rule, the corrections, and new guidance in their entirety. Registrants who wish to comply with the final rule immediately may do so after notifying the Agency.

DATES: Effective August 3, 1998. The complaince date for the final rule amending 40 CFR part 159, issued on September 19, 1997 at 62 FR 49388 is deferred from June 16, 1998 until August 17, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Bouve, Office of Pesticide Programs (7502C), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 224, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703) 305–5032; Bouve.Kate@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Document Apply to You?

You are affected by this action if you are a pesticide producer who is now or ever has been the registrant of a pesticide product. Regulated categories and entities may include, but is not limited to:

Category	Examples of regulated entities
Industry	Pesticide producers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in the rule at 40 CFR 159.152.

II. Background

On September 19, 1997, EPA published in the **Federal Register** (62 FR 9388 *et seq.*) (FRL–5739–1) new regulations governing the reporting by pesticide registrants of information under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That section requires registrants to report to EPA additional factual information in their possession related to whether a pesticide causes unreasonable adverse effects in the environment. Among other things, the new regulations provided registrants with detailed instructions on whether, when, and how to report information in the possession of the registrant or its agents. Until the new rule is effective, registrants are required to comply with Agency guidance issued in 1979 (44 FR 40716, July 12, 1979).

At the time the regulations were promulgated, the Agency was sensitive to the significant need for training and other implementation issues raised by the regulations. The Agency therefore established an effective date for the regulations of June 16, 1998. At the time the regulations were published, the Agency also announced its intention to provide assistance to registrants in implementing the regulations. In addition to providing speakers at seminars and conferences, the Agency commenced preparation of guidance documents to help explain to registrants their responsibilities under the new regulations.

On April 3, 1998, the Agency issued Pesticide Registration (PR) Notice 98–3 which provided guidance to registrants on a broad range of issues. In addition, the Agency promulgated a direct final rule and technical corrections to the regulations, which were published on June 19, 1998 in the **Federal Register** (63 FR 33580) (FRL–5792–2). The June 1998 document corrects the definition of registrants which identifies the parties subject to the regulations, specifies time frames for reporting certain types of adverse effects information, and specifies information to be submitted to the Agency about reportable detections of pesticides in food, feed, and water.

On June 10, 1998, seven pesticide trade associations requested that the effective date of the regulation be deferred for 120 days after issuance of the technical corrections and other guidance. The seven trade associations observed that the new regulations impose extensive new reporting obligations on pesticide registrants which must train numerous individuals to implement their compliance programs. Because of Agency delays in issuing all needed technical corrections and guidance, the trade associations believed that registrants did not have sufficient time to address all requirements before the effective date of the regulations.

The Agency has considered the issues raised by the trade associations and has determined that, given the timing of the issuance of the guidance documents and the technical corrections, it would be appropriate to defer the compliance date of the regulations for an additional 60 days in order to allow registrants the opportunity to incorporate the material included in the guidance documents into their training and implementation programs in an orderly fashion. Accordingly, the Agency is hereby extending the adjustment period and changing the compliance date of the final rule published at 62 FR 49388, September 19, 1997 from June 16, 1998, to August 17, 1998. EPA is also modifying § 159.159 to reflect this new date.

While EPA is deferring the compliance date for the new regulations for a brief period, EPA is also aware that some registrants may wish to comply with the new regulations immediately rather than continue to comply with the pre-existing requirements for another 2 months. Any registrant that wishes to comply with the new regulations immediately may do so provided that the registrant first informs the Agency in writing of its desire to be bound by the new regulations effective June 16, 1998. Such notice should be submitted to Kathryn Bouve, the Agency contact person, at the address given above

under FOR FURTHER INFORMATION CONTACT.

III. Regulatory Assessment Requirements

This action does not impose any new requirements. It only defers the effective date of a previously issued final rule. Any assessments necessary for the final rule are discussed in that final rule and are not affected by today's action. In fact, this action does not require review by the Office of Management and Budget under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the *Unfunded Mandates Reform Act of 1995* (Pub. L. 104–4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the action in the **Federal Register**. This is a deferral of the compliance date of a rule, and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 159

Environmental protection, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: July 16, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 159 is amended as follows:

PART 159—[AMENDED]

1. The authority citation for part 159 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. Section 159.159 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 159.159 Information obtained before promulgation of the rule.

(a) Notwithstanding any other provision of this part, information held by registrants on August 17, 1998 which has not been previously submitted to the Agency, but which is reportable under the terms of this part, must be submitted to the Agency if it meets any of the following criteria:

* * * * *

[FR Doc. 98–20615 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule substantially revises the Legal Services Corporation's (LSC or Corporation) regulation on the disclosure of information under the Freedom of Information Act. This revised rule implements the 1996 amendments to the FOIA regarding electronic records, time limits, and standards for processing requests for records. In addition, the rule is restructured for clarity, titles are revised to better identify the purpose of the sections, and revisions are made to incorporate procedures for Office of Inspector General records.

DATES: This final rule is effective September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation revised and published its Freedom of Information Act (FOIA) rule as final in 1993, principally to include the Office of Inspector General (OIG) in the FOIA process. However, the rule was withdrawn before it became effective. In 1996, Congress amended the FOIA. See "Electronic Freedom of Information Act Amendments of 1996." Pub. L. 104–231. The Office of Information and Privacy of the Department of Justice has issued a final rule and guidances on the 1996 amendments, which LSC has relied on for many of this rule's revisions. See 63 FR 29591 (June 1, 1998). Generally, the 1996 amendments deal with electronic records, but changes were also made to time limits and to procedures and standards for processing requests. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to revise 45 CFR Part 1602, which sets out the Corporation's procedures for the disclosure of information under the FOIA. After making changes to the draft rule, the Committee adopted a proposed rule that was published in the **Federal Register** on March 9, 1998. See 63 FR 11303 (March 9, 1998).

The Corporation received only one comment on the proposed rule from the Public Citizen Litigation Group (Public Citizen), a nonprofit consumer advocacy organization. Public Citizen disagreed with the rule's interpretation of a provision in Sec. 552(a)(2) of FOIA which requires agencies to make their public reading room records created after November 1, 1996, available electronically. Section 1602.5 of the proposed rule applied this requirement only to records "created" by the Corporation. Public Citizen argued that the requirement should also apply to records obtained by the Corporation from outside sources, such as recipient reports and grant applications. Public Citizen was specifically concerned about the new category of reading room records included in the 1996 FOIA amendments, that is, records released pursuant to a request for records that the Corporation determines are likely to become the subject of subsequent requests (subsequent request records). See § 1602.8.

The Board did not agree and the final rule continues to apply the electronic record requirement only to records "created by the Corporation" after November 1, 1996. This is consistent with the interpretation of the Office of Information and Privacy of the Department of Justice (DOJ) and applicable case law. The Office of Information and Privacy, which specializes in FOIA and the Privacy Act, advised Federal agencies in 1997 that records generated from outside the agency "are not created by the agency and should not be regarded as subject to

the new electronic availability requirement." DOJ FOIA Update, Winter 1997 at 4–5. In addition, the final DOJ FOIA rule continues this interpretation and applies the electronic records requirement only to public reading room records created by DOJ. 63 FR 29591–29604 (June 1, 1998).

Case law also supports this interpretation. In *United States Dep't of Justice* v. *Tax Analysts,* 492 U.S. 136, 144 (1989), the Supreme Court recognized that agency records subject to FOIA fall into 2 categories: records that are "created" by agencies and records that are "obtained" by agencies. The electronic reading room requirement uses the term "created" and nothing in the legislative history of the 1996 amendments requires the term "created" to include records obtained by an agency. See H. R. Rep. No. 104–795 (1996). This interpretation is consistent with the nature of reading room records. Except for subsequent request records obtained from outside of the agency, records required by FOIA to be maintained in an agency's public reading room are records created by an agency. Such records include an agency's final opinions and orders, statements of policy and interpretations adopted by the agency, administrative staff manuals and instructions to staff that affect the public, and an index of such records in their public reading rooms. Sec. 552(a)(2) of FOIA.

Of course, the Corporation may choose, as a matter of discretion, to make subsequent request records that are generated from outside the Corporation available electronically in any case in which it determines that to do so would be most cost effective in serving public access needs under subsection 552(a)(2)(D) of FOIA.

Other technical changes have also been included in this final rule. For example, headings have been added to several paragraphs for clarity and the reference to regional offices has been deleted because the Corporation no longer has any regional offices. A section-by-section analysis follows.

Section-by-Section Analysis

Section 1602.1 Purpose

The purpose of this part is to set out the rules and procedures the Corporation follows to make information available to the public under the FOIA. This section is revised to reflect the addition of a new section, § 1602.4, that implements the FOIA requirement that certain Corporation records be published in the **Federal Register**.

Section 1602.2 Definitions

Several definitions from the prior rule have been deleted in this final rule. The definitions of "clerical," "management," "professional staff," and "professional support," are deleted because they are no longer consistent with the Corporation's personnel system. The definition of "direct costs" is also deleted. It was used in the prior rule only in § 1602.4 to clarify the cost of duplication of the index. The final rule applies the same standard duplication charges to the index that apply to other Corporation records.

Requirement To Use OMB Definitions

FOIA requires that agencies promulgate rules specifying a schedule of fees based on guidance published by the Director of the Office of Management and Budget (OMB). See 52 FR 10012 (March 27, 1987). The terms defined in this section that are used in the section on fees, § 1602.13, were promulgated in 1988 and are based, as required, on the OMB guidance. See 53 FR 6151–6154 (March 1, 1988).

Commercial use request. The definition of this term is based on the OMB guidance, and the term is based on a standard for determining fees in the FOIA. The definition eliminates a reference to looking at the identity of the requester to help determine whether the request is for commercial use. OMB included the references to the requester's identity in its proposed guidance, but deleted it in the final guidance.

Duplication. The definition of this term is based on the OMB guidance, and the term is included in the section on fees (§ 1602.13) which permits charging of fees for certain duplication of records.

Educational institution, non-commercial scientific institution, representative of the news media. The definitions of these terms are based on the OMB guidance and are used in the section on fees, § 1602.13. Minor technical revisions have been made.

Office of Inspector General records. The definition of this term distinguishes OIG records from Corporation records. This definition and other OIG provisions in this rule are proposed to provide regulatory authority to the OIG to process and to grant or deny FOIA requests for OIG records.

Records. The definition of records is revised to clarify that the term includes electronic records.

Review. This term is used in the section on fees (§ 1602.13) and is based on the OMB guidance. The revisions are technical. The prior definition included a reference to commercial use requests, because review fees are charged only for such requests. The section on fees which uses this term, however, makes it clear that review fees are charged only for commercial use requests, so it is redundant to include reference to commercial use requests in the definition of review. The first sentence of the definition describes how the review process preliminarily identifies portions of information that clearly are exempt. If the reviewer is not certain whether certain information is exempt, and there is a need for qualified staff to resolve any legal or policy issues on disclosure, the time spent resolving such issues or policy is not included in the meaning of review, as is made clear in the third sentence of this definition.

Search. The term "search" is used in the section on fees (§ 1602.13). The revisions are intended to conform the definition to the revised definition in the FOIA as amended in 1996 and includes searching for information by automated means.

Section 1602.3 Policy

This section generally states that it is the policy of the Corporation to make every reasonable effort to comply with the requirements of the FOIA. The revisions to this section are technical or eliminate unnecessary information. A reference to "a recipient" is added.

Section 1602.4 Records Published in the **Federal Register**

This is a new section. Section 552(a)(1) of FOIA requires each agency to currently publish in the **Federal Register** for the guidance of the public a range of basic information regarding its structure and operations, including information on the agency's organization, functions, procedural and substantive rules, and general statements of policy. The Corporation routinely publishes such information in the **Federal Register** as it is revised or amended. Such publications include its regulations, notices, and requests for proposals. Information on the Corporation's structure and location is annually published in the United States Government Manual, a special publication of the **Federal Register**.

Section 1602.5 Public Reading Room

This section sets out the process by which the Corporation makes available for public inspection and copying records listed in paragraph (b) of this section, as required by Sec. 552(a)(2) of the FOIA. This rule changes the title of this section from central records room to public reading room to better describe the function of the room. Paragraph (a)

provides the address and hours of business of the public reading room.

Paragraph (b) lists the types of reading room records. These records include final opinions and orders, statements of policy and interpretations adopted by the Corporation that are not published in the **Federal Register** and administrative staff manuals and instructions that affect the public or recipients. A new category of public reading room record are records provided pursuant to a public request (see § 1602.8) that the Corporation determines are likely to be subject to multiple subsequent requests. For example, the website for the Federal Bureau of Investigation includes records on Elvis Presley, Marilyn Monroe, Elliot Ness, Baby Face Nelson, Jackie Robinson and Will Rodgers. Currently, the Corporation has not identified any subsequent request records.

The use of the term "will be made available" in paragraph (b) is intended to clarify that certain public reading room records will normally be maintained in the public reading room while others will be kept in close proximity elsewhere in the Corporation's headquarters in Washington DC. In response to a request, any records kept in close proximity will be made available for inspection and copying in the public reading room.

Paragraph (c) sets out the protections from public disclosure that may apply to certain reading room records and the process the Corporation will use to edit or delete protected information.

Paragraph (d) provides that reading room records created by the Corporation after November 1, 1996, and an index of such records, will be made available electronically. The Corporation is in the process of converting such records to electronic form. As they are so converted, they will be made available electronically in the public reading room.

Paragraph (e) states that the Corporation will make most of its electronic public reading room records available on its websites.

Section 1602.6 Procedures for Use of Public Reading Room

This section describes the process by which a member of the public may inspect and copy public reading room records. Persons interested in using the public reading room are advised to make arrangements ahead of time to facilitate their access to the requested information.

Section 1602.7 Index of Records

The FOIA requires the Corporation to maintain and make available an index of reading room records. This section clarifies that the index the Corporation maintains will be made available in the Corporation's public reading room and on the Corporation's websites. A revision is proposed that would make the cost of duplicating the index consistent with the charges for duplication of other Corporation records.

Section 1602.8 Requests for Records

The FOIA also addresses a third category of records, which are records required to be made available by the Corporation upon request by any person unless they are exempt from mandatory disclosure under any of the FOIA exemptions. This type of record is any Corporation record that is not a public reading room record or a record published in the **Federal Register**. Such records commonly include information obtained by the Corporation from its grantees, correspondence, financial and statistical reports obtained or created by the Corporation, compliance review reports and competition records.

Section 1602.8 sets out the process by which the Corporation makes such records available. It has been restructured and revised to better describe the procedures for submitting and processing requests for records. Minor revisions are made to paragraph (a) to make it consistent with other revisions to the rule.

Paragraphs (b), (c) and (d) describe how requests should be made. In order to facilitate the location of records by Corporation staff, requests should reasonably describe the records sought.

Paragraph (e) clarifies that the FOIA does not require the Corporation to create a record or perform research on a matter to satisfy a request.

Paragraph (f) requires that a requester be promptly informed of any estimated fees that may be charged for the request as set out in the rule's section on fees, § 1602.13.

Paragraph (g) provides that any request for a fee waiver or reduction should be included in the FOIA request, and that the Corporation must respond promptly to such requests for a fee waiver or reduction.

Paragraphs (i) through (l) set out the process and time limits for responding to requests. The OIG provisions are new and are included in recognition of the establishment of an OIG at the Corporation.

Paragraph (m) provides a process and standard for dealing with requests for expedited treatment and implements the 1996 amendments to the FOIA. One criterion that will be considered when determining whether to provide expedited processing is whether there is an urgent need to inform the public about actual or alleged Corporation or government activity and the requester is a person primarily engaged in disseminating information. Consistent with the DOJ rules, a person primarily engaged in disseminating information is a full-time representative of the news media, as defined in this part, or a person whose primary profession is that of a representative of the news media.

Section 1602.9 Exemptions for Withholding Records

This section delineates the exemptions that protect certain records from mandatory disclosure. All of the exemptions in this section are based on the FOIA, although not all FOIA exemptions are included in this rule, because certain exemptions are not applicable to the Corporation. For example, the exemption for information on geological information related to wells is not included. Technical changes are made to this section to better conform the language to the FOIA.

The language for § 1602.9(a)(6)(iv) is revised in recognition of the establishment of the OIG at the Corporation. This FOIA exemption protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's prior rule made no reference to information compiled for law enforcement purposes. Because the OIG conducts investigations into criminal activities, addition of this reference to such information is appropriate. This exemption was included in the published rule that was withdrawn in 1993. A reference to "a recipient" is also added to § 1602.9(a)(6)(ii).

Paragraph (b) explains the process by which the Corporation will segregate protected information from information that must be made available to the requester. The 1996 amendments to the FOIA require the Corporation to indicate the amount and location of deleted material (if technically feasible), unless such action would harm the interest protected by the applicable exemption.

Paragraph (c) sets out the standard by which the Corporation may exercise discretion to release information otherwise protected from disclosure. The consultation language is intended to address OIG records.

Section 1602.10 Officials Authorized To Grant or Deny Requests for Records

This section identifies the officials within the Corporation authorized to grant or deny requests for records. The revisions to paragraphs (a) and (b) are added to include the OIG in the Corporation's processing of FOIA requests when OIG records are requested and to be consistent with the Corporation's current procedures.

Section 1602.11 Denials

This section sets out the process the Corporation shall follow when a request for records is denied.

Section 1602.12 Appeals of Denials

This section describes the process by which a person may appeal a denial. Provisions including the OIG in the appeal process have been added.

Section 1602.13 Fees

Revisions to this section are largely technical. Paragraph (e) sets out the schedule of charges for services regarding the production or disclosure of the Corporation's records. Revisions to paragraph (e) reflect changes to the Corporation's salary system. The term "band" in paragraph (e) refers to a specific range of pay, just as the term "schedule" refers to a pay range for Federal employees.

References to the Corporation have been added to paragraph (f) to apply certain fee waiver provisions to the Corporation as well as to governmental entities.

A revision to paragraph (j) is proposed to allow rather than require the Corporation to charge interest, which is consistent with the OMB guidance.

List of Subjects in 45 CFR Part 1602

Freedom of information.

For reasons set forth in the preamble, LSC revises 45 CFR part 1602 as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

Authority: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

§ 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation follows in making records available to the public under the Freedom of Information Act.

§ 1602.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a requested record pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(e) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) *Office of Inspector General records* means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

(g) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purposes.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(i) *Review* means the process of examining documents located in response to a request to determine whether any portion of any such document is exempt from disclosure. It also includes processing any such documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner.

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the

maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this part. Records exempt from disclosure under the FOIA may be made available as a matter of discretion when disclosure is not prohibited by law, and disclosure would not foreseeably harm a legitimate interest of the public, the Corporation, a recipient, or any individual.

§ 1602.4 Records published in the Federal Register.

The Corporation routinely publishes in the **Federal Register** information on its basic structure and operations necessary to inform the public how to deal effectively with the Corporation. The Corporation will make reasonable efforts to currently update such information, which will include basic information on the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy, and information regarding how the public may obtain information, make submittals or requests, or obtain decisions.

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington DC 20002–4250. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to the staff that affect the public or recipients;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records pursuant to § 1602.8 which the Corporation has determined are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The current index required by § 1602.7;

(6) To the extent feasible, other records considered to be of general interest to recipients or members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to section 552(b) of the FOIA and § 1602.9. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) Records required by the FOIA to be maintained and made available in the public reading room that are created by the Corporation on or after November 1, 1996, shall be made available electronically. This includes the index of published and reading room records, which shall indicate which records are available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Corporation's websites at http://www.lsc.gov and http://oig.lsc.gov.

§ 1602.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 1602.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel. Persons submitting requests by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner provided in § 1602.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.7 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.4 and § 1602.5(b) (1) through (5). The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in § 1602.13(e). The Corporation will also make the index available on its websites.

§ 1602.8 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** (§ 1602.4) or to be made available in the public reading room (§ 1602.5), Corporation records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) Requests. Requests for records under this section shall be made in writing, with the envelope and the letter or e-mail request clearly marked Freedom of Information Request. All such requests shall be addressed to the Corporation's Office of the General Counsel. Requests by letter shall use the address given in § 1602.5(a). E-mail requests shall be addressed to info@smtp.lsc.gov. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (i) of this section until it has been received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or designee shall notify the requester of the date on which the time period began.

(c) A request must reasonably describe the records requested so that employees of the Corporation who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph.

(d) To facilitate the location of records by the Corporation, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Corporation which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a grant, a contract, or a report;

(5) Personnel of the Corporation who may have prepared or have knowledge of the record;

(6) Citations to newspapers or publications which have referred to the record.

(e) The Corporation is not required to create a record or to perform research to satisfy a request.

(f) Estimated fees. The Corporation shall advise the requester of any estimated fees as promptly as possible. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester.

(g) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 1602.13(f). The Corporation shall respond to such request as promptly as possible.

(h) Format. The Corporation will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(i)(1) The General Counsel or designee, upon request for any records made in accordance with this section, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) Initial response/delays. If the General Counsel or designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(3) Unusual circumstances. As used in this part, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization, such as a recipient, having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (i) of this section, the Corporation may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the General Counsel or designee or the Counsel to the Inspector General or designee shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Corporation's President or Inspector General, in accordance with § 1602.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 1602.12. The General Counsel or designee or the Counsel to the Inspector General or designee may ask the requester to forego appeal until a determination is made.

(l) After it has been determined that a request will be granted, the Corporation will act with due diligence in providing a substantive response.

(m)(1) Expedited treatment. Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Corporation or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Corporation's or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Corporation pursuant to paragraphs (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of its receipt of a request for expedited processing, the General Counsel or designee or the Inspector General or designee shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Corporation.

§ 1602.9 Exemptions for withholding records.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute (other than the exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for law enforcement purposes including enforcing the Legal Services Corporation Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made. In appropriate circumstances, at the discretion of the Corporation officials authorized to grant or deny a request for records, and after appropriate consultation as provided in § 1602.10, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Corporation official authorized to grant or deny the request for records, after appropriate consultation as provided in § 1602.10. Records may be made available pursuant to this paragraph when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the Corporation, the public, a recipient, or any person.

§ 1602.10 Officials authorized to grant or deny requests for records.

(a) The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation.

(b) The General Counsel or designee and the Counsel to the Inspector General or designee are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this part. The General Counsel or designee shall consult with the Office of Inspector General prior to granting or denying any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or designee shall consult with the Office of the General Counsel prior to granting or denying any requests for records.

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9 (a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under § 1602.5(b).

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in § 1602.5(a) and § 1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the

denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

§ 1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b) Fees shall be limited to reasonable standard charges for document search, review, and duplication, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $10.26 per hour;

(ii) Band 2: $16.12 per hour;

(iii) Band 3: $25.22 per hour;

(iv) Band 4–5: $42 per hour;

(v) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 10 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fee waivers. Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or the Federal government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of the Corporation or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed $25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Corporation.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate

such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: July 29, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–20643 Filed 7–31–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24, 26, 27, 90 and 97

[ET Docket No. 96–2, FCC 98–140]

Arecibo Coordination Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order ("MO&O") clarifies the rules regarding the Arecibo Radio Astronomy Observatory (Observatory) Coordination Zone that covers the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rican Islands). This action will promote efficient coordination between the Observatory and service applicants in the Coordination Zone.

EFFECTIVE DATE: September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket 96–2, FCC 98–140, adopted June 29, 1998, and released July 2, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW Washington, DC 20036.

Summary of the Memorandum Opinion and Order

1. In the *Report and Order* (R&O), 62 FR 55525, October 27, 1997, in this proceeding, we established a Coordination Zone that covers the Puerto Rican Islands. The policies that we established regarding the Coordination Zone require that: (1) applicants for new radio facilities in various communications services must provide notification of their proposed operations to the Observatory no later than the time their license applications are submitted to us; (2) applicants for modified radio facilities in these services must provide notification of their proposed operations to the Observatory no later than the time their license applications are submitted to us, but only if the modified facilities pose an interference threat to the operations of the Observatory; and (3) applicants for new radio facilities in commercial wireless services in which individual station licenses are not issued must provide notification of their proposed operations to the Observatory at least 45 days in advance of their proposed operations if their facilities pose an interference threat to the operations of the Observatory.

2. In the *R&O*, we provided the Observatory 20 days to file comments with us regarding each service applicant's potential for interference, and applicants are responsible for making reasonable efforts to accommodate the interference concerns of the Observatory. We did not establish interference standards, but required the operator of the Observatory—Cornell University (Cornell)—to provide interference guidelines to service applicants so that applicants may consider protection to the Observatory in the early design phase of radio facilities.

3. Puerto Rico Telephone Company (PRTC) filed a petition for reconsideration of the *R&O*, in which it urges us to reconsider three aspects of this decision. First, PRTC contends, we have inappropriately left control of interference standards to Cornell. PRTC argues that we should establish specific standards or, alternatively, require Cornell to develop standards and submit them to us for review. Second, PRTC urges us to place restrictions on what "reasonable efforts" will be required to satisfy Cornell in a given instance. PRTC contends that the record in the proceeding is not clear as to whether even as significant a change to a broadcast station's operating parameters as mandatory time-sharing of frequencies with the Observatory would be deemed "reasonable" by the Commission. Finally, PRTC urges us to reconsider our decision to apply coordination filing requirements to commercial wireless services for which we award licenses for geographic service areas but not for individual operating facilities. PRTC argues that it is inconsistent to create a duty to file notifications with Cornell when such licensees are not required to file any information with us, and that the *Notice of Proposed Rule Making* (NPRM), 61 FR 10709, March 15, 1996, in this proceeding gave no notice that we were considering creating such a duty.

4. As discussed in the *R&O*, interference guidelines may significantly lessen coordination problems, and Cornell has pledged to develop such guidelines. We are convinced that a guideline approach is preferable to a standards approach. We find it efficient for Cornell to develop guidelines because it has gained expertise over many years through informal coordination with service applicants in the Coordination Zone. We reiterate our statement in the *R&O* that telecommunications service providers in Puerto Rico provide highly important services that must be maintained. Further, we believe it is in Cornell's self-interest to develop realistic guidelines so as to avoid unnecessary disputes with service applicants. Accordingly, we are affirming our decision and requiring Cornell to establish interference guidelines for each service in the Coordination Zone.

5. In the *R&O*, we stated that "reasonable efforts [to minimize interference from various telecommunications services to the Observatory] will vary from case-to-case, dependent on the degree of harm to the Observatory's operations and the extent of the change needed to prevent such harm" and "to attempt to set forth a general definition of the term 'reasonable efforts' is extremely difficult, if not impossible." Accordingly, we are denying PRTC's request to place general restrictions on the types of reasonable efforts that will be required of service applicants in the Coordination Zone.

6. However, while what is reasonable in each individual situation will vary, we can alleviate PRTC's specific concern regarding time-sharing of frequencies. As we stated in the R&O: "We also observe that adoption of a Coordination Zone would neither allocate additional spectrum for RAS [Radio Astronomy Service] use, nor provide the Observatory additional rights to spectrum allocated to other services." Requiring service providers in the Coordination Zone to time-share spectrum with the Observatory would provide it "additional rights to spectrum allocated to other services."

Accordingly, we are clarifying that involuntary time-sharing of frequencies between the Observatory and licensed services will not be mandated. This clarification does not prohibit voluntary time-sharing arrangements between the Observatory and a service provider.

7. The issue of including in the Coordination Zone commercial wireless services in which licensees do nof receive individual station licenses was covered by our proposals in the NPRM and was specifically addressed by parties commenting on the NPRM. Accordingly, adequate notice of this issue was given.

8. With respect to the substantive concerns raised by PRTC regarding this issue, we stress that licensees of commercial wireless services in which licensees do not receive individual station licenses are required to notify the Observatory only when a new transmitter may cause harmful interference to the operations of the Observatory. We will continue to rely upon each operator to determine when a transmitter may pose an interference threat to the operations of the Observatory. We note that operators in these services must comply with the notification requirements when new transmitters are introduced. We cannot exclude the possibility that in some circumstances the introduction of a new or modified transmitter in a geographically-licensed service could result in harmful interference to the Observatory. Accordingly, we find that in those circumstances notification to the Observatory must take place. To make this policy explicit in the rules, we are adopting clarifying language for parts 22, 24, 26, 27, and 90.

9. Finally, in the *R&O*, the amended rules of part 97 inadvertently omitted language specifying that a licensee is required to make reasonable efforts to resolve or mitigate any potential interference problems with the Observatory and that a licensee must notify the Observatory of new or modified facilities at least 20 days in advance of planned operation. Accordingly, we are adding that language to part 97—see sections 97.203(h) and 97.205(h).

Final Regulatory Flexibility Analysis

10. Final Regulatory Flexibility Certification. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. We sought written comments on the proposals in the NPRM, including the IRFA. No commenting parties raised issues specifically in response to the IRFA, and a Final Regulatory Flexibility Analysis was included in the *R&O*. The rules adopted in this Memorandum Opinion and Order (MO&O) provide clarification of the rules adopted in the *R&O*. We therefore certify pursuant to section 605(b) of the RFA that the rules adopted in the MO&O do not have a significant economic impact on a substantial number of small entities. We shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and shall include it in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 26

General Wireless communications service, Radio.

47 CFR Part 27

Wireless communications service, Radio.

47 CFR Part 90

Land mobile, Radio.

47 CFR Part 97

Civil defense, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, parts 22, 24, 26, 27, 90 and 97 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.369, is amended by revising paragraphs (d)(1), (2) and (3) to read as follows:

§ 22.369 Quiet zones and Arecibo Coordination Zone.

* * * * *

(d) * * *

(1) Carriers planning to construct and operate a new Public Mobile Services station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new Public Mobile Services station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing Public Mobile Services station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC rule part, type of emission, and effective isotropic radiated power.

(2) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (d)(1) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (d)(1) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (d)(1) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(3) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

4. Section 24.18 is revised to read as follows:

§ 24.18 Notification to the Arecibo Observatory.

(a) The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(b) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (a) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (a) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (a) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(c) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

5. The authority citation for part 26 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

6. Section 26.105 is revised to read as follows:

§ 26.105 Notification to the Arecibo Observatory.

(a) The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC rule part, type of emission, and effective isotropic radiated power.

(b) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (a) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (a) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (a) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(c) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 27—WIRELESS COMMUNICATIONS SERVICE

7. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

8. Section 27.62 is revised to read as follows:

§ 27.62 Notification to the Arecibo Observatory.

(a) The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a

modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC rule part, type of emission, and effective isotropic radiated power.

(b) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (a) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (a) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (a) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(c) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

Authority: Secs. 4, 251–2, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

10. Section 90.177 is amended by revising paragraph (f) introductory text, and paragraphs (f)(1) and (2) to read as follows:

§ 90.177 Protection of certain radio receiving locations.

* * * * *

(f) Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(1) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (f) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (f) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (f) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

(2) After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the FCC determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

* * * * *

PART 97—AMATEUR RADIO SERVICE

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

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

12. Section 97.203 is amended by revising paragraph (h) introductory text, and (h)(2) to read as follows:

§ 97.203 Beacon station.

* * * * *

(h) The provisions of this paragraph do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands. Before establishing a repeater within 16 km (10 miles) of the Arecibo Observatory or before changing the transmitting frequency, transmitter power, antenna height or directivity of an existing repeater, the station licensee must give notification thereof at least 20 days in advance of planned operation to the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Licensees who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) * * *

(2) If an objection to the proposed operation is received by the FCC from the Arecibo Observatory, Arecibo, Puerto Rico, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate. The licensee will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory.

13. Section 97.205 is amended by revising paragraph (h) introductory text and (h)(2) to read as follows:

§ 97.205 Repeater station.

* * * * *

(h) The provisions of this paragraph do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands. Before establishing a repeater within 16 km (10 miles) of the Arecibo Observatory or before changing the transmitting frequency, transmitter power, antenna height or directivity of an existing repeater, the station licensee must give notification thereof at least 20 days in advance of planned operation to the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Licensees who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) * * *

(2) If an objection to the proposed operation is received by the FCC from the Arecibo Observatory, Arecibo, Puerto Rico, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate. The licensee will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory.

[FR Doc. 98–20528 Filed 7–31–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 072398A]

North Atlantic Swordfish Fishery; Closure

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

ACTION: Closure.

SUMMARY: NMFS has projected that the driftnet directed fishery quota of 41.6 metric tons (mt) dressed weight (dw) for the 1998 North Atlantic swordfish season (opens August 1, 1998) will be reached on or before August 12, 1998. Consequently, NMFS closes the driftnet directed fishery for the North Atlantic swordfish management unit, effective 11:30 p.m. on August 14, 1998. All swordfish must be offloaded by driftnet vessels by the time of the closure.

DATES: The closure is effective at 11:30 p.m. local time on August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, (301) 713–2347.

SUPPLEMENTARY INFORMATION: The North Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of International Commission for the Conservation of Atlantic Tunas.

The regulations governing the Atlantic swordfish fisheries at 50 CFR 630.24 provide for a specified annual quota to be landed by the driftnet directed fishery. NMFS is required, under § 630.25(a)(1), to monitor the catch and landings statistics and, on the basis of these statistics, to project a date when the catch will equal the quota, and to publish a **Federal Register** document announcing the closure at least 14 days in advance.

The North Atlantic swordfish driftnet fishery was closed on December 5, 1996, under an emergency rule to protect the endangered northern right whale. That fishery remained closed through November 26, 1997, while NMFS considered fishery management alternatives to reduce bycatch in the fishery and to address other fishery management issues. On December 1, 1997 (62 FR 63467), NMFS implemented a temporary time/area closure under the authority of the Endangered Species Act to avoid the likelihood that this fishery would jeopardize the continued existence of the northern right whale. As a result of these rulemakings, the driftnet fishery has not operated in the North Atlantic Ocean for swordfish since the summer of 1996.

Closure of the Fishery

The average daily landings of swordfish in the driftnet fishery in the first semiannual season of 1996 were greater than 14,000 lb dw (6.4 mt dw). However, NMFS considered a number of factors that are likely to slow the daily catch rates in the 1998 fishery. Based on previous landings and other factors, it is expected that the driftnet directed harvest quota of 41.6 mt dw for the entire directed fishery (which opens on August 1, 1998) would be reached on or about August 12, 1998. To allow for travel time from the fishing grounds and time for offloading, NMFS announces that the directed fishery for swordfish is closed at 11:30 p.m. on August 14, 1998. All vessels must be in port and offloaded on or before this closing date. This notice provides more than a 14 day period during which swordfish vessel owners can plan their fishing and sale of landings prior to the closure deadline.

During the closure of the directed swordfish driftnet fishery, on board a vessel using or having on board a driftnet, a person may not fish for swordfish from the north Atlantic stock, and no more than 2 swordfish, caught incidentally while fishing for other species, may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean state. Driftnets are not permitted for use in the South Atlantic swordfish fishery.

Classification

This action is taken under 50 CFR 630.24 and 50 CFR 630.25 (a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 28, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–20538 Filed 7–28–98; 4:33 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 148
Monday, August 3, 1998

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 10, 11, 25, and 95

RIN 3150–AF97

Conformance to National Policies for Access to and Protection of Classified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the requirements for the protection of and access to classified information to new national security policy documents. This proposed rule is necessary to ensure that classified information in the possession of NRC licensees, certificate holders, and others under the NRC's regulatory requirements is protected in accordance with current national policies. Additionally, changes have been made to address new requirements for the control of foreign visitors at certain sites. Also, some editorial changes are being made to reflect a reorganization within the NRC Office of Administration.

DATES: The comment period expires October 2, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments may be submitted either electronically or in written form.

ADDRESSES: For written comments, the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). From the home page, select "Rulemaking" from the tool bar. The interactive rulemaking web site can then be accessed by selecting "Rulemaking Forum." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request to Reproduction and Distribution Services Section , U.S. Nuclear Regulatory Commission, Washington DC 20555, or by faxing a request to (301) 415–2289. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the rulemaking web site as indicated above.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7403, E-mail DGK@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The national requirements for the protection of and access to Classified National Security Information have been revised by the issuance of the National Industrial Security Program Operating Manual (NISPOM), Executive Order 12958, "Classified National Security Information," dated April 17, 1995, and Executive Order 12968, "Access to Classified Information," dated August 2, 1995. In order to conform to these national security policy documents, the NRC must revise its regulations for the protection of classified information. The requirements of 10 CFR parts 25 and 95 are substantially based on Executive Orders 12958 and 12968.

The proposed rule would amend the provisions of 10 CFR parts 10, 11, 25, and 95 that deal with requirements for access to and protection of classified information that have been changed or added by the NISPOM, the Executive Orders, or new national guidelines on the scope and adjudication of personnel security investigations. Specifically, changes include a new definition in 10 CFR part 10 for the "Personnel Security Review Panel" and revisions to a number of definitions in all four parts to reflect a change in the name of the Division of Security to the Division of Facilities and Security. Additionally, several changes to definitions were made to reflect a change in responsibility for certain decisions from the Executive Director for Operations to the Deputy Executive Director for Management Services; revised due process procedures; a new requirement for a facility clearance for those licensees or others who require access to classified information at a facility other than their own; additional information on the scope and reporting requirements for the Foreign Ownership, Control, or Influence (FOCI) program; a requirement to resubmit an updated Security Practice Procedures Plan every five years; a requirement for a visitor control program; and greater specificity as to when particular reports are required. The proposed rule addresses the intent of Executive Order 12829, "National Industrial Security Program," to reduce wasteful and inefficient duplicative oversight of private facilities which have classified interests from more than one Government agency.

The proposed rule would also adopt new requirements in areas where the executive orders, the NISPOM, or the adjudicative guidelines require specific procedures not included in the previous versions of the rules. These new requirements include: the change to a three member Personnel Security Review Panel from three Review Examiners, acting individually, reviewing the record of a case where an individual's eligibility for access authorization or employment clearance is in question; an explicit notification that individuals whose eligibility for access authorization or employment clearance is in question have the right to be represented by counsel or other representative at their own expense and that they have a right to the documents, records, and reports which form the basis for the question of their eligibility, to the extent the documents would be available to them under the Freedom of Information Act or Privacy Act, and to the entire investigative file, as permitted by national security and other applicable law; a change to the period

between reinvestigations for "L" and "R" access authorizations from five years to ten years; a change to the fee schedules of 10 CFR parts 11 and 25 due to a change in the investigative requirements for "Q," "L," "U," and "R" access authorizations; and changing the security classification markings to conform to Executive Order 12958;

The proposed rule also republishes for additional public comment §§ 25.15 and 95.35 which address the personnel security investigative requirements for access to Secret Restricted Data. These proposed changes were originally published as a proposed rulemaking on August 5, 1996 (61 FR 40555), and would have permitted access to most Secret Restricted Data, other than that defined as "Critical Secret Restricted Data" (that term is no longer used but the concept continues to be used for selected types of Secret Restricted Data) in the NISPOM and its supplement, with an "L" clearance based on a National Agency Check with Law and Credit investigation (NACLC). The Department of Energy (DOE) objected to this change in their formal comments on that proposed rule, recommending that, pending determination of what constitutes the most sensitive Restricted Data and its upgrade to Top Secret, all personnel with access to Secret Restricted Data continue to have a "Q" clearance based on a Single Scope Background Investigation (SSBI). Given DOE's special statutory authorities in establishing controls for Restricted Data, their views required special consideration. However, because this requirement may exceed the requirements of applicable national policy (i.e., the NISPOM), and result in additional costs to licensees and certificate holders, the NRC decided to withdraw the changes to §§ 25.15 and 95.35 in the final rulemaking which was published on April 11, 1997 (62 FR 17683), and to republish them later for additional public comment to provide interested parties an equal opportunity to address the issues and provide supporting rationale for their recommendations and comments.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 8.3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The NRC is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0046, –0047), Office of Management and Budget, Washington, DC 20503. Comments to OMB on the collections of information or on the above issues should be submitted by September 2, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If an information collection requirement does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7403.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The NRC carefully considered the effect on small entities in developing this proposed rule on the protection of classified information and have determined that none of the facilities affected by this rule would qualify as a small entity under the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, applies to this rulemaking initiative because it falls within the criteria of 10 CFR 50.109(a)(1). However, a backfit analysis is not required because this rulemaking qualifies for exemption under 10 CFR 50.109(a)(4)(iii) that reads: "That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate."

List of Subjects

10 CFR Part 10

Administrative practice and procedure, Classified information, Criminal penalties, Investigations, Security measures.

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear Materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following

amendments to 10 CFR parts 10, 11, 25, and 95.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

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

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR Parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4.; E.O. 12968, 3 CFR 1995 COMP., p. 396.

2. Section 10.1 is revised to read as follows:

§ 10.1 Purpose.

(a) This part establishes the criteria, procedures, and methods for resolving questions concerning:

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Management Services of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance.

(b) This part is published to implement the Atomic Energy Act of 11954, as amended, the Energy Reorganization Act of 1974, as amended, Executive Order 10865, 25 FR 1583 (February 24, 1960) Executive Order 10450, 18 FR 2489 (April 27, 1954), and Executive Order 12968, 60 FR 40245 (August 2, 1995).

3. In § 10.2, paragraph (d) is revised to read as follows:

§ 10.2 Scope.

* * * * *

(d) Any other person designated by the Deputy Executive Director for Management Services of the Nuclear Regulatory Commission.

4. In § 10.5, the introductory text is removed, the paragraph designations preceding each of the defined terms are removed, the definitions are rearranged in alphabetical order, and the definitions of *Access Authorization, Employment Clearance, National Security Information,* and *NRC Personnel Security Review Panel* are revised to read as follows:

§ 10.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Deputy Executive Director for Management Services, is eligible for a security clearance for access to Restricted Data or National Security Information.

* * * * *

Employment Clearance means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Deputy Executive Director for Management Services of the NRC is eligible for employment or continued employment pursuant to subsection 145(b). of the Atomic Energy Act of 1954, as amended.

* * * * *

National Security Information means information that is owned by, produced for or by, or under the control of the United States Government, and that has been determined, pursuant to Executive Order 12958 or antecedent orders, to require protection against unauthorized disclosure, and is so designated.

* * * * *

NRC Personnel Security Review Panel means an appeal panel appointed by the Deputy Executive Director for Management Services and consisting of three members, two of whom shall be selected from outside the security field. One member of the Panel shall be designated as Chairman.

* * * * *

5. In § 10.10 the introductory text of paragraph (d) is revised to read as follows:

§ 10.10 Application of the criteria.

* * * * *

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization and/or employment clearance, the following principles shall be applied by the Director, Division of Facilities and Security, Hearing Examiners, and the NRC Personnel Security Review Panel:

* * * * *

6. In § 10.12, paragraphs (a) and (c) are revised to read as follows:

§ 10.12 Interview and other investigation.

(a) The Director, Division of Facilities and Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize the conduct of an interview with the individual, if the individual consents to be interviewed, or such other investigation as the Director deems appropriate. On the basis of such interview and/or investigation, the Director may authorize the granting of access authorization and/or employment clearance.

* * * * *

(c) If the Director, Division of Facilities and Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility shall be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

7. Section 10.20 is revised to read as follows:

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for access authorization and/or employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450, 10865, and 12968 when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

8. Section 10.21 is revised to read as follows:

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for access authorization and/or employment clearance, the Director, Division of Facilities and Security, through the Director, Office of Administration, shall forward to the Deputy Executive Director for Management Services or other Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Facilities and Security, shall consider such factors as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of

his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Deputy Executive Director for Management Services or other Deputy Executive Director.

9. Section 10.22 is revised to read as follows:

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Facilities and Security, approved by the Office of General Counsel, and signed by the Director, Office of Administration, shall be presented to each individual whose eligibility for access authorization and/or employment clearance is in question. Where practicable, such letter shall be presented to the individual in person. The letter will be accompanied by a copy of this part and shall state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for access authorization and/or employment clearance;

(b) That information that creates a substantial doubt regarding the individual's eligibility for access authorization and/or employment clearance shall be as comprehensive and detailed as the national security interests and other applicable law permit;

(c) That the individual has the right to be represented by counsel or other representative at their own expense;

(d) That the individual may request within 20 days of the date of the notification letter, any documents, records and reports which form the basis for the question of their eligibility for access authorization and/or employment clearance, to the extent the documents would be provided if requested under the Freedom of Information or the Privacy Act; and to request the entire investigative file, as permitted by the national security and other applicable law;

(e) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, the Director, Division of Facilities and Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC;

(f) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual must file with that request a written answer under oath or affirmation which admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement shall operate as a denial. The answer shall also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact shall be deemed an admission that the allegation or fact is true.

(g) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of his receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, a written answer in accordance with the requirements of paragraph (f) of this section;

(h) That the procedures in § 10.24 et seq. shall apply to any hearing and review.

10. In § 10.23, paragraph (a) is revised to read as follows:

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a timely written request for a hearing pursuant to § 10.22, a recommendation as to the final action to be taken shall be made by the Director, Division of Facilities and Security, through the Director, Office of Administration, to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC, including any answer filed by the individual.

* * * * *

11. In § 10.25, paragraphs (a) and (c) are revised to read as follows:

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 shall, before the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Facilities and Security, in making his or her finding that a question exists regarding the eligibility of the individual for NRC access authorization and/or employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Facilities and Security, shall make arrangements for the production of such evidence and for such witnesses to appear at the hearing by subpoena or otherwise.

* * * * *

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answers and defense to the allegations contained in the notification letter. When requested, however, Hearing Counsel shall assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Facilities and Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such assistance has been made.

12. In § 10.27 paragraph (c) is revised to read as follows:

§ 10.27 Prehearing proceedings.

* * * * *

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Facilities and Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC.

13. In § 10.28, paragraph (n) is revised to read as follows:

§ 10.28 Conduct of hearing.

* * * * *

(n) A written transcript of the entire proceeding shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost. The transcript or recording shall be made part of the applicant's or employee's personnel security file.

14. Section 10.31 is revised to read as follows:

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Deputy Executive Director for Management Services who at his or her discretion may return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Deputy Executive Director for Management Services;

(b)(1) In the event of a recommendation by the Hearing Examiner that an individual's access authorization and/or employment clearance be denied or revoked, the Deputy Executive Director for Management Services shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by the NRC Personnel Security Review Panel and of the right to submit a brief in support of his or her contentions. The request for a review shall be submitted to the Deputy Executive Director for Management Services within five days after the receipt of the notice. The brief shall be forwarded to the Deputy Executive Director of Management Services, for transmission to the NRC Personnel Security Review Panel not later than 10 days after receipt of such notice.

(2) In the event the individual fails to request a review by the NRC Personnel Security Review Panel of an adverse recommendation within the prescribed time, the Deputy Executive Director for Management Services may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. The request shall set forth those matters at issue in the hearing on which the Deputy Executive Director for Management Services desires a review by the NRC Personnel Security Review Panel.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Deputy Executive Director for Management Services may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. If such a request is made, the Deputy Executive Director for Management Services shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Deputy Executive Director for Management Services desires a review by the NRC Personnel Security Review Panel. The Deputy Executive Director for Management Services shall further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Panel. The brief shall be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, the Hearing Counsel may file a brief within 10 days of being notified by the Deputy Executive Director for Management Services that a review has been requested. The brief shall be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel.

(e) The Hearing Counsel may also request a review of the case by the NRC Personnel Security Review Panel. The request for review, which shall set forth those matters at issue in the hearing on which the Hearing Counsel desires a review, shall be submitted to the Deputy Director Executive for Management Services within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which shall be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel. A copy of the request for review, and a copy of any brief filed, shall be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Panel. The brief shall be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel. A copy of the brief shall be made a part of the applicant's personnel security file.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Deputy Executive Director for Management Services for good cause shown.

(g) In the event a request is made for a review of the record by the NRC Personnel Security Review Panel, the Deputy Executive Director for Management Services shall forthwith send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Panel. If neither the individual, the Deputy Executive Director for Management Services, nor the Hearing Counsel requests such a review, the final determination shall be made by the Deputy Executive Director for Management Services on the basis of the record with all findings and recommendations.

15. Section 10.32 is revised to read as follows:

§ 10.32 Recommendation of the NRC Personnel Security Review Panel.

(a) The Deputy Executive Director for Management Services shall designate an NRC Personnel Security Review Panel to conduct a review of the record of the case. The NRC Personnel Security Review Panel shall be comprised of three members, two of whom shall be selected from outside the security field. To qualify as an NRC Personnel Security Review Panel member, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No NRC Personnel Security Review Panel member shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The NRC Personnel Security Review Panel shall consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. The NRC Personnel Security Review Panel may request such additional briefs as the Panel deems appropriate. When the NRC Personnel Security Review Panel determines that additional evidence or further proceedings are necessary, the record may be returned to the Deputy Executive Director for Management Services with a recommendation that the case be returned to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony. When additional testimony is taken by the Hearing Examiner, a written transcript of such testimony shall be made a part of the record and shall be taken by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

(c) In conducting the review, the NRC Personnel Security Review Panel shall make its findings and recommendations as to the eligibility or continued eligibility of an individual for access authorization and/or employment clearance on the record supplemented by additional testimony or briefs, as has been previously determined by the NRC Personnel Security Review Panel as appropriate.

(d) The NRC Personnel Security Review Panel shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, the NRC Personnel Security Review Panel is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the NRC Personnel Security Review Panel shall make a favorable recommendation; otherwise, the NRC Personnel Security Review Panel shall make an adverse recommendation. The NRC Personnel Security Review Panel shall prepare a report of its findings and recommendations and submit the report in writing to the Deputy Executive Director for Management Services, who shall furnish a copy to the individual. The findings and recommendations shall be fully supported by stated reasons supporting the findings and recommendations.

16. Section 10.33 is revised to read as follows:

§ 10.33 Action by the Deputy Executive Director for Management Services.

(a) The Deputy Executive Director for Management Services, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28(i), (j), or (l) have been used and the Deputy Executive Director for Management Services determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether access authorization and/or employment clearance shall be granted, denied, or revoked, the Deputy Executive Director for Management Services or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration, of his or her decision that access authorization and/or employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration.

17. In § 10.34, paragraph (a) is revised to read as follows:

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Deputy Executive Director for Management Services, the Commission shall review the record and determine whether access authorization and/or employment clearance shall be granted, denied, or revoked, based upon the record.

* * * * *

18. Section 10.35 is revised to read as follows:

§ 10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Deputy Executive Director for Management Services or the Commission has made a determination granting access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Deputy Executive Director for Management Services has made a determination denying or revoking access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or national security information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is convincing evidence of reformation or rehabilitation. Requests for reconsideration shall be submitted in writing to the Deputy Executive Director for Management Services through the Director, Office of Administration. Such requests shall be accompanied by an affidavit setting forth in detail the information referred to above. The Deputy Executive Director for Management Services shall cause the individual to be notified as to whether his or her eligibility for access authorization and/or employment clearance will be reconsidered and if so, the method by which such reconsideration will be accomplished.

(c) Where access authorization and/or employment clearance has been granted

to an individual by the Director, Division of Facilities and Security, without recourse to the procedures set forth in §§ 10.20 through 10.34, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information, to which the individual has or will have access, has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

19. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

20. In § 11.7 the paragraph designations are removed, the definitions are rearranged in alphabetical order, and the definitions of *NRC—"U" special nuclear material access authorization* and *NRC—"R" special nuclear material access authorization* are revised to read as follows:

§ 11.7 Definitions.

* * * * *

NRC—"U" special nuclear material access authorization means an administrative determination based upon a single scope background investigation, normally conducted by the Office of Personnel Management, that an individual in the course of employment is eligible to work at a job falling within the criteria of § 11.11(a)(1) or § 11.13.

NRC—"R" special nuclear material access authorization means an administrative determination based upon a national agency check with law and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

* * * * *

21. Section 11.15 is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(a)(1) Application for special nuclear material access authorization, renewal, or change in level shall be filed by the licensee on behalf of the applicant with the Director, Division of Facilities and Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications for affected individuals employed on October 28, 1985, shall be submitted within 60 days of notification of Commission approval of the amended security plan.

(2) Licensees who wish to secure NRC—U or NRC—R special nuclear material access authorizations for individuals in possession of an active NRC Q or L access authorization or other security clearance granted by another Federal agency based on an equivalent investigation shall submit a "Security Acknowledgment" (NRC Form 176) and a "Request for Access Authorization" (NRC Form 237). NRC will process these requests by verifying the data on an NRC cleared individual, or by contacting the Federal agency which granted the clearance, requesting certification of the security clearance, and determining the investigative basis and level of the clearance. Licensees may directly request the Federal agency which administered the security clearance, if other than NRC, to certify to the NRC that it has on file an active security clearance for an individual and to specify the investigative basis and level of the clearance.

(b) Applications for special nuclear material access authorization for individuals, other than those qualifying under the provisions of § 11.15(a)(2), must be made on forms supplied by the Commission, including:

(1) Questionnaire for National Security Positions (SF—86, Parts 1 and 2);

(2) Two completed standard fingerprint cards (FD—258);

(3) Security Acknowledgment (NRC Form 176);

(4) Other related forms where specified in accompanying instruction (NRC—254); and

(5) A statement by the employer, prospective employer, or contractor identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC–U special nuclear material access authorizations must be renewed every five years from the date of issuance. Except as provided in paragraph (c)(3) of this section, NRC–R special nuclear material access authorizations must be renewed every ten years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period for NRC–U and ten year period for NRC–R, respectively, and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC–U or an NRC–R special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The Questionnaire for National Security Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC–U special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC–U access authorization. Any NRC–U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC–R special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE–L or DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements will satisfy the NRC renewal submission and paperwork requirements even if less than ten years have passed since the date of issuance or renewal of the NRC–R access authorization. Any NRC–R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next

reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) of this section, the period of time for the initial and each subsequent NRC–U renewal application to NRC may not exceed seven years.

(5) Notwithstanding the provisions of paragraph (c)(3) of this section, the period of time for the initial and each subsequent NRC–R renewal application to NRC may not exceed twelve years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, for a NRC–U renewal or twelve years of the previous submission for a NRC–R renewal, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven year period for NRC–U or twelve year period for NRC–R renewal.

(d) If at any time, due to new assignment or assumption of duties, a change in special nuclear material access authorization level from NRC "R" to "U" is required, the individual shall apply for a change of level of special nuclear material access authorization. The application must include a description of the new duties to be assigned or assumed, justified by appropriate reference to the licensee's security plan.

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–R	[1] $128
ii. NRC–R (expedited processing)	[1] $200
iii. NRC–R based on certification of comparable investigation	[2] $0
iv. NRC–R renewal	[1] $128
v. NRC–U requiring single scope investigation	$3275
vi. NRC–U requiring single scope investigation (expedited processing)	$3800
vii. NRC–U based on certification of comparable investigation	[2] $0
viii. NRC–U renewal	[2] $1720

(2) Material access authorization fees will be published each time the Office of Personnel Management notifies NRC of a change in the background investigation rate it charges NRC for conducting the investigation. Any such changed access authorization fees will be applicable to each access authorization request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed expeditiously at no cost, since the Commission may accept the certification of access authorizations and investigative data from other Federal government agencies which grant personnel access authorizations.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable single scope background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–U special nuclear material access authorization would afford.

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a comparable or greater background investigation consisting of a national agency check with law and credit may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–R special nuclear material access authorization would afford. An NRC or DOE–L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check with credit, which was granted or being processed by another Federal agency before January 1, 1998, is acceptable to meet this requirement.

22. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or canceled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Facilities and Security immediately, by telephone, so that the investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Facilities and Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the single scope investigation at the time of withdrawal or cancellation.

23. In § 11.21, paragraphs (c) and (d) are revised to read as follows:

§ 11.21 Application of the criteria.

* * * * *

(c) When the reports of investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it shall create a question as to the individual's eligibility for special nuclear material access authorization. In such cases, the application of the criteria shall be made in light of and with specific regard to whether the existence of such information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Facilities and Security, may authorize the granting of special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as the Director deems appropriate, may authorize the granting of special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for special nuclear material access authorization shall be resolved in accordance with the procedures set forth in §§ 10.20 through 10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for special nuclear material access authorization by action of the Hearing Examiner or a Personnel Security Review Panel,[3] the following principle shall be applied by the Examiner and the Personnel Security Review Panel: Where there are grounds sufficient to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of such information

[1] If the NRC determines, based on its review of available data, that a National Agency Check with law and credit investigation is necessary, a fee of $128 will be assessed prior to the conduct of the investigation; however, if a single scope investigation is deemed necessary by the NRC, based on its review of available data, a fee of $3,275 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, a fee of $3,275 will be assessed prior to the conduct of the investigation.

[3] The functions of the Hearing Examiner and the Personnel Security Review Panel are described in part 10 of this chapter.

supports a reasonable belief that granting access would be inimical to the common defense and security, this shall be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

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

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp. p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

25. In § 25.5 the definitions of *"L" access authorization*, *National Security Information* and *"Q" access authorization* are revised to read as follows:

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check with law and credit investigation (NACLC) or an access national agency check and inquiries investigation (ANACI)) conducted by the Office of Personnel Management.

* * * * *

National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

* * * * *

"Q" access authorization means an access authorization granted by the Commission normally based on a single scope background investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency which conducts personnel security investigations.

* * * * *

26. Section 25.9 is revised to read as follows:

§ 25.9 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director, Division of Facilities and Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

27. Section 25.15 is revised to read as follows:

§ 25.15 Access permitted under "Q" or "L" or equivalent CSA access authorization.

(a) A "Q" or CSA equivalent access authorization permits an individual access on a need-to-know basis to Secret Restricted Data related to nuclear weapons design, manufacturing and vulnerability information; and certain particularly sensitive Naval Nuclear Propulsion Program information (e.g., fuel manufacturing technology) as well as Secret and Confidential National Security Information including intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information.

(b) An "L" access authorization permits an individual access on a need-to-know basis to Secret and Confidential classified information other than the categories specifically included in paragraph (a) of this section. In addition, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1985.

(c) Each employee of the Commission is processed for one of the two levels of access authorization. Licensees and other persons will furnish classified information to a Commission or CSA employee on official business when the employee has the appropriate level of access authorization and need-to-know. Some individuals are permitted to begin NRC employment without an access authorization. However, no NRC or CSA employee is permitted access to any classified information until the appropriate level of access authorization has been granted to that employee by NRC or the CSA.

28. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for access authorization or access authorization renewal must be submitted to the CSA. If the NRC is the CSA, the application and its accompanying fee must be submitted to the NRC Division of Facilities and Security. If necessary, the NRC Division of Facilities and Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Facilities and Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

29. In § 25.21, paragraph (c) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC "Q" access authorization must be renewed every five years from the date of issuance. Except as provided in paragraph (c)(2) of this section, NRC "L" access authorization must be renewed every ten years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period for "Q" access authorization and ten-year period for "L" access authorization, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(d).

(2) Renewal applications and the required paperwork are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by the NRC to meet the NRC's requirements. (The DOE Reinvestigation Program has been determined to meet the NRC's requirements.) For these individuals, the submission of the SF–86 by the licensee or other person to the other government agency pursuant to their reinvestigation requirements will satisfy the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC "Q" access authorization or 10 years have passed since the date of issuance or renewal of the NRC "L" access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other Government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC "Q" renewal application to the NRC may not exceed seven years or, in the case of NRC "L" renewal application, twelve years. Any individual who is subject to the reinvestigation program

requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years for "Q" renewal or twelve years for "L" renewal of the previous submission, shall submit a renewal application to the NRC using the forms prescribed in § 25.17(d) before the expiration of the seven-year period.

(3) If the NRC is not the CSA, reinvestigation program procedures and requirements will be set by the CSA.

30. In § 25.23, paragraph (a) is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

* * * * *

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by a Personnel Security Review Panel ; or

* * * * *

31. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of access authorization is withdrawn or canceled, the requestor shall notify the CSA immediately by telephone so that the single scope background investigation, national agency check with law and credit investigation, or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization or access authorization renewal requested. The requestor shall confirm each telephone notification promptly in writing.

32. In § 25.27, paragraph (b) is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are canceled.

* * * * *

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for National Security Positions (SF–86), or CSA equivalent, the individual must complete a personnel security packet (see § 25.17(d)). The CSA, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

33. In § 25.31, paragraphs (a), (b), and (c) are revised to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

(a) The NRC Division of Facilities and Security may, on request, extend the authorization of an individual who possesses an access authorization in connection with a particular employer or activity, to permit access to classified information in connection with an assignment with another employer or activity.

(b) The NRC Division of Facilities and Security may, on request, transfer an access authorization when an individual's access authorization under one employer or activity is terminated, simultaneously with the individual being granted access authorization for another employer or activity.

(c) Requests for extension or transfer of access authorization must state the full name of the person, his date of birth and level of access authorization. The Director, Division of Facilities and Security, may require a new personnel security packet (see § 25.17(c)) to be completed by the applicant. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

* * * * *

34. In § 25.33, paragraphs (a) and (b) are revised to read as follows:

§ 25.33 Termination of access authorizations.

(a) Access authorizations will be terminated when:

(1) Access authorization is no longer required;

(2) An individual is separated from the employment or the activity for which he or she obtained an access authorization for a period of 90 days or more; or

(3) An individual, pursuant to 10 CFR part 10 or other CSA-approved adjudicatory standards, is no longer eligible for access authorization.

(b) A representative of the licensee or other organization that employs the individual whose access authorization will be terminated shall immediately notify the CSA when the circumstances noted in paragraph (a)(1) or (a)(2) of this section exist; inform the individual that his or her access authorization is being terminated, and the reason; and that he or she will be considered for reinstatement of access authorization if he or she resumes work requiring it.

* * * * *

35. In § 25.35, paragraph (b) is revised to read as follows:

§ 25.35 Classified visits.

* * * * *

(b) Representatives of the Federal Government, when acting in their official capacities as inspectors, investigators, or auditors, may visit a licensee, certificate holder, or other's facility without furnishing advanced notification, provided these representatives present appropriate Government credentials upon arrival. Normally, however, Federal representatives will provide advance notification in the form of an NRC Form 277, "Request for Visit or Access Approval," with the "need-to-know" certified by the appropriate NRC office exercising licensing or regulatory authority and verification of NRC access authorization by the Division of Facilities and Security.

* * * * *

36. In § 25.37, paragraph (b) is revised to read as follows:

§ 25.37 Violations.

* * * * *

(b) National Security Information is protected under the requirements and sanctions of Executive Order 12958.

37. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee (dollars)
Initial "L" access authorization	[1] 128
Initial "L" access authorization (expedited processing)	[1] 200
Reinstatement of "L" access authorization	[2] 128
Extension or Transfer of "L" access authorization	[2] 128
Renewal of "L" access authorization	[1] 128
Initial "Q" access authorization	3275
Initial "Q" access authorization (expedited processing)	3800
Reinstatement of "Q" access authorization	[2] 3275
Reinstatement of "Q" access authorization (expedited processing)	[2] 3800
Extension or Transfer of "Q'	[2] 3275
Extension or Transfer of "Q" (expedited processing)	[2] 3800
Renewal of "Q" access authorization	[2] 1720

[1] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, a fee of $3275 will be assessed before the conduct of the investigation.

[2] Full fee will only be charged if an investigation is required.

38. The heading of part 95 is revised to read as follows:

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

39. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391.

* * * * *

40. In § 95.5 the definitions of *NRC "L" access authorization, NRC "Q" access authorization* and *security container* are revised to read as follows:

§ 95.5 Definitions.

* * * * *

NRC "L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check with law and credit investigation (NACLC) or an access national agency check and inquiries investigation (ANACI)) conducted by the Office of Personnel Management.

NRC "Q" access authorization means an access authorization granted by the Commission normally based on a single scope background investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency which conducts personnel security investigations.

* * * * *

Security container includes any of the following repositories:

(1) A security filing cabinet—one that bears a Test Certification Label on the side of the locking drawer, inside wall adjacent to the locking drawer, or interior door plate, and is marked, General Services Administration Approved Security Container on the exterior of the top drawer or door.

(2) A safe—burglar-resistive cabinet or chest which bears a label of the Underwriters' Laboratories, Inc. certifying the unit to be a TL–15, TL–30, or TRTL–30, and has a body fabricated of not less than 1 inch steel and a door fabricated of not less than 1½ inches steel exclusive of the combination lock and bolt work; or bears a Test Certification Label on the inside of the door and is marked General Services Administration Approved Security Container and has a body of steel at least ½ "thick, and a combination locked steel door at least 1" thick, exclusive of bolt work and locking devices, and an automatic unit locking mechanism.

(3) A vault—a windowless enclosure constructed with walls, floor, roof and door(s) that will delay penetration sufficient to enable the arrival of emergency response forces capable of preventing theft, diversion, damage or compromise of classified information or matter, when delay time is assessed in conjunction with detection and communication subsystems of the physical protection system.

(4) A vault-type room—a room which has a combination lock door and is protected by an intrusion alarm system which alarms upon the unauthorized penetration of a person anywhere into the room.

(5) Other repositories which in the judgment of the Division of Facilities and Security would provide comparable physical protection.

* * * * *

41. Section 95.9 is revised to read as follows:

§ 95.9 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director, Division of Facilities and Security, Nuclear Regulatory Commission, Washington, DC 20555.

42. In § 95.15, paragraph (a) is revised to read as follows:

§ 95.15 Approval for processing licensees and others for facility clearance.

(a) A licensee, certificate holder, or other person who has a need to use, process, store, reproduce, transmit, transport, or handle NRC classified information at any location in connection with Commission related activities shall promptly request an NRC facility clearance. This specifically includes situations where a licensee, certificate holder, or other person needs a contractor or consultant to have access to NRC classified information, or others who require access to classified information in connection with NRC regulated activities, but do not require use, storage, or possession of classified information outside of NRC facilities. However, it is not necessary for a licensee, certificate holder, or other person to request an NRC facility clearance for access to another agency's classified information at that agency's facilities or to store that agency's classified information at their facility, provided no NRC classified information is involved and they meet the security requirements of the other agency. If NRC classified information is involved, the requirements of § 95.17 apply.

* * * * *

43. In § 95.17, the introductory text of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 95.17 Processing facility clearance.

(a) Following the receipt of an acceptable request for facility clearance, the NRC will either accept an existing facility clearance granted by a current CSA and authorize possession of license or certificate related classified information or process the facility for a facility clearance. Processing will include—

(1) A determination based on review and approval of a Standard Practice Procedure Plan that granting of the Facility Clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made. An NRC finding of foreign ownership, control, or influence is based on factors concerning the foreign intelligence threat, risk of unauthorized technology transfer, type and sensitivity of the information that requires protection, the extent of foreign influence, record of compliance with pertinent laws, and the nature of international security and information exchange agreements. The licensee, certificate holder, or other person is required to advise NRC within 30 days of any significant events or changes that may affect its status concerning foreign ownership, control, or influence.

* * * * *

44. Section 95.19 is revised to read as follows:

§ 95.19 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee, certificate holder or other person shall obtain prior CSA approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the CSA with copies to the Director, Division of Facilities and Security, Office of Administration, NRC, Washington, DC 20555–0001 (if NRC is not the CSA), and the NRC Regional Administrator of the cognizant Regional Office listed in appendix A of part 73. These substantive changes to the Standard Practice Procedures Plan that affect the security of the facility must be submitted to NRC Division of Facilities and Security, or CSA, at least 30 days

prior to the change so that it may be evaluated. The CSA shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior CSA approval include—

(1) A change in the approved facility's classified mail address; or

(2) A temporary or permanent change in the location of the approved facility (e.g., moving or relocating NRC's classified interest from one room or building to another). Approved changes will be reflected in a revised Security Practices and Procedures Plan submission within 30 days of approval. Page changes rather than a complete rewrite of the plan may be submitted.

(b) A licensee or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified information without receiving prior CSA approval. These minor changes that do not affect the security of the facility may be submitted to the addressees noted in paragraph (a) of this section within 30 days of the change. Page changes rather than a complete rewrite of the plan may be submitted. Some examples of minor, non-substantive changes to the Standard Practice Procedures Plan include—

(1) The designation/appointment of a new facility security officer; or

(2) A revision to protective personnel patrol routine, provided the new routine continues to meet the minimum requirements of this part.

(c) A licensee, certificate holder, or other person must update its NRC facility clearance by submitting a complete Standard Practice Procedures Plan to the Division of Facilities and Security at least every 5 years.

45. Section 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Facilities and Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization of the Commission's grant, acceptance of another agency's facility clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of the NRC, NRC licensees, NRC certificate holders, NRC contractors, or other Federal agencies having a need to transmit classified information to the licensee or other person.

46. Section 95.21 is revised to read as follows:

§ 95.21 Withdrawal of requests for facility security clearance.

When a request for facility clearance is to be withdrawn or canceled, the requester shall notify the NRC Division of Facilities and Security in the most expeditious manner so that processing for this approval may be terminated. The notification must identify the full name of the individual requesting discontinuance, his position with the facility, and the full identification of the facility. The requestor shall confirm the telephone notification promptly in writing.

* * * * *

47. In § 95.25, the introductory text of paragraph (a), paragraphs (a)(2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (j)(6), and (j)(7) are revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

(a) Secret matter, while unattended or not in actual use, must be stored in—

* * * * *

(2) Any steel file cabinet that has four sides and a top and bottom (all permanently attached by welding, rivets, or peened bolts so the contents cannot be removed without leaving visible evidence of entry) and is secured by a rigid metal lock bar and an approved key operated or combination padlock. The keepers of the rigid metal lock bar must be secured to the cabinet by welding, rivets, or bolts, so they cannot be removed and replaced without leaving evidence of the entry. The drawers of the container must be held securely so their contents cannot be removed without forcing open the drawer. This type cabinet will be accorded supplemental protection during non-working hours.

(b) Confidential matter while unattended or not in use must be stored in the same manner as SECRET matter except that no supplemental protection is required.

(c) * * *

(2) Combinations must be changed by a person authorized access to the contents of the container, or by the Facility Security Officer or his or her designee.

* * * * *

(f) Combinations shall be changed only by persons authorized access to Secret or Confidential National Security Information and/or Restricted Data depending upon the matter authorized to be stored in the security container.

(g) Posted information. Containers may not bear external markings indicating the level of classified matter authorized for storage. A record of the names of persons having knowledge of the combination must be posted inside the container.

(h) End of day security checks.

(1) Facilities that store classified matter shall establish a system of security checks at the close of each working day to ensure that all classified matter and security repositories have been appropriately secured.

(2) Facilities operating with multiple work shifts shall perform the security checks at the end of the last working shift in which classified matter had been removed from storage for use. The checks are not required during continuous 24-hour operations.

(i) Unattended security container found opened. If an unattended security container housing classified matter is found unlocked, the custodian or an alternate must be notified immediately. The container must be secured by protective personnel and the contents inventoried as soon as possible but not later than the next workday. A report reflecting all actions taken must be submitted to the responsible Regional Office (*see* 10 CFR part 73, Appendix A, for addresses) with an information copy to the NRC Division of Facilities and Security within 30 days after the event. The licensee shall retain records pertaining to these matters for 3 years after completion of final corrective action.

(j) * * *

(1) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of classified matter;

* * * * *

(6) Keys and spare locks must be protected equivalent to the level of classified matter involved;

(7) Locks must be changed or rotated at least every 12 months, and must be replaced after loss or compromise of their operable keys; and

* * * * *

48. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, classified matter must be under the direct control of an authorized individual to preclude physical, audio, and visual access by persons who do not have the prescribed access authorization or other written CSA disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

49. In § 95.29, paragraphs (a), (c)(2), and (c)(4) are revised to read as follows:

§ 95.29 Establishment of restricted or closed areas.

(a) If, because of its nature, sensitivity or importance, classified matter cannot

otherwise be effectively controlled in accordance with the provisions of §§ 95.25 and 95.27, a Restricted or Closed area must be established to protect such matter.

* * * * *

(c) * * *

(2) Access must be limited to authorized persons who have an appropriate security clearance and a need-to-know for the classified matter within the area. Persons without the appropriate level of clearance and/or need-to-know must be escorted at all times by an authorized person where inadvertent or unauthorized exposure to classified information cannot otherwise be effectively prevented.

* * * * *

(4) Open shelf or bin storage of classified matter in Closed Areas requires CSA approval. Only areas protected by an approved intrusion detection system will qualify for approval.

50. In § 95.33, paragraph (f) is revised to read as follows:

§ 95.33 Security education.

* * * * * *

(f) Refresher Briefings. The licensee or other facility shall conduct refresher briefings for all cleared employees every 3 years. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and by issuing written materials.

* * * * *

51. A new § 95.34 is added to read as follows:

§ 95.34 Control of visitors.

(a) *Uncleared visitors.* Licensees, certificate holders, or others subject to this part shall take measures to preclude access to classified information by uncleared visitors.

(b) *Foreign visitors.* Licensees, certificate holders, or others subject to this part shall take measures as may be necessary to preclude access to classified information by foreign visitors.

(1) The names, dates of birth, and organizational affiliation and status (e.g., resident aliens, dual citizenship) of foreign visitors shall be provided to the Division of Facilities and Security 60 days in advance of the visit. Unless an objection to the visit is received from the NRC Division of Facilities and Security within the 60 day period, the visit may proceed as scheduled.

(2) The licensee, certificate holder, or others shall retain records of visits for 5 years beyond the date of the visit.

52. Section 95.35 is revised to read as follows:

§ 95.35 Access to National Security Information and Restricted Data.

(a) Unless authorized by the Commission, a person subject to the regulations in this part may not receive or permit any individual to have access to Secret or Confidential National Security Information or Restricted Data unless the individual has one of the following access authorizations:

(1) A U.S. Government granted access authorization based on a Single Scope Background Investigation and issued by the CSA which permits an individual access to—

(i) Secret Restricted Data related to nuclear weapons design, manufacturing and vulnerability information; and certain particularly sensitive Naval Nuclear Propulsion Program information (e.g., fuel manufacturing technology) and Confidential Restricted Data; and

(ii) Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information.

(2) A U.S. Government granted access authorization based on a National Agency Check with Law and Credit investigation (NACLC) and issued by the CSA which permits an individual access to Secret and Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section.

(3) Access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

(4) An established "need-to-know" for the information. (See Definitions, § 95.5).

(5) CSA approved storage facilities if classified documents or material are to be transmitted to the individual.

(b) Classified information must not be released by a licensee or other person to any personnel other than properly access authorized Commission licensee employees, or other individuals authorized access by the Commission.

(c) Access to classified national security information at NRC-licensed facilities by authorized representatives of IAEA is permitted in accordance with § 95.36 of this part.

53. In § 95.36, paragraphs (a), (c), and (d) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the NRC Division of Facilities and Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA) or other international organization and that the individual is authorized to make visits or inspections in accordance with an established agreement with the United States Government, a licensee, certificate holder or other person subject to this part shall permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure authorization) to have access to matter which is classified National Security Information that is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee, certificate holder, or other person subject to this part to provide access to Restricted Data.

* * * * *

(c) In accordance with the specific disclosure authorization provided by the Division of Facilities and Security, licensees, or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents which contain classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organizations in accordance with instructions contained in the NRC's disclosure authorization letter. Licensees and other persons subject to this part may also forward these documents through the NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees and other persons may not reproduce documents containing classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for 5 years beyond the date of the visit or inspection. These records must specifically identify each document which has been released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Facilities and Security, by letter, may require) the categories of documents that the authorized

representative has had access and the date of this access. A licensee or other person subject to this part shall also retain Division of Facilities and Security disclosure authorizations for 5 years beyond the date of any visit or inspection when access to classified information was permitted.

* * * * *

54. In § 95.37, paragraph (c)(1)(iv) is removed and paragraphs (c)(1)(i) and (h)(2) are revised to read as follows:

§ 95.37 Classification and preparation of documents.

* * * * *

(c) * * *

(1) * * *

(i) Derivative classifications of classified National Security Information must contain the identity of the source document or the classification guide, including the agency and office of origin, on the "Derived From" line and its classification date. If more than one source is cited, the "Derived From" line should indicate "Multiple Sources." The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document.

* * * * *

(h) * * *

(2) In the event of a question regarding classification review, the holder of the information or the authorized classifier shall consult the NRC Division of Facilities and Security, Information Security Branch, for assistance.

* * * * *

55. In § 95.39, the heading, paragraphs (b)(3) and (c)(2) are revised to read as follows:

§ 95.39 External transmission of classified matter.

* * * * *

(b) * * *

(3) The outer envelope or wrapper must contain the addressee's classified mailing address. The outer envelope or wrapper may not contain any classification, additional marking or other notation that indicate that the enclosed document contains classified information. The Classified Mailing Address shall be uniquely designated for the receipt of classified information. The classified shipping address for the receipt of material (e.g., equipment) should be different from the classified mailing address for the receipt of classified documents.

* * * * *

(c) * * *

(2) Confidential matter may be transported by one of the methods set forth in paragraph (c)(1) of this section, by U.S. express or certified mail. Express or certified mail may be used in transmission of Confidential documents to Puerto Rico or any United States territory or possession.

* * * * *

56. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing classified National Security Information must be downgraded or declassified as authorized by the NRC classification guides or as determined by the NRC. Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC Division of Facilities and Security, Office of Administration, Washington, DC 20555–0001. Requests for downgrading or declassifying of Restricted Data will be forwarded to the NRC Division of Facilities and Security for coordination with the Department of Energy.

* * * * *

57. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing classified information.

Documents containing classified information may be destroyed by burning, pulping, or another method that ensures complete destruction of the information that they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the CSA.

58. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The facility may deliver all documents and matter containing classified information to the Commission or to a person authorized to receive them or destroy all such documents and matter. In either case, the facility shall submit a certification of nonpossession of classified information to the NRC Division of Facilities and Security within 30 days of termination of facility clearance.

(b) In any instance where facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the CSA, dispose of classified documents in a manner specified by the CSA.

59. Section 95.57 is revised to read as follows:

§ 95.57 Reports.

Each licensee or other person having a facility clearance shall report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in 10 CFR part 73, Appendix A,

(a) Any alleged or suspected violation of the Atomic Energy Act, Espionage Act, or other Federal statutes related to classified information. Incidents such as this must be reported within 1 hour of the event followed by written confirmation;

(b) Any infractions, losses, compromises or possible compromise of classified information or classified documents not falling within paragraph (a) of this section. Incidents such as these must be reported via written notification within 30 days of the incident. The report shall include details of the incident including corrective action taken;

(c) In addition, NRC requires records for all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Facilities and Security. These may be submitted on an as completed basis or every 30 days. The information may be submitted either electronically by an on-line system (NRC prefers the use of a dial-in automated system connected to the Division of Facilities and Security) or by paper copy using NRC Form 790.

Dated at Rockville, Maryland, this 16th day of July, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–20602 Filed 7–31–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98N–0040]

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to

October 15, 1998, the comment period on a proposal rule that was published in the Federal Register of May 22, 1998 (63 FR 28301). The document proposed to amend the drug and biologics regulations by adding provisions that would clarify the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The agency is taking this action to provide interested persons additional time to submit comments to FDA on the proposed rule.

DATES: Written comments by October 15, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210, or Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 22, 1998 (63 FR 28301), FDA published a proposed rule to amend the drug and biologics regulations by adding provisions that would clarify the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The proposed regulations would describe certain types of indications for which FDA may approve diagnostic radiopharmaceuticals. The proposed rule would also include criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. Interested persons were given until August 5, 1998, to submit comments on the proposed rule. Due to the technical nature of the proposed rule, FDA has decided to extend the comment period until October 15, 1998, to allow interested persons additional time to submit comments on the proposed rule.

Interested persons may, on or before October 15, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20596 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 095–0083; FRL–6133–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of the sulfur content of fuels within the Ventura County Air Pollution Control District.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of sulfur dioxide (SO_2) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate it into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions.

DATES: Comments must be received on or before September 2, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Ventura County Air Pollution Control District (VCAPCD) Rule 64, Sulfur Content of Fuels. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

II. Background

40 CFR 81.305 provides the attainment status designations for air districts in California. Ventura County Air Pollution Control District is listed as being in attainment for the national ambient air quality standards for sulfur dioxide (SO_2). Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds.

VCAPCD adopted Rule 64, Sulfur Content of Fuels, on June 14, 1994. On July 13, 1994 the State of California submitted many rules for incorporation into its SIP, including the rule being acted on in this document. VCAPCD Rule 64 was found to be complete on September 12, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being proposed for limited approval and limited disapproval. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of an SO_2 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

While the VCAPCD is in attainment with the SO_2 NAAQS, many of the

[1] EPA adopted completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

general SIP requirements regarding enforceability, for example, are still appropriate for the rule. In determining the approvability of this rule, EPA evaluated it in light of the "SO_2 Guideline Document", EPA–452/R–94–008.

On April 17, 1987, EPA approved into the SIP a version of Rule 64, Sulfur Content of Fuels, that had been adopted by the VCAPCD on July 5, 1983. VCAPCD submitted an amendment to Rule 64 on July 13, 1994 which includes the following significant changes from the current SIP:

- Adds a section on applicability of the rule.
- Adds a section on test methods for determining the sulfur content of fuels.
- Removes incineration of waste gases whose gross heating value is less than 300 BTUs per cubic foot from the list of exemptions to Rule 64.
- Exempts flare gas combustion and places it under the requirements of Rule 54: Sulfur Compounds.

EPA has evaluated VCAPCD's submitted Rule 64 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions result in a clearer, more enforceable rule. Although VCAPCD's Rule 64 will strengthen the SIP, this rule contains the following deficiency which should be corrected.

- The rule does not explicitly state those records which sources are required to keep on site and made available to inspectors to assess compliance. The rule also does not state the minimum length of time for retaining data on site.

A detailed discussion of the rule deficiency can be found in the Technical Support Document for Rule 64 (7/1/98), which is available from the U.S. EPA, Region IX office. Because of this deficiency, the rule is not approvable and may lead to rule enforceability problems.

Because of the above deficiency, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of VCAPCD Rule 64 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains a deficiency. There will be no sanctions clock as VCAPCD is in attainment for SO_2.

It should be noted that the rule covered by this proposed rulemaking has been adopted by the VCAPCD and is currently in effect in the VCAPCD. EPA's final limited disapproval action will not prevent the VCAPCD or EPA from enforcing this rule.

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.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

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 businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

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 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 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 98–20609 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6133–8]

Designation of Areas for Air Quality Planning Purposes: State of Idaho and the Fort Hall Indian Reservation and Clean Air Act Reclassification; Fort Hall Indian Reservation Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; re-opening of public comment deadline.

SUMMARY: By this action, EPA is re-opening the public comment period from July 20, 1998, to August 19, 1998, the deadline for receiving written comments on two Agency proposed actions: the redesignation of the Power-Bannock Counties PM–10 nonattainment area, and a finding that the proposed Fort Hall nonattainment area failed to attain the National Ambient Air Quality Standard (NAAQS) for particulate matter of less than ten micrometers in aerodynamic diameter (PM–10).

DATES: Comments must be received or postmarked on or before August 19, 1998.

ADDRESSES: Copies of the request and other information supporting this proposed action are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Office of Air Quality, 1200 Sixth Avenue, (OAQ–107), Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality (OAQ–107), US Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION: On June 19, 1998 (63 FR 33597), EPA solicited public comment on its proposal to redesignate the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas that together cover the identical geographic area as the original nonattainment area. Likewise, on June 19, 1998 (63 FR 33605), EPA solicited public comment on a concurrent proposal to find that a portion of the Fort Hall Indian Reservation had failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. EPA received a request to extend the public comment period to allow more time to prepare a comprehensive comment document.

As a result of a request to extend the public comment period, EPA is granting a 30-day extension. A copy of this request has been placed into the docket and may be reviewed during normal business hours at the following location: Office of Air Quality (OAQ–107), Environmental Protection Agency, 1200 Sixth Avenue Seattle, Washington 98101. Interested parties are invited to comment on all aspects of EPA's two proposals of June 19, 1998. Comments should be submitted, preferably in triplicate, to the address listed in the front of this document.

Dated: July 24, 1998.

Phil Millam,

Acting Regional Administrator, Region 10.

[FR Doc. 98–20608 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–3967; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period for a Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document extends the comment period on an NPRM concerning a petition from Reitter & Schefenacker GmbH & Co. KG. to amend the agency's lighting standard. The petition asks that the standard be amended to relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources in motor vehicle signal lamps. In the NPRM, the agency sought comments on adding requirements reflecting Society of Automotive Engineers (SAE) specifications for measurement of photometrics in taillamps and in certain stop and turn signal lamps with more than one lighted section. In response to a petition from the American Automobile Manufacturers Association (AAMA), the agency is extending the comment period from August 10, 1998 to October 9, 1998. The reason for the extension is to give commenters sufficient time to review new information that has come to light since the NPRM was published.

DATES: Comments on Docket No. NHTSA 98–3967; Notice 1 must be received by October 9, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Chris Flanigan, Office of Safety Performance Standards (202–366–4918).

SUPPLEMENTARY INFORMATION: On June 24, 1998, NHTSA published in the **Federal Register** (63 FR 34350) an NPRM concerning a petition from Reitter & Schefenacker GmbH & Co. KG. The petitioner requested the agency amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," to relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources in motor vehicle lamps. The petition was submitted to relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources. These new lamp technologies include light-emitting diodes (LEDs), miniature halogen bulbs, and other light sources with a limited luminous flux. Because the requirements contained in FMVSS No. 108 for signal lamps are based on SAE Standards and Recommended Practices that were developed many years before LEDs, when incandescent bulbs were the only light sources in use at that time, the standard does not take into account the characteristics of these new-technology light sources.

On July 23, 1998, AAMA petitioned for an extension of the comment period. AAMA noted that new information has recently been published which should be thoroughly considered before offering comment on the NPRM. Namely, the University of Michigan Transportation Research Institute published a report in June 1998 entitled "Photometric Requirements for Signal Lamps Using Innovative Light Sources: Updating Requirements Based on Lighted Sections" (UMTRI–98–19). The opportunity to examine the views expressed in this report should be given to those who will comment on the NPRM.

After considering the arguments raised by AAMA, NHTSA has decided that it is in the public interest to grant the petitioner's request.

(Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50)

Issued on: July 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–20630 Filed 7–31–98; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 63, No. 148
Monday, August 3, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Double Sec Timber Sale and Vegetation Management, Philipsburg Ranger District, Beaverhead-Deerlodge National Forest, Granite and Deer Lodge Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impact of proposed actions to manage the vegetation through timber harvest and prescribed burning in the Flint Creek, North Flint Creek, and upper Warm Springs drainages. The timber harvest proposal includes road construction and regenerating new stands of trees. The project area is located approximately 10 miles south of Philipsburg, Montana.

The Forest Service intends to harvest 11.5 million board feet of timber using a variety of harvest methods on approximately 1,250 acres of Forest land. The proposal includes construction of 4.5 miles of permanent roads and 4.5 miles of temporary roads.

Additionally, the proposal includes mechanical and prescribed fire treatments to control conifer encroachment on 843 acres.

Travel management, both motorized and non-motorized, will be analyzed to determine the effects to wildlife and may result in changes in public access.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than September 14, 1998.

ADDRESSES: Send written comments to Deborah L.R. Austin, Forest Supervisor, c/o Bob Gilman, District Ranger, Philipsburg Ranger District, PO Box H, Philipsburg, Montana 59858.

FOR FURTHER INFORMATION CONTACT: Ed Casey, Interdisciplinary Team Leader, Philipsburg Ranger District, PO Box H, Philipsburg, MT, 59858; or phone: (406) 859–3211.

SUPPLEMENTARY INFORMATION: The environmental analysis was initiated for this area in the spring of 1997. At that time it was thought that an environmental assessment would be adequate to make an informed decision. New information concerning potential significant effects to lynx, which is proposed for listing under the ESA as a threatened species, due to overharvest and habitat modification has led to the decision to prepare an environmental impact statement.

The proposed action would harvest approximately 11.5 million board feet from 1,250 acres. Harvest would occur in the Dry Creek, Blodgett Gulch, Travelers Home Creek, Sawmill Creek, and North Fork Flint Creek subwatersheds. Silvicultural methods include precommercial thinning, commercial thinning, shelterwood, seed tree, salvage, clearcut, clearcut with reserve, and partial overstory removal. Approximately 4.5 miles of permanent roads would be constructed to access harvest units and to provide future access for protection and management of the area. In addition, 4.5 miles of temporary roads would provide short term access to harvest units.

Public participation is important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. To date, over 900 letters were sent to interested people, adjacent landowners, organizations, business, as well as Federal, State, County, and Tribal organizations. A field trip was held during the summer of 1997. Preliminary issues identified in scoping include effects to wildlife habitats, visual quality, recreation, and adjacent private land. Potential alternatives may harvest less timber, or emphasize harvest in other areas. Implementation of the proposed action or alternatives may require forest plan amendments for elk management, visual quality standards, or timber size class standards.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) during the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in February, 1999. The final EIS is scheduled for completion in May, 1999.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 400 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific

as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Beaverhead-Deerlodge Forest Supervisor is the responsible official who will make the decision. She will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: July 22, 1998.

Thomas W. Heintz,

Acting Forest Supervisor, Beaverhead-Deerlodge National Forest.

[FR Doc. 98–20567 Filed 7–31–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Alton (IL), Columbus (OH), and Farwell (TX) Areas, and Request for Comments on the Alton, Columbus, and Farwell Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Alton Grain Inspection Department (Alton), Columbus Grain Inspection, Inc. (Columbus), and Farwell Grain Inspection, Inc. (Farwell), will end January 31, 1999, according to the Act. GIPSA is asking persons interested in providing official services in the Alton, Columbus, and Farwell areas to submit an application for designation. GIPSA is also asking for comments on the services provided by Alton, Columbus, and Farwell.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before September 1, 1998. Comments are due by October 31, 1998.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Alton, main office located in St. Paul, Missouri, Columbus, main office located in Circleville, Ohio, and Farwell, main office located in Farwell, Texas, to provide official inspection services under the Act on February 1, 1996.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Alton, Columbus, and Farwell end on January 31, 1999, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Alton.

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Michigan and Ohio, is assigned to Columbus.

In Ohio: Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State line south to the Ohio River;

Bounded on the South by the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68 (including all of Sidney, Ohio); U.S. Route 68 north to U.S. Route 30; U.S. Route 30 east to State Route 19; State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Columbus' assigned geographic area does not include the export port locations inside Columbus' area which are serviced by GIPSA.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Arizona, New Mexico and Texas, is assigned to Farwell.

Maricopa, Pinal, and Yuma Counties, Arizona.

Bernalillo, Chaves, Curry, DeBaca, Eddy, Guadalupe, Lea, Quay, Roosevelt, San Miguel, Santa Fe, Torrance, and Union Counties, New Mexico.

Bailey, Cochran, Deaf Smith (west of State Route 214), Hockley, Lamb (south of a line bounded by U.S. Route 70, FM 303, U.S. Route 84, and FM 37), and Parmer Counties, Texas.

Interested persons, including Alton, Columbus, and Farwell are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Alton, Columbus, and Farwell areas is for the period beginning February 1, 1999, and ending January 31, 2002. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Alton, Columbus, and Farwell official agencies. Commentors are encouraged to submit pertinent data concerning the Alton, Columbus, and Farwell official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered

in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 17, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–20071 Filed 7–31–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Fremont (NE) and Titus (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Fremont Grain Inspection Department, Inc. (Fremont) and Titus Grain Inspection, Inc. (Titus) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 2, 1998, **Federal Register** (63 FR 10187), GIPSA asked persons interested in providing official services in the geographic areas assigned to Fremont and Titus to submit an application for designation. Applications were due by March 31, 1998. Fremont and Titus, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Fremont and Titus were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Fremont and Titus are able to provide official services in the geographic areas for which they applied. Effective September 1, 1998, and ending August 31, 2001, Fremont and Titus are designated to provide official services in the geographic area specified in the March 2, 1998 **Federal Register.**

Interested persons may obtain official services by contacting Fremont at 402–721–1270 and Titus at 765–497–2202.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 17, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–20072 Filed 7–31–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for a new information collection, the Wildlife Damage Survey.

DATES: Comments on this notice must be received by October 7, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Wildlife Damage Survey.

Type of Request: Intent to seek Approval to Conduct an Information Collection.

Abstract: The Animal Health Plant Inspection Service has contracted with NASS to survey a sample of U.S. producers of selected agricultural commodities. The primary goal of the survey is the collection and development of valid statistical data reflecting the percentage of U.S. producers experiencing loss of product or resources caused by vertebrate wildlife. An accurate measurement of dollar losses to vertebrate wildlife will be obtained. Additional goals are to evaluate the Wildlife Services Program name recognition and test the efficacy of the Program in reducing crop and livestock losses. NASS intends to request that the survey be approved for a 3 year period. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13 minutes per response.

Respondents: Agricultural Commodity Growers.

Estimated number of Respondents: 32,000.

Estimated total Annual Burden on Respondents: 6,933 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

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 will 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, July 16, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–20561 Filed 7–31–98; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m and adjourn at 6:00 p.m. on August 22, 1998, at the Hawaii Imin International Conference Center, East-West Center, Jefferson Hall, Room 225, 1777 East-West Road, Honolulu, Hawaii 96848. The Committee will hold a community forum on the status of Native Hawaiian civil rights five years after the passage of the Apology Bill.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–20539 Filed 7–31–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Current Industrial Reports (Wave II Mandatory).

Form Number(s): M20J, M20L, M20N, M22P, MQ23A, MQ23X, MQ35W, MA22F, MA22K, MA22Q, MA24T, MA28A, MA28B, MA28C, MA28G, MA31A, MA33L, MA35L, MA35P, MA36E, MA36M, MA36Q, MA38R.

Agency Approval Number: 0607–0395.

Type of Request: Extension of a currently approved collection.

Burden: 27,636.

Number of Respondents: 17,273.

Avg Hours Per Response: About 45 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

For clearance purposes, the approximately 72 CIR surveys are divided into 'waves.' Each wave has an associated voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. This year we are submitting the voluntary and mandatory clearance packages for wave II. There are no planned changes to the mandatory forms, only a request for a three-year extension of OMB approval.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly, Quarterly, and Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. , Sections 61, 81, 131, 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–20580 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis

Title: Annual Survey of U.S. Direct Investment Abroad *Form Number(s):* BE–11.

Agency Approval Number: 0608–0053.

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

Burden: 113,200 hours.

Number of Respondents: 1,550.

Avg Hours Per Response: 73 hours.

Needs and Uses: The survey provides a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The survey is a cutoff sample survey that covers all foreign affiliates (and their U.S. parent companies) above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by carrying forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5732, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–20581 Filed 7–31–98; 8:45am].

BILLING CODE: 3510–06–P.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duties: Five Year (Sunset) Reviews; Conduct Policies

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders, findings, and/or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders and/or suspended investigations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

Parties wanting to participate in the sunset review being conducted by the Department must follow the separate procedural regulations promulgated by the Department (see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998)).[1] In addition, because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication of the notice of initiation of the sunset review in the **Federal Register**. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, 63 FR 24391 (May 4, 1998)). For guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews, you may wish to consult the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871(April 16, 1998). We are making information related to sunset proceedings available to the public on the Internet at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/". Finally, the procedural rules regarding filing, format, translation, service, and certification of documents can be found at 19 CFR 351.303 (see *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295, 27406 (May 19, 1997)).

Initiation of Reviews

In accordance with 19 CFR 351.218, as amended, we are initiating sunset reviews of the following antidumping and countervailing duty orders, findings, or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–401–040	AA–114	Sweden	Stainless Steel Plate.
A–588–041	AA–115	Japan	Synthetic Methionine.
A–588–046	AA–129	Japan	Polychloroprene Rubber.
A–122–047	AA–127	Canada	Elemental Sulphur.
A–122–050	AA–137	Canada	Racing Plates.
A–588–055	AA–154	Japan	Acrylic Sheet.
A–588–056	AA–162	Japan	Melamine.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20644 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–036. *Applicant:* Finch University of Health Sciences, The Chicago Medical School, 3333 Green Bay Road, North Chicago, IL 60064–3095. *Instrument:* (4 each) Right and Left Hand Micromanipulators, Model SM–20. Manufacturer: Narishige Co., Japan. *Intended Use:* The

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (pursuant to 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

instrument will be used for investigations of the cellular and network properties of the nervous system in the marine mollusk Tritonia diomedea that underlie decision-making and learning. *Application accepted by Commissioner of Customs:* July 20, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–20653 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stanford University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–030. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Crystal Growth Furnace, Type FZ–T–10000–HVP–II–S. *Manufacturer:* Crystal Systems, Inc., Japan. *Intended Use:* See notice at 63 FR 33052, June 17, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides optical melting of a rod to produce a single uncontaminated crystal along a moving float zone on the rod. The National Aeronautics and Space Administration advised February 8, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–20652 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

NOAA Coastal Ocean Programs (COP) Grant Applications

ACTION: Proposed Collection; 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 October 2, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, 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 Leslie McDonald, COP Grants Office, NOAA Coastal Ocean Programs (COP), SSMC#3, Silver Spring, MD 20910–3283,(301–713–3338, x 137).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Coastal Ocean Programs provides predictive capability for managing coastal ecosystems through sponsorship of research. COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues which exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers and the public. Grant monies are available for related activities.

In addition to the standard application requirements for Federal grants, applicants must include the COP Summary Proposal Budget Form and a COP Project Summary (Abstract) Form. Applications may require up to 25 original proposal copies at time of submission. Use of the budget form will provide the level of detail required to evaluate the effort to be invested by investigators and staff on a specific project by the COP program staff; the proposed budget form is compatible with forms in use by other agencies that participate in joint projects with COP.

The project summary (abstract) shall include a statement of objectives, methods to be employed, and the significance of the proposed activity to the advancement of knowledge or education; must not be more than one page in length; and should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

The stated requirements for the number of original proposal copies provide for a timely review process because of the large number of technical reviewers. Due to the fact that many proposals contain original color inserts and the lack of color-copying capabilities by COP, the increased number of original proposal copies provides the opportunity for a more consistent review of all proposals by all reviewers during the competitive process.

Persons with approved grants must file a COP Annual Progress Report and a COP Project Final Report. The annual report will provide the minimal information required by COP staff to evaluate the project's progress in respect to its goals and objectives, its schedule of accomplishments, and its resource management. The Project Final report will provide the level of detail required to evaluate the effort invested by the grantee, as well as the actual accomplishments or findings. The proposed format is compatible with forms in use by other agencies that participate in joint projects with COP.

II. Method of Collection

The COP Summary Proposal Budget Form and the COP Project Summary Form are submitted as part of grant applications. The COP Annual Progress Report and the COP Project Final Report must follow a format provided to grantees. For the number of proposal copies required, the information is submitted as part of the application process; and no form is used.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for profit institutions (public or private institutions of higher education, institutes, laboratories).

Estimated Number of Respondents: 300.

Estimated Time Per Response: 30 minutes for a budget form, 30 minutes for a project summary, 10 hours for an annual report, 10 hours for a final

report, and 10 minutes to provide the additional copies required.

Estimated Total Annual Burden Hours: 1,550 hours.

Estimated Total Annual Cost to Public: None (no capital expenditures required).

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.

Dated: July 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–20582 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072498I]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Executive Committee and Squid, Mackerel, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meetings will be held on Monday, August 17, 1998, to Thursday, August 20, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Holiday Inn Independence Mall, 4th and Arch Streets, Philadelphia, PA, telephone: 215–923–8660.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: On Monday, August 17, the Council will meet from 10:00 a.m. until 7:00 p.m. On Tuesday, August 18, the Council will meet from 8:00 a.m. until 5:00 p.m. On Wednesday, August 19, the Executive Committee will meet from 8:00–9:00 a.m., the Council will meet from 9:00 a.m. until 5:00 p.m., and the Squid, Mackerel, and Butterfish Monitoring Committee will meet from 5:00–6:00 p.m. On Thursday, August 20, the Council will meet from 8:00 a.m. until 5:00 p.m. In the event Council business will not be concluded by 5:00 p.m. on Thursday, Council may continue meeting for several hours on Friday morning, August 21, 1998.

Agenda items for this meeting are: Election of Chairman and Vice Chairman; review and hearing adoption of Dogfish Fishery Management Plan; Stock Assessment Workshop; adoption of commercial and recreational management measures for bluefish for 1999; possible discussion of Amendment 1 to the Bluefish Fishery Management Plan (FMP): adoption of commercial quota, recreational harvest limit, and commercial management measures for black sea bass, summer flounder, and scup for 1999; review and hearing adoption of Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP, Amendment 12 to the Surfclam and Ocean Quahog FMP, and Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; adoption of the 1999 quota and commercial management measures for surfclams and ocean quahogs; possible review and comment on whiting, New England groundfish, herring, lobster and scallop management measures; discussion of management measures and possible adoption of the Monkfish FMP for Secretarial submission; adoption of the 1999 quotas and commercial management measures for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish; possible adoption of the Consistency Amendment for submission to the Secretary; and committee reports and other fishery management matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 28, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–20635 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072498C]

Endangered Species; Permits

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

ACTION: Receipt of an application for a research/enhancement permit (1174); issuance of a modification to a scientific research permit (1015).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from: Mr. Harold Brundage III, Environmental Research and Consulting, Inc (ERCI)(1174); NMFS has issued a modification to a permit subject to certain conditions set forth therein, to: Dr. Frank A. Chapman, of Department of Fisheries and Aquatic Sciences (DFAS)(1015).

DATES: Written comments or requests for a public hearing on the application must be received on or before September 2, 1998.

ADDRESSES: Written comments or requests for a public hearing on the permit application should be sent to:

Chief, Endangered Species Division, Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

All documents pertaining to permits in this notice are available for review,

by appointment, by contacting the above address, or:

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Endangered Species Division, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS. The holding of a hearing on this permit is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modifications was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

New Application Received

ERCI (1174) requests a 5-year permit to take and conduct research on endangered shortnose sturgeon (Acipenser brevirostrum) in the Delaware River and Estuary system and in the lower Susquehanna River/ Chesapeake Bay Complex. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in the Delaware River Estuary and in the lower Susquehanna River and Chesapeake Bay. Emphasis will be placed on calculating reliable population estimates, determining aggregation areas, and obtaining information on juvenile shortnose sturgeon. Information on population size and length distribution for the Delaware River population will be compared with that during the 1980s.

Modification Issued

On June 15, 1998 NMFS received a request from DFAS for a modification to Permit 1015. Permit 1015 allows shortnose sturgeon to be maintained in captivity. The fish would be PIT-tagged, anaesthetized, handled, have blood and tissue samples taken, and be spawned and progeny reared, in accordance with the application and current handling standards. The modification to the permit increases the number of sturgeon that the applicant may maintain in captivity from 200 to 619. The 619 consist of: 100 1– to 3-year old sturgeon; 50 2-year old sturgeon; 30 ripe female sturgeon; 20 ripe male sturgeon; 69 sturgeon transferred from Mote Marine Laboratory (#1028) and 350 1997-year class sturgeon obtained as part of a group of 5,000 from the USFWS hatchery in Bear Bluff, SC between May and June, 1997. Modification 1 is good for the duration of the permit, which expires on September 30, 2001.

Dated: July 28, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20633 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072498B]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1173).

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife at Roseburg, OR (ODFW) has applied in due form for a permit that would authorize takes of an endangered species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before September 2, 1998.

ADDRESSES: The applications and related documents are available for review, by appointment, by contacting:

Tom Lichatowich, Protected Resources Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5438); or

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division, Portland.

SUPPLEMENTARY INFORMATION: ODFW requests a five-year permit (1173) for an annual direct take of endangered, adult and juvenile cutthroat trout (*Oncorhynchus clarki clarki*) associated with scientific research in the Umpqua River. This action falls under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

ODFW proposes a broad-based sampling program to continue and enhance monitoring efforts of the listed species. Fish would be captured, examined, marked, and released. Traps, electrofishing and hook/line techniques would be used to capture the fish. Finclips as well as Passive Integrated Transponders (PIT) would used to mark and monitor their migrations. Data would be used to expand current knowledge about cutthroat distribution, migration patterns and population densities. Fish would also be observed by snorkeling and routine stream surveys. An indirect mortality of ESA-listed fish associated with the research is also requested.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on the application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: July 27, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20634 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060998A]

Marine Mammals; File No. P524B

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Shannon Atkinson, University of Hawaii, Institute of Marine Biology,

1000 Pope Road MSB #213, Honolulu, HI 96822, has been issued an amendment to scientific research Permit No. 969 to import tissue samples from all species of Cetacea and Pinnipedia (except walrus).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Program Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/949–7400).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 27, 1998, notice was published in the **Federal Register** (63 FR 3881) that an amendment of Permit No. 969, issued October 24, 1995 (60 FR 55543), 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.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this amendment, as required by the ESA 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 ESA.

Dated: July 27, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20636 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Structured Reporting System (SRS) for the Telecommunications and Information Infrastructure Assistance Program

ACTION: Proposed collection; 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 October 2, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce—Room 5327, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gay Shrum, NTIA—Room 4892, 1401 Constitution Avenue NW, Washington, DC 20230. (202–482–1056).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Telecommunications and Information Infrastructure Assistance Program (TIIAP) is to promote the widespread and efficient use of advanced telecommunications services in the public and non-profit sectors to serve America's communities. It does this by providing matching funds to public and non-profit sector organizations to use information infrastructure to provide community-wide information, health, life-long learning, education, public safety and other public services.

The Program has the following objectives:

- To increase awareness in public and non-profit sectors of the National Information Infrastructure and its benefits.
- To stimulate public and non-profit sector organizations to examine potential benefits of, and plan for, investments in the information infrastructure.
- To provide a wide variety of model information infrastructure projects for public and non-profit sector organizations to follow.
- To educate the public and non-profit sectors about best practices in implementing a wide variety of information infrastructure projects.
- To help reduce disparities in access to, and use of, information infrastructure.

The National Telecommunications and Information Administration (NTIA), in administering TIIAP, awards a varying number of awards each year, but there are an average of 2,225 active grantees involved in some, or all, of the reporting requirements each year. In order to ensure that grant recipients are effectively promoting the efficient and widespread use of advanced telecommunications services to serve American communities and to comply with the Government Performance and Results Act, NTIA will collect and analyze quantitative and qualitative data relating to start-up documentation, quarterly and annual progress, and close-out documentation on TIIAP-funded projects.

NTIA seeks a mechanism whereby it can evaluate the impacts of its projects on an ongoing basis, monitor grants more efficiently and effectively, and provide timely technical assistance to grant recipients. Currently, grantees provide qualitative quarterly progress reports and close-out documentation. Grantees also provide evaluation reports covering a wide array of sophistication and complexity of design.

To enable the Program to monitor and to analyze the impacts of the funded projects, TIIAP seeks to incorporate standardized quantitative and qualitative data elements into an online structured reporting system. The reporting system will include a set of core data elements that apply to all projects and other data elements that are specific to the applications areas of the projects.

NTIA is interested in the effects that the funded projects are having at the local level and, over the long term, at the national level. It is NTIA's intention to understand the nature and degree of those effects on the organizations implementing the projects, other organizations that are involved with the projects, the individuals who are served by the projects, and the community as a whole.

II. Method of Collection

Data will be collected through the use of automated collection techniques. The information collection instrument to be used for this study will include a web-based structured reporting system for both quantitative and qualitative project

information for 50 new projects for 1998.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: State and Local Government and Non-Profit Institutions.

Burden Hours Calculations/Reporting

The total estimated response burden for the grant recipients that receive TIIAP funding in FY 1998 is 8,400 hours (the overall burden on any given grant recipient would be approximately 168 hours (21 days) over their participation in the TIIAP project). This estimate is based on the following assumptions:

- Start-Up Documentation. Each of the 50 initiatives will spend an average of 40 hours on the following activities: (accessing and learning the web-based system: (2) developing answers to the items; and (3) verifying the accuracy and completeness of the data that are to be submitted (50 projects × 40 hours equals 2,000 hours).
- Quarterly Reports. Each of the 50 initiatives will spend an average of 8 hours developing answers to the items contained in the quarterly report (50 projects × 8 hours × 10 quarterly reports equals 4,000 hours).
- Annual Reports. Each of the 50 initiatives will spend an average of 4 hours developing answers to the items contained in the annual report (50 projects × 4 hours × 2 reports equals 400 hours).
- Final Closeout Reports. Each of the 50 initiatives will spend an average of 40 hours developing answers to the items contained in the final closeout report (50 projects × 40 hours equals 2,000 hours).

Estimated Total Annual Cost: Cost to respondents is consistent with their normal administrative overhead. No material or equipment will need to be purchased to provide information.

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 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.

Dated: July 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–20583 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Patent Application Bibliographic Data Entry Format (Proposed Addition to the Initial Patent Application).

Form Numbers: None.

OMB Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 1,915,500 hours.

Number of Respondents: 243,100.

Avg. Hours Per Response: The PTO estimates that it will take an average of 7.88 hours to complete a patent application using the Patent Application Data Entry Format. This figure is an average based on the number of each type of application received by the PTO per year times the amount of time that it takes an applicant to complete each type of application. This total is then divided by the total number of applications submitted per year. The bibliographic takes approximately 12 minutes to complete.

Needs and Uses: The Patent and Trademark Office (PTO) plans to accept from applicants, on a voluntary basis, papers containing the bibliographic information for a patent application in a specific format termed a "Patent Application Data Entry Format." This format groups the bibliographic information into different information sections composed of headings and labels. Providing the bibliographic information for a patent application to the PTO in the Patent Application Data Entry Format will enable the PTO to automate the data entry process for the application. The purpose of the program is three fold. First, the system will improve the quality of Filing Receipt information mailed by the PTO to applicants. Second, the program will provide the PTO with experience in establishing a simplified system that completely captures the bibliographic information for all patent applications. Third, the system will accurately and directly feed this bibliographic information into the Patent Application Locating and Monitoring (PALM) system, an automated electronic information management system.

Although use of the Patent Application Data Entry Format is strictly voluntary, there are definite benefits for applicants if they do submit their bibliographic data in this format. The applicant is benefited because it takes less time to process a filing receipt when the bibliographic information is provided using the Patent Application Data Entry Format.

It must also be noted that the Patent Application Data Entry Format is not a PTO form, but rather a specific format that the public can use to submit their bibliographic information. This format may be created either by typing the bibliographic information directly onto blank sheets of paper in the specified format (using a typewriter or word processor), or by using electronic templates in a word processor. Since using the Patent Application Data Entry Format is strictly voluntary, applicants will be encouraged, but not required, to provide bibliographic information in this format.

When this program is implemented, the PTO will provide a copy of the Patent Application Data Entry Format Guide for Preparing Bibliographic Data for Electronic Capture to users who request one. This user guide will provide instructions for the format, guidelines for a variety of requirements, such as paper size, font, font sizes, etc., designed to minimize errors in the scanning and text conversion, and examples of various formats. The user guide, as well as electronic templates of the various formats for Microsoft Word and WordPerfect word processing programs, can be accessed by the public on the PTO's Internet Web site or by requesting (by mail or telephone) a copy from the PTO.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, federal government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: July 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–20584 Filed 7–31–98; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Application of Cantor Financial Futures Exchange as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note, and Two-Year Note Futures Contracts

AGENCY: Commodity Futures Trading, Commission

ACTION: Notice of public meeting.

TIME AND DATE: Tuesday, August 11, 1998, from 2:00 to 4:00 PM.

PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room located at Room 1000.

STATUS: Open.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission ("Commission") will convene a public meeting at which interested members of the public may appear before it to give oral and written statements relating to the Commission's consideration of the application of Cantor Financial Futures Exchange ("CFFE" or "Exchange") to be designated as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note, and two-year note futures contracts.

ADDRESSES: Requests to appear and statements of interest should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 Street, N.W., Washington, D.C. 20581, attention Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or tarnsmitted electronically to [secretary@cftc.gov]. Reference should be made to "Cantor Financial Futures Exchange Meeting."

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, Telephone number: (202) 418–5481; Electronic mail: dvanwagner@cftc.gov; or contact Adam E. Wernow, Attorney-Advisor; Division of Trading and Markets, at the same address, Telephone number: (202) 418–5042, Electronic mail: awernow@cftc.gov.

SUPPLEMENTARY INFORMATION: CFFE, a New York not-for-profit corporation, has applied to the Commission for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has been formed pursuant to an agreement between the New York Cotton Exchange ("NYCE") and CFFE, LLC, a subsidiary of Cantor Fitzgerald, LP ("Cantor"). Under the agreement, CFFE trading would be conducted on the same trading system that another Cantor subsidiary, Cantor Fitzgerald Securities, LLC ("CFS"), currently operates as an interdealer-broker in the US Treasury securities market. CFFE's regulatory responsibilities would be handled by NYCE. CFFE trades would be cleared and settled by the Commodity Clearing Corporation ("CCC") which is wholly owned by NYCE.

CFFE has not previously been designated by the Commission as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted to the Commission a proposed trade-matching algorithm; proposed rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market.

Notice of CFFE's application was previously published on February 3, 1997 (63 FR 5505) for a comment period ending on April 6, 1998. That comment period was later extended until April 27, 1998 (63 FR 17823 (April 10, 1998)). After the closing of that comment period, the Exchange submitted to the Commission additional materials which revised or further explicated certain features of its proposal. Accordingly, the Commission published CFFE's application again on July 1, 1998 (63 FR 35912) for an additional comment period ending July 16, 1998, so that the public could review and comment on the Exchange's additional submissions.

The Commission is of the view that, in addition to the receipt of written comments, an opportunity for interested members of the public to appear before it will assist it in its consideration of CFFE's application and is in the public interest. Accordingly, the Commission will convene a public meeting on August 11, 1998, for that purpose.

In its requests for comment, 63 FR 5505 (February 3, 1998), 63 FR 35912 (July 1, 1998), the Commission described CFFE's application, including its provisions regarding CFFE's governance structure, trade matching algorithm, compliance program, and disciplinary and arbitration procedures. Persons appearing before the Commission are invited specifically to address those, and any other aspects of CFFE's application for designation as a new contract market, as well as CCC's proposal to serve as CFFE's clearing organization, and to provide relevant factual data.

All individuals or organizations wishing to appear before the Commission should submit to the Commission at the above address, by August 6, 1998, a concise written statement of interest and qualifications and a brief written summary or abstract of the content of his or her statement. The Commission will invite a representative number of individuals or organizations to appear from those submitting such statements. A transcription of the meeting will be made and entered into the Commission's public comment files.

Issued in Washington, D.C., this 30th day of July, 1998.

By the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–20787 Filed 7–31–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Conference Calls To Provide Technical Assistance to Organizations Interested in Applying To Sponsor AmeriCorps Promise Fellows

AGENCY: Corporation for National and Community Service.

ACTION: Notice of pre-application technical assistance conference calls.

SUMMARY: The Corporation for National and Community Service (Corporation) has scheduled two conference calls to provide technical assistance to organizations interested in applying to sponsor AmeriCorps Promise Fellows.

DATES: The conference calls will be held Friday, August 7, 1998, and Friday, August 21, 1998, from 2:00–3:30 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: To register for either call and obtain the information needed to participate, contact Jeff Gale, (202) 606–5000, ext. 280. T.D.D. (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: On July 20, 1998, in a notice published at 63 FR 38811, the Corporation announced the availability of funds to organizations interested in sponsoring AmeriCorps Promise Fellows in support of the goals of the Presidents' Summit for America's Future. Sponsor proposals are due September 10, 1998.

Organizations interested in applying to sponsor AmeriCorps Promise Fellows may participate in the conference calls listed above to obtain technical assistance relating to the application process.

Dated: July 28, 1998.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 98–20598 Filed 7–31–98; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science & Technology (S&T) Meeting Plan and Integrating Thrust Review in support of the HQ USAF Scientific Advisory Board will meet at Woodshole, MA on September 14–16, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–20570 Filed 7–31–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

Allen, R. Mr.
Altwegg, D. M. Mr.
Amerault, J. F. VADM
Angrist, E. Mr.
Antoine, C. S. Mr.
Atkins, J. A. Mr.
Bailey, D. C. Mr.
Balderson, W. Mr.
Balisle, P. M. RADM
Bice, D. F. BGEN
Blatstein, I. M. Dr.
Blickstein, I. N. Mr.
Bonwich, S. M. Mr.
Boyer, R. R. Mr.
Branch, E. B. Mr.
Brant, D. L. Mr.
Brooke, R. K. Mr.
Brown, P. F. Mr.
Buckley, B. CAPT
Buonaccorsi, P. P. Mr.
Burgess, L. Mr.
Cali, R. T. Mr.
Carpenter, A. W. Ms.
Cataldo, P. R. Mr.
Camp, J. R. Mr.
Carnevale, J. RADM
Carter, R. L. Mr.
Cassidy, W. J. Mr.
Catrambone, G. Mr.
Chenevey, J. V. RADM
Church, A. T. RADM
Clark, C. C. Ms.
Cobb Jr., W. W. RADM
Coffey, T. Dr.
Cole, D. A. Mr.
Collie, J. D. Mr.
Combs, O. RADM
Commons, G. L. Ms.
Cook, J. A. RADM
Costello, J. N. Mr.
Craine, J. W. RADM
Cuddy, J. V. Mr.
Curtis, D. I. Mr.
Davidson, M. H. Mr.
Davis, J. P. RADM
Decker, M. H. Mr.
Decorpo J. Dr.
Demarco, R. Dr.
Distler, D. Mr.
Dixson, H. L. Mr.
Doak, R. Mr.
Doherty, L. M. Dr.
Dominique, L. CAPT
Dothard, J. J. Mr.
Douglass, J. Hon.
Douglass, T. E. Mr.
Dowd, T. Mr.
Draim, R. P. Mr.
Duddleston, R. J. Mr.
Dudley, W. S. Dr.
Durham. D. L. Dr.
Eaton, W. D. Mr.
Evans, G. L. Ms.
Filippi, D. M. Ms.
Fiocchi, T. C. Mr.
Florip, T. Mr.
Ford, F. B. Mr.
Gaffney, P. RADM.
Gerry, D. Mr.
Ginman, R. T. RADM
Gist, W. J. Mr.
Glasco, L. M. Mr.
Goldschmidt, J. X. Mr.
Gottfried, J. M. Ms.
Haas, R. Mr.
Hammes, M. C. Mr.
Handel, T. H. Mr.
Hannah, B. W. Dr.
Hartwig, E. Dr.
Hathaway, D. L. Mr.
Hauenstein, W. H. Mr.
Haut, D. G. Mr.
Hayes, J. E. BGEN
Haynes, R. S. Mr.
Heath, K. S. Ms.
Hefferon, J. J. Mr.
Henry, M. G. Mr.
Hicks, S. N. Mr.
Hildebrandt, A. H. Mr.
Holaday, D. A. Mr.
Howell, D. S. Ms.
Hubbell, P. C. Mr.
Huchting, G. A. RADM
Jacobson, D. J. Mr.
Jacoby, L. RADM
Johnson, M. RADM
Johnston, K. J. Dr.
Josephson, D. Mr.
Junker, B. Dr.
Kaskin, J. D. Mr.
Kelly, L. J. Mr.
Kelsey, H. D. Mr.
Kolb, R. C. Dr.
Kotzen, P. S. Ms.
Krasik, S. A. Ms.
Kreitzer, L. P. Mr.
Kuesters, J. J. Mr.
Lamade, S. K. Ms.
Larsen JR., D. P. Mr.

Laux, T. E. Mr.
Leach, R. A. Mr.
Leboeuf, G. G. Mr.
Lefande. R. Dr.
Leggieri, S. R. Ms.
Lewis, R. D. Ms.
Lippert, K. W. RADM
Lockard, J. VADM+
Loftus, J. V. Ms.
Lopata, F. A. Mr.
Lowell, P. Mr.
Lynch, J. G. Mr.
Maltbie, W. Mr.
Mangels, K. H. Mr.
Marquis, S. L. Ms.
Martin, R. J. Mr.
Masciarelli, J. R. Mr.
Mattheis, W. G. Mr.
McEleny, J. F. Mr.
McKissock, G. S. MAJGEN
McManus, C. J. Mr.
McNair, J. W. Mr.
McNair, S. M. Ms.
Meadows, L. J. Ms.
Merritt, M. M. Mr.
Messerole, M. Mr.
Miller, A. Dr.
Miller, K. E. Mr.
Mohler, M. Mr.
Molzahn, W. Mr.
Montgomery Jr., H. E. Mr.
Moore, S. B. Mr.
Moy, G. W. Dr.
Munsell, E. L. Ms.
Murphy, P. M. Mr.
Muth, C. M. Ms.
Mutter, C. A. LTGEN
Nanos, G. P. RADM
Nehman, J. Mr.
Nemfakos, C. P. Mr.
Newton, L. Ms.
Newsome, L. D. RADM
Nickell, J. R. Mr.
Nussbaum, D. A. Mr.
O'Driscoll, M. J. Mr.
Olsen, M. A. Ms.
Paige, K. K. RADM
Panek, R. L. Mr.
Paulk, R. D. Ms.
Payne, T. Mr.
Pennisi, R. A. Mr.
Phelps, F. A. Mr.
Pirie Jr., R. B. HON.
Pflueger, M. P. Mr.
Poe, L. Mr.
Porter, D. E. Mr.
Powers, B. F. Mr.
Ramberg, S. Dr.
Rath, B. Dr.
Rhodes, J. E. LTGEN
Riegel, K. W. Dr.
Roark, J. E. Mr.
Robey, C. Ms.
Roderick, B. A. Mr.
Rostker, B. HON.
Ryzewic, W. H. Mr.
Saalfeld, F. Dr.
Sargent Jr., D. P. RADM
Saul, E. L. Mr.
Savitsky, W. D. Mr.
Schaefer, W. J. Mr.
Schneider, P. A. Mr.
Schuster Jr., J. G. Mr.
Sentner, R. P. Mr.
Shaffer, R. L. Mr.
Shea, R. BGEN
Sheck, E. E. Mr.
Shephard, M. R. Ms.
Shipway, J. F. RADM
Shoup, F. E. Dr.
Simmen, C. R. Mr.
Sirmalis, J. E. Dr.
Slaght, K. D. RADM
Somoroff, A. R. Dr.
Steidle, C. RADM
Stewart, J. D. MAJGEN
Storey, R. C. Mr.
Strong, B. D. RADM
Stussie, W. A. Mr.
Sullivan, M. P. RADM
Szemborski, S. R. RADM
Thornett, R. Mr.
Thomas, R. O. Mr.
Thompson, R. C. Mr.
Throckmorton, E. L. Mr.
Tisone, A. A. Mr.
Tompkins, C. L. Mr.
Townsend, D. Ms.
Trammell, R. K. Mr.
Tullar, E. W. Mr.
Turnquist, C. J. Mr.
Uhler, D. G. Dr.
Vanderlinden, G. BGEN
Verkoski, J. E. Mr.
Welch, B. S. Ms.
Weller, P. B. Mr.
Wessel, P. R. Mr.
Whiton, H. W. RADM
Williams, G. P. Mr.
Williams, M. J. MAJGEN
Young, S. D. Ms.
Yount, G. R. RADM
Zanfagna, P. E. Mr.
Zeman, A. R. Dr.
Zimet, E. Dr.

FOR FURTHER INFORMATION CONTACT: Ms. Cora Graves, Director, Executive Personnel and Leadership Development Division, Office of the Assistant Secretary (Manpower and Reserve Affairs), 1000 Navy Pentagon, Washington, DC 20350–1000, telephone (703) 696–5165.

Dated: July 24, 1998.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 98–20623 Filed 7–31–98; 8:45 am]

BILLING CODE 3810–FK–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency information collection activities: proposed collection; comment request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning proposed revisions to the Form EIA–846A/C, "Manufacturing Energy Consumption Survey."

DATES: Written comments must be submitted on or before October 2, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. Robert K. Adler, Energy Consumption Division, EI–63, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0660. Mr. Adler's telephone number is (202) 586–1134, FAX number (202) 586–0018. His Internet address is: robert.adler@eia.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Robert K. Adler at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the

Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

The Manufacturing Energy Consumption Survey (MECS) is a mail survey designed to collect energy consumption and expenditures data from establishments in the manufacturing sector (Standard Industrial Classification (SIC) 20 through 39). There are 3 MECS data collection forms, depending on the establishment's SIC. Form EIA–846A collects information for SIC's 20 through 39 except for SIC's 24, 26, 28, 29, 3312, 3321, 3331, and 3339. Form EIA–846B is for establishments operating primarily in the petroleum refining industry (SIC 2911). Form EIA–846C is for establishments in SIC's 24, 26, 28, 29 (excluding 2911), 3312, 3321, 3331, and 3339.

For the 1998 MECS, it is proposed to collect the following data from each MECS establishment: (1) For each energy source consumed—consumption (total, fuel and nonfuel uses) and the expenditures for each energy source, energy storage (as applicable), and energy produced onsite; (2) energy end uses; (3) energy-saving technologies; (4) energy management activities; and (5) square footage and number of buildings in the establishment.

The MECS has been conducted four times previously, covering the years 1985, 1988, 1991, and 1994. In all four survey years, the MECS has collected baseline data on manufacturers' energy consumption and fuel-switching capabilities. In the 1991 and 1994 surveys, the MECS also collected data on end-uses, energy management technologies, building square footage, and energy-saving technologies. The MECS forms the basis for a major publication on energy consumption, Manufacturing Consumption of Energy, 1994. Additionally, the MECS data and tables form the basis for an Internet site (http://www.eia.doe.gov/emeu/mecs) in which are found numerous data tables, past publications, and articles. The 1998 MECS will also be used to update the changes in energy intensity data series.

The proposed 1998 MECS uses experience gained from the administration and processing of the four previous surveys and past consultations with respondents, trade association representatives, and data users. EIA is continuing to pursue many avenues to obtain advice and needs for data from customers concerning manufacturing energy data. On the EIA site is a survey of user needs (found at http://www.eia.doe.gov/emeu/mecs/webque98.html). Past MECS customers from trade associations, government, private industry, academia, and other sectors have been contacted through the mail directly to give them an opportunity to express their needs. A few manufacturing establishments have participated in onsite cognitive interviews to test respondents' ability to answer certain proposed sections of the MECS. This notice serves as another opportunity for customers to express their needs for manufacturing energy data.

II. Current Actions

EIA proposes making several changes to the 1998 MECS. Decreases in survey funding have necessitated certain actions to adjust to the reduced level of funding while still maintaining the usefulness of the core program. For that reason, the MECS cycle has changed from once every three years to once every four years. A second consequence of the reduced budget is that the designed sample size of the MECS must be reduced from approximately 23,000 to approximately 17,000 cases (a cut of 26 percent). The cut in sample size means that the finest geographic breakdown of the data available will be at the four Census Regions level, rather than at the nine Census Divisions level that were available from the 1994 survey. Finally, again for budgetary reasons, EIA is proposing to no collect fuel-switching data. Although minor changes have been discernable, data from the previous surveys has shown that the relationship between switchability and consumption has been relatively stable over the years covered by the MECS.

The 1998 MECS will have a substantially altered appearance. It will take advantage of recent forms design research in order to make it easier for respondents to understand and respond to the survey. Prime among the changes is the replacing of the matrix or tabular format with a format that is sequential by energy source. Most of the necessary instructions are built into the questionnaire itself, rather than relying on separate instruction sheets. The questionnaire will be reformatted to fit a standard page (8.5 by 11 inches). The resulting questionnaire will contain more pages, but should be much easier for the respondent to complete.

EIA, in conjunction with the Bureau of the Census, is exploring ways to have data presented in terms of the new North American Industry Classification System (NAICS) and the Standard Industrial Classification (SIC) system. In MECS cycles after 1998, all data will be presented in terms of NAICS.

Other than the removal of fuel-switching, much of the content of the 1994 MECS data collection will remain for the 1998 MECS, with the following exceptions:

1. The 1998 MECS will not contain questions relating to lists or other records of motors present at the establishment. This deletion is in keeping with the agreement EIA had with industry during the 1994 questionnaire design process that this data collection would be a one-time effort.

2. Due to the importance of understanding the ongoing changes in the natural gas industry, the 1998 MECS will have some additional questions relating to the type of purchase made. Specifically, EIA is considering asking about purchases from the local utility and nonutility purchases; the type of rate schedule the purchaser uses; and, for some nonutility purchasers, the breakdown of costs associated with purchasing and transporting the gas from the point-of-purchase to the establishment.

3. The list of energy-saving technologies will be updated. The DOE Office of Energy Efficiency and Renewable Energy has already reviewed the list and provided input to EIA.

4. EIA is exploring ways to adapt the electricity section to fit the new deregulated environment. Because very few manufacturing establishments would be eligible to purchase electricity from other than their local utilities in 1998, the expectation is that any changes in the electricity section would be minor.

5. The questions concerning participation in energy management activities will be changed: electric utility participation will no longer be asked about.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 9 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. Are there additional energy-savings technologies not already included on the MECS for which data on their penetration would be useful?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, July 24, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–20625 Filed 7–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–680–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

July 28, 1998.

Take notice that on July 21, 1998, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–680–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to operate as a jurisdictional facility in interstate commerce a 2-inch tap and meter station previously installed, operated and placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c) of the Commission's regulations. Koch make this request, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection, under its blanket certificate issued in Docket No. CP92–430–000.[1]

Koch states that the proposed certification of facilities will enable Koch to provide transportation services under its blanket transportation certificate through the tap and meter which connects Koch facilities to Integrated Services Inc. (ISI), an intrastate pipeline company, in Shelby County, Texas.

Koch further states it will operate the proposed facilities in compliance with 18 CFR Part 157, Subpart F, and that the proposed activities will not affect Koch's ability to serve its other existing customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 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.

[1] *See,* 20 FERC ¶ 62,416 (1982).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–20566 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–673–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 28, 1998.

Take notice that on July 16, 1998, Northern Natural Gas Company, (Applicant), P.O. Box 3330, Omaha, Nebraska, 68103–0330, filed in Docket No. CP98–673–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for approval to upgrade three existing delivery points located in Wright, Carver, and Stearns Counties, Minnesota, to accommodate natural gas deliveries to Minnegasco, a division of NorAm Energy Corporation, (Minnegasco), under Applicant's blanket certificate issued in Docket Nos. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to upgrade these delivery points to accommodate natural gas deliveries to Minnegasco under currently effective throughput service agreements. Applicant asserts that Minnegasco has requested the upgrade of the existing delivery points to provide increased natural gas service to the Dayton, Waconia, and Cold Springs town border stations to meet peak day requirements. Applicant further states that the estimated incremental volumes proposed to be delivered to Minnegasco at these delivery points are 5,110 MMBtu on a peak day and 600,114 MMBtu on an annual basis. It is also indicated that the estimated cost to upgrade the delivery points is $228,000.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 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 activities 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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–20565 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–161–004]

Puget Sound Energy, Inc.; Notice of Filing

July 27, 1998.

Take notice that on June 29, 1998, Puget Sound Energy, Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 7, 1998. 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 proceedings. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20585 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1202–001]

Texas Utilities Electric Company; Notice of Filing

July 27, 1998.

Take notice that on March 6, 1998, Texas Utilities Electric Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before August 6, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20587 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–2–003]

Wisconsin Public Service Corporation; Notice of Filing

July 27, 1998.

Take notice that on July 20, 1998, Wisconsin Public Service Corporation tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 7, 1998. 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 proceedings. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20586 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–94–000, et al.]

Narragansett Energy Resources, et al.; Electric Rate and Corporate Regulation Filings

July 23, 1998.

Take notice that the following filings have been made with the Commission:

1. Narragansett Energy Resources Company

[Docket No. EG98–94–000]

Take notice that on July 22, 1998, Narragansett Energy Resources Company (NERC), with its business office at 280 Melrose Street, Providence, Rhode Island, filed an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

NERC states that it will be engaged indirectly through its affiliates in owning and operating the Ocean State Power project consisting of two approximately 250 megawatt electric generating facilities located in Burrillville, Rhode Island. Electric energy produced by the Ocean State Power project is sold exclusively at wholesale.

Comment date: August 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. California Independent System Operator Corporation

[Docket No. ER98–990–002]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Scheduling Coordinator Agreement between The Montana Power Trading & Marketing Company and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the

Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Scheduling Coordinator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–1313–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Scheduling Coordinator Agreement between NorAm Energy Services, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Scheduling Coordinator Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1844–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Citizens Power Sales and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1853–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between NorAm Energy Services, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1 modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–1861–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between California Power Exchange Corporation and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–1864–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between California Polar Brokers, L.L.C., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER98–1868–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between The Montana Power Trading & Marketing Company and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–1883–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Scheduling Coordinator Agreement between Avista Energy, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Scheduling Coordinator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER98–1910–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Mountain Vista Power Generation, L.L.C., for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Participating Generator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket Nos. ER98–1924–000]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between the Western Area Power Administration, Sierra Nevada Region and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER98–1928–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Scheduling Coordinator Agreement between the Western Area Power Administration, Sierra Nevada Region and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Scheduling Coordinator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER98–1930–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Alta Power Generation, L.L.C., for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Participating Generator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER98–1931–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Ocean Vista Power Generation, L.L.C., for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Participating Generator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER98–1935–001]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Oeste Power Generation, L.L.C., for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO requests waiver of the Commission's 60-day notice

requirement and requests that Amendment No. 1, become effective March 31, 1998, the effective date of the Participating Generator Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER98–3795–000]

Take notice that on July 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Enserch Energy Services, Inc. This Transmission Service Agreement specifies that Enserch Energy Services, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Enserch Energy Services, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Enserch Energy Services, Inc., as the parties may mutually agree.

NMPC requests an effective date of July 17, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Enserch Energy Services, Inc.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas And Electric Company

[Docket No. ER98–3796–000]

Take notice that on July 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Purchase and Sales Agreement between LG&E and OGE Energy Resources, Inc., under LG&E's Rate Schedule GSS.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Upper Peninsula Power Company

[Docket No. ER98–3797–000]

Take notice that on July 20, 1998, Upper Peninsula Power Company tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission service under its open access transmission service tariff for service to Aquila Power Corporation.

UPPCO proposes to make the service agreement effective as of September 14, 1998.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Houston Lighting & Power Company

[Docket No. ER98–3800–000]

Take notice that on July 20, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Merchant Energy Group of the Americas, Inc. (Merchant), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections.

HL&P has requested an effective date of July 20, 1998.

Copies of the filing were served on Merchant and the Public Utility Commission of Texas.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. American Electric Power Service Corporation

[Docket No. ER98–3801–000]

Take notice that on July 20, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service on or after June 21, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER98–3802–000]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Calpine Geysers Company, C.P. and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Calpine Geysers and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of July 13, 1998.

Copies of this filing have been served on Calpine Geysers and the California Public Utilities Commission.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket No. ER98–3803–000]

Take notice that on July 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Calpine Geysers Company, L.P. (Calpine Geysers) for acceptance by the Commission.

The ISO states that this filing has been served on Calpine Geysers and the California Public Utilities Commission.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER98–3804–000]

Take notice that on July 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement between NMPC and Village of Brocton. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Brocton has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Brocton to enter into separately scheduled transactions under which NMPC will provide network integration transmission service for Village of Brocton as the parties may mutually agree.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Brocton.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER98–3805–000]

Take notice that on July 20, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Carolina Power & Light Company, Morgan Stanley Capital Group Inc., and The Energy Authority, Inc., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on June 22, 1998.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Western Resources, Inc.

[Docket No. ER98–3806–000]

Take notice that on July 20, 1998, Western Resources, Inc., tendered for filing two Service Agreements between Western Resources and Amoco Energy Trading Corporation and Tennessee Valley Authority. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective June 20, 1998 and May 21, 1998, respectively.

Copies of the filing were served upon Amoco Energy Trading Corporation, Tennessee Valley Authority, and the Kansas Corporation Commission.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Illinois Power Company

[Docket No. ER98–3807–000]

Take notice that on July 20, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which OGE Energy Resources, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 8, 1998.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. 3E Technologies, Inc.

[Docket No. ER98–3809–000]

Take notice that on July 20, 1998, 3E Technologies, Inc. (3E), filed an amendment to its application for market-based rates as a power marketer. The amended information makes correction to the application relevant to (1) removal of 3E Energy Services, LLC; (2) removal of LLC member managers as owners; and (3) includes replacement of 3E Energy Services, LLC with 3E Technologies, Inc., and owner's name.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. DukeSolutions, Inc.

[Docket No. ER98–3813–000]

Take notice that on July 20, 1998, DukeSolutions, Inc. (DukeSolutions), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of electric capacity and energy at market-based rates as a power marketer.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Minnesota Power, Inc.

[Docket No. ER98–3815–000]

Take notice that on July 20, 1998, Minnesota Power, Inc., tendered for filing a signed Wholesale Coordination Sales short-Term Transaction Service Agreement with UtiliCorp United, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2), to satisfy its filing requirements under this tariff.

Minnesota Power, Inc., requests an effective date of June 20, 1998, also requests waiver of the Commission's notice requirements.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20562 Filed 7–31–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–96–000, et al.]

Termotasajero S.A.E.S.P., et al.; Electric Rate and Corporate Regulation Filings

July 22, 1998.

Take notice that the following filings have been made with the Commission:

1. Termotasajero S.A.E.S.P.

[Docket No. EG98–96–000]

Take notice that on July 15, 1998, Termotasajero S.A.E.S.P. of Bogota, Colombia 01010 filed with the Federal Energy Regulatory Commission an application for a determination of Exempt Wholesale Generator status pursuant to Part 365 of the Commission's Regulations.

Termotasajero, a Colombian corporation, directly or indirectly and exclusively develops, owns and operates an electric generating facility, located in the Province of Norte De Santiago, Colombia and will sell electricity at wholesale or at retail outside the United States. The electric generating facility will consist of a coal-fired generating plant, auxiliary equipment and appurtenant facilities necessary to interconnect the electric generating facility to the Colombian National Transmission System. The facility will have a nominal generating capacity of 150 MW.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Choctaw Generation Limited Partnership

[Docket No. EG98–97–000]

Take notice that on July 16, 1998, Choctaw Generation Limited Partnership (Choctaw), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations

Choctaw Generation Limited Partnership, a Delaware limited partnership, is a wholly-owned subsidiary of Tractebel Power, Inc., also a Delaware corporation. Tractebel Power, Inc., is an indirect wholly-owned subsidiary of Tractebel, S.A., a Belgian corporation.

Choctaw will operate the Red Hills Generation Facility, a 440 MW lignite-

fired generating facility which will consist of a steam turbine, two circulating fluidized bed boilers, two natural gas auxiliary boilers, lignite handling systems, a fabric filter baghouse, transmission interconnection facilities and associated real and personal property. The Facility will be located in Choctaw County, Mississippi.

Comment date: August 14, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Tractebel Choctaw Operations, Inc.

[Docket No. EG98–93–000]

Take notice that on July 16, 1998, Tractebel Choctaw Operations, Inc. (TCO), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

TCO, a Delaware corporation, is a wholly-owned subsidiary of Tractebel Power, Inc., also a Delaware corporation. Tractebel Power, Inc.,is an indirect wholly-owned subsidiary of Tractebel, S.A., a Belgian corporation.

TCO will operate the Red Hills Generation Facility, a 440 MW lignite-fired generating facility which will consist of a steam turbine, two circulating fluidized bed boilers, two natural gas auxiliary boilers, lignite handling systems, a fabric filter baghouse, transmission interconnection facilities and associated real and personal property. The Facility will be located in Choctaw County, Mississippi.

Comment date: August 14, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. UGI Utilities, Inc. Electric Division v. PP&L, Inc.

[Docket No. EL98–61–000]

Take notice that on July 10, 1998, UGI Utilities, Inc. Electric Division tendered for filing a complaint against PP&L, Inc. for collecting multiple charges for transmission service provided under agreements that are inconsistent with the Commission's order of May 4, 1998, in Docket No. ER98–1568–000, *et al.*

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–3196–000]

Take notice that on July 17, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of three Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale. NSP is in response to the Commission's deficiency letter dated June 17, 1998.

NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreements, as corrected by this filing, be accepted for filing effective May 1, 1998. NSP requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER98–3753–000]

Take notice that on July 16, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-to-Point Transmission Service Customers under its Open Access Transmission Tariff. CILCO also submits copies of Attachment B, one Short-Term Firm and one Non-Firm Point-to-Point Forms of Service Agreement with Tractebel Energy Marketing, Inc.

CILCO requests an effective date of July 8, 1998, for the new Index and Service Agreements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Summersville Hydroelectric Project

[Docket No. ER98–3763–000]

Take notice that on July 17, 1998, the City of Summersville, West Virginia, Noah Corp., and Gauley River Power Partners L.P., tendered for filing with the Federal Energy Regulatory Commission revisions to the Summersville Hydroelectric Project FERC Rate Schedule No. 1, an Agreement for the Sale and Purchase of Electric Energy between Applicants and Appalachian Power Company (APCo) and for certain blanket authorizations and waivers of the Commission Regulations. The proposed revisions extend the deadline for obtaining regulatory approvals and commercial operation of the Project and reduce the rate to be paid by APCo for electric energy delivered from the Project prior to September 1, 2000. The proposed revisions are necessary due to delays in Project construction associated with appeals of prior Commission orders.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3764–000]

Take notice that on July 17, 1998, Consolidated Edison Company of New York, Inc., (Con Edison), tendered for filing pursuant to its FERC Electric Tariff Rate Schedule No. 3, Service Agreements between Central Hudson Gas & Electric, Inc., Consolidated Edison Solutions, Inc., DTE Energy Trading, Inc., Econnergy Energy Company, Energis Resorces, Inc., KeySpan Energy Services, Inc., mc2 Inc., Metromedia Energy, Inc., New Energy Ventures, L.L.C., Northeast Utilities Service Company, Plum Street Energy Marketing, Inc., and Wheeled Electric Power Company to purschase electric capacity and energy pursuant to the terms of Con Edison's retail access program.

The Service Agreements are proposed to be effective on June 1, 1998, and will continue until terminated by either party pursuant to the terms of the tariff.

Con Edison states that a copy of this filing has been served by mail upon the Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER98–3765–000]

Take notice that on July 17, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing proposed changes in its Rate Schedule FERC No. 62. Such change is comprised of a Third Amendment dated July 8, 1998, to the Electric Transmission Interconnection Agreement (Agreement) dated March 1, 1991 and entered into by a MidAmerican predecessor with Corn Belt Power Cooperative (Corn Belt).

MidAmerican states that the Third Amendment amends the Agreement by (i) revising the Points of Interconnection and descriptions thereof to reflect new, discontinued and corrected Points of Interconnection of MidAmerican and Corn Belt; (ii) adding provisions for loss compensation to Corn Belt by

MidAmerican as the result of the interconnected operation of wind generation facilities at the Buena Vista Substation; and (iii) adding provisions relating to certain facilities to be constructed on behalf of Corn Belt by Storm Lake Power Partners I LLC.

Copies of the filing were served upon representatives of Corn Belt, the Iowa Utilities Board, the Illinois Commerce Commissionand the South Dakota Public Utilities Commission.

MidAmerican proposes an effective of September 15, 1998, for the rate schedule change.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service on Behalf of The Potomac Edison Company

[Docket No. ER98–3766–000]

Take notice that on July 17, 1998, Allegheny Power Service Corporation, on behalf of The Potomac Edison Company (PE), filed Power Service Agreements under which PE will provide full requirements service to the City of Hagerstown, the Town of Thurmont, and the Town of Front Royal. The parties request a June 25, 1998, effective date.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER98–3767–000]

Take notice that on July 17, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Northern/AES Energy, L.L.C., (Northern/AES).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Northern/AES pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER98–3768–000]

Take notice that on July 17, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Northern/AES Energy, L.L.C., (Northern/AES).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Northern/AES pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 31, 1998.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER98–3769–000]

Take notice that on July 17, 1998, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Power Sales Tariff with Constellation Power Source, Inc. (Constellation). Northern Indiana has requested an effective date of July 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3772–000]

Take notice that on July 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Constellation Power Source, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Constellation Power Source, Inc.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER98–3773–000]

Take notice that on July 17, 1998, Western Resources, Inc. tendered for filing an agreement between Western Resources and SCANA Energy Marketing, Inc. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective June 22, 1998.

Copies of the filing were served upon SCANA Energy Marketing, Inc. and the Kansas Corporation Commission.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Choctaw Generation Limited Partnership

[Docket No. ER98–3774–000]

Take notice that on July 17, 1998, Choctaw Generation Limited Partnership tendered for filing its FERC Electric Rate Schedule No. 1, and requested certain waivers of the Commission's regulations.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER98–3775–000]

Take notice that on July 17, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Non-Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997.

Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 19, 1998, for the Service Agreement.

Copies of the filing were served upon Enron Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER98–3776–000]

Take notice that on July 17, 1998, Virginia Electric and Power Company

(Virginia Power), tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 19, 1998, for the Service Agreement.

Copies of the filing were served on Enron Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER98–3777–000]

Take notice that on July 17, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Koch Energy Trading, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L requests an effective date of July 8, 1998, for the Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Power Strategies LLC

[Docket No. ER98–3778–000]

Take notice that on July 17, 1998, Power Strategies LLC (Power Strategies), petitioned the Commission for acceptance of Power Strategies' Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Power Strategies LLC intends to engage in wholesale electric power and energy purchases and sales as a marketer. Power Strategies LLC is not in the business of generating or transmitting electric power. Power Strategies LLC is an Oklahoma Limited Liability Company.

Comment date: August 6,1998, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER98–3779–000]

Take notice that on July 17, 1998, Commonwealth Edison Company (ComEd), tendered for filing six (6) Short-Term Firm Service Agreements establishing Coral Power, L.L.C. (CORP), Williams Energy Services, Company (WESC), American Electric Power (AEP), Cargill-Aliant LLC (CIEG), Columbia Energy Power Marketing Corp. (CPM), and two (2) executed Short-Term Firm Service Agreements establishing Northern States Power Company (NSP), and Williams Energy Services Company (WESC), as short-term firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 28, 1998, for the agreement with CORP and requests an effective date of June 21, 1998, for the agreements with, WESC, AEP, CIEG, CPM, and NSP. Accordingly, ComEd seeks waiver of the Commission's notice requirements.

Copies of this filing were served on the Illinois Commerce Commission and an abbreviated copy of the filing was served on each affected customer.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Company of New Mexico

[Docket No. ER98–3783–000]

Take notice that on July 17, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Merchant Energy Group of the Americas, Inc. (2 agreements, dated July 14, 1998, for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. BHP Copper White Pine Refinery Inc.

[Docket No. ER98–3784–000]

Take notice that on July 17, 1998, BHP Copper White Pine Refinery Inc. (BHP), tendered for filing waiver of certain Commission Regulations and/or blanket approvals and acceptance of initial rates for filing and notice of cancellation of electric power service agreement between BHP Copper White Pine Inc. (BHP), and Aquila Power Corporation (Aquila), effective July 17, 1998.

Notice of the proposed cancellation has been served upon Aquila Power Corporation and BHP.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. OA96–204–003]

Take notice that on June 4, 1998, First Energy Corp., parent of The Cleveland Electric Illuminating Company and The Toledo Edison Company, tendered for filing a compliance refund report pursuant to the Commission's April 15, 1998 Letter Order.

FirstEnergy Corp. states that a copy of the filing has been served on the parties in the above-referenced proceedings.

Comment date: August 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20588 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–363–000]

Etowah LNG Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Etowah LNG Project and Request for Comments on Environmental Issues

July 28, 1998.

On June 23, 1998, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Intent (NOI) to prepare an

environmental assessment (EA) for the proposed Etowah LNG Project. As a result of comments we have expanded our mailing list and are reissuing the NOI with an extended time period for comments. If you have already provided comments on the proposed project, you do not need to resubmit them.

The Commission's staff will prepare an EA that will discuss the environmental impacts of the construction and operation of the liquefied natural gas (LNG) storage plant and associated pipeline facilities proposed in the Etowah LNG Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by an Etowah LNG Company, L.L. C. (Etowah) representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. Etowah would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Etowah could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Etowah seeks authority to construct and operate an LNG storage plant and associated pipeline facilities in Polk County, Georgia. The proposed LNG plant would be located approximately 4.5 miles northeast of Rockmart, Georgia and 40 miles northwest of Atlanta, Georgia. The purpose of the facilities is to meet winter peak shaving requirements, including those of Atlanta Gas Light Company (AGLC) and the City of Austell Gas System.

The primary components of the LNG plant would include:

- A 750,000-barrel-double-wall metal LNG storage tank with a gas-equivalent capacity of 2.5 billion cubic feet;
- A pretreatment and liquefaction system with a capacity of 15 million cubic feet per day (MMcfd);
- A boil-off recompression system;
- A vaporization and sendout system with a design capacity of 300 MMcfd with standby vaporization capacity of up to 200 MMcfd;
- Measurement facilities;
- Associated control and hazard-protection systems; and
- A trucking system capable of loading 20,000 gallons per hour.

Etowah also proposes to construct:

- Approximately 12.5 miles of 12.75-inch-diameter pipeline (Etowah pipeline would be adjacent to and overlap an existing utility right-of-way for 83 percent of its route; and
- A 1.3-mile-long permanent access road and new bridge extending from the plant site northward to Davis Town Road.

The LNG storage tank would be approximately 149 feet in height and 250 feet in diameter. The LNG tank area would be surrounded by an earthen berm that would slope towards an impoundment basin that together form the spill containment system. The proposed project facilities would be designed, constructed, operated, and maintained to comply with the U.S. Department of Transportation Federal Safety Standards for Liquefied Natural Gas Facilities (49 Code of Federal Regulations [CFR] Part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards.

The following related nonjurisdictional facilities would be constructed:

- AGLC would construct and operate approximately 16.8 miles of 24-inch-diameter pipeline (Etowah-Mars Hill Road pipeline) in Polk, Paulding, and Cobb Counties, Georgia connecting the LNG plant to AGLC's distribution system. The Etowah-Mars Hill Road pipeline would be adjacent to and overlap an existing utility right-of-way for 95 percent of its route; and
- Georgia Power would construct and operate an approximately 0.9-mile-long 115 kilovolt (kV) overhead electric powerline collocated with AGLC's pipeline, and a 0.4-acre 115 kV to 4,160 volt substation connecting the LNG plant to the new Georgia Power electric powerline in Polk County, Georgia.

All natural gas received at the LNG facility for liquefaction and storage would be shipped from Southern Natural Gas Company's (Southern) system through the Etowah pipeline. Vaporized natural gas would be transported from the LNG facility either through the Etowah pipeline to Southern's system or through the Etowah-Mars Hill Road pipeline to AGLC's system.

The location of the project facilities is shown in appendix 2.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the LNG plant would affect approximately 50 acres of an 883-acre site owned by Etowah. An additional 7.8 acres would be disturbed during construction of the permanent access road to the site. The 57.8 acres of land for the plant site and access road would be permanently affected by the project.

Construction of the proposed Etowah pipeline would affect approximately 132.3 acres of land, including temporary extra work areas. Following construction, about 50.5 acres of land would be maintained as new permanent right-of-way.

Construction of the related nonjurisdictional facilities would affect approximately 106.4 acres of land. Of this, about 0.4 acre would be required for the substation, 4.2 acres would be required for the powerline, and 101.8 acres would be required for the Etowah-Mars Hill Road pipeline. Following construction, about 4.6 acres would be required for the substation and permanent right-of-way for the powerline and 61.1 acres would be required for the permanent right-of-way for the Etowah-Mars Hill Road pipeline.

The EA Process/Environmental Issues

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 the general

[1] Etowah LNG Company, L.L.C.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] 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, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

headings listed below. 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 Etowah. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils.

—Effect of blasting and disposal of blast rock.
—Landslide potential (moderate incidence with high susceptibility).
—Erosion control.
—Facility site and right-of-way restoration.

- Water Resources and Fisheries.

—Groundwater withdrawal and discharge to surrounding surface waters.
—Effect of blasting on potable water sources.
—Effect of permanent access road and bridge on Hills Creek.
—Crossings of 35 perennial waterbodies.
—Impact on Silver Creek, a secondary trout stream.
—Hydrostatic test water rates and discharge locations.

- Vegetation and Wildlife.

—Effect of facility construction and operation on wildlife and fisheries habitat, including federally and state-listed threatened and endangered, or sensitive animal and plant species and their habitats.
—Impact on forested wetlands.
—Clearing of upland forest.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Socioeconomics.

—Impact of a peak workforce of about 300 workers on housing and demands for services in the surrounding area.
—Impact of timber removal on landowners.
—Long-term effects of increased employment and tax benefits on the local economy.

- Land Use and Transportation.

—Crossing of one recreation area leased by the Georgia Department of Natural Resources.
—Effect on 18 residences within 50 feet of the construction work area.
—Visual effect of the storage tank on the surrounding area.
—Impact on future county plans (*e.g.*, schools, roads).
—Consistency with local land use plans and zoning.
—Impact of construction and operation traffic.

- Air Quality and Noise.

—Air quality and noise impacts associated with construction and operation.

- Public Safety.

—Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion), siting criteria, seismic criteria, and cryogenic criteria.
—Consequences of a major spill.
—Design and operation of the firewater system.
—Assessment of hazards associated with natural gas pipelines.

- Cumulative Impact.

—Assessment of the combined effect of the proposed project with other projects which have been or may be proposed in the same region and similar time frame.

We will also evaluate possible site, routing, and system 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 make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative sites and routes, and measures to avoid or lessen environmental impact). The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP98–363–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 27, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. 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 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. 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 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing 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 environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–20564 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000, et al., CP97–319–000, CP98–200–000, and CP98–540–000]

Independence Pipeline Company; Supplemental Notice of Intent To Prepare a Combined Environmental Impact Statement for the Proposed Independence Pipeline and Market Link Expansion Projects, Request for Comments on Environmental Issues Associated With the Market Link Expansion Project, and Notice of Public Scoping Meetings and Site Visit

July 28, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that the proposed Independence Pipeline and Market Link Expansion Pipeline Projects are environmentally related projects and will be combined into one environmental impact statement (EIS) pursuant to the National Environmental Policy Act.[1] This EIS will be used by the Commission in its decision-making process to determine whether the proposed actions are in the public convenience and necessity. This Notice opens another environmental scoping comment period (see below). If you have already provided environmental comments as an affected property owner, interested party, agency, or intervenor for the Independence Pipeline Project, we request that you not submit additional scoping/environmental comments. We are specifically requesting comments only from those affected property owners and interested parties in the Market Link Expansion Project, project area.

If you are a landowner whose property will be crossed by the proposed Market Link Expansion Project, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company may seek to negotiate a mutually acceptable agreement relative to land use and access. However, if the project is approved by the Commission, the pipeline has the right to use eminent domain. Therefore, if negotiations fail to produce an agreement between the pipeline company and landowner, the pipeline company would initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.

Summary of the Proposed Project

On March 9, 1998, the Commission issued a "Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Independence Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit (NOI)." The NOI described the Independence Pipeline Project facilities proposed by ANR Pipeline Company, Independence Pipeline Company, and National Fuel Gas Supply Corporation. This Notice will only describe those facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in its Market Link Expansion Project. Please refer to the NOI of March 9, 1998 for additional detail and project information concerning the Independence Pipeline Project.

The facilities discussed below are proposed by Transcontinental Gas Pipe Line Corporation (Transco) in its Market Link Expansion Project, and will be incorporated into the Commission staff's Independence Pipeline Project EIS:

- 24.19 miles of 42-inch-diameter pipeline loop between mileposts 161.29 and 185.48 in Lycoming and Clinton Counties, Pennsylvania (Haneyville Loop);[2]
- 13.23 miles of 42-inch-diameter pipeline loop between mileposts 129.51 and 142.74 in Lycoming County, Pennsylvania; and 1.79 miles of 36-inch-diameter pipeline between mileposts 142.74 and 144.53 in Lycoming County (Williamsport Loop);[2]
- 17.73 miles of 42-inch-diameter pipeline loop between mileposts 28.56 and 115.18 in Luzerne and Columbia Counties, Pennsylvania (Benton Loop);
- 6.27 miles of 42-inch-diameter pipeline loop between mileposts 30.29 and 36.56 in Northampton County, Pennsylvania (Allentown Loop);
- 29.23 miles of 42-inch-diameter pipeline loop between mileposts 0.14 and 29.37 in Somerset and Warren Counties, New Jersey (Clinton Loop);
- 23.88 miles of 42-inch-diameter pipeline loop between mileposts 1789.53 and 1812.36 in Somerset and Morris Counties, New Jersey (Stirling Loop);
- 18.81 miles of 36-inch-diameter pipeline loop between mileposts 1820.66 and 1839.47 in Bergen and Essex Counties, New Jersey (Roseland Loop);
- 5.46 miles of 36-inch-diameter pipeline loop between mileposts 1802.73 and 1808.19 in Middlesex and Union Counties, New Jersey (Woodbridge Loop)[2]
- 7.10 miles of 36-inch-diameter pipeline between mileposts 18.96 and 26.06 in Burlington County, New jersey (Bordentown Loop); and[2]
- 0.30 miles of 42-inch-diameter pipeline loop crossing the Raritan River between mileposts 1794.70 and 1795.00 in Middlesex County, New Jersey (Raritan River Loop).

Transco also proposes to:

- Replace about 6.3 miles of 12-inch-diameter pipeline (in the same trench) with a new 36-inch-diameter pipeline between mileposts 30.53 and 36.83 in Burlington County, New Jersey (Mt. Laurel Replacement);[2]
- Install a 36-inch-diameter interconnect pipeline with a proposed meter building outlet of Independence Pipeline Company to Transco's existing 24-inch-diameter Leidy Lines "A" and "B"; and 30-inch-diameter Leidy Line "C" in Clinton County, Pennsylvania (milepost 194.06).
- Replace the impellers on two existing 12,600-horsepower (hp), turbine-driven compressor units at Compressor Station (C.S.) 520 in Lycoming County, Pennsylvania;
- Install two new 15,000-hp turbine-driven compressor units; perform the rewheeling of one existing 12,600-hp turbine-driven compressor unit, and perform impeller replacement on two existing 5,500-hp turbine-driven compressor units at C.S. 517 in Columbia County, Pennsylvania;
- Install one 15,000-hp turbine-driven compressor unit and perform the rewheeling and uprating of an existing 12,600-hp turbine-driven compressor unit to 15,000-hp at C.S. 515 in Luzerne County, Pennsylvania;
- Install one 15,000-hp electric motor-driven compressor unit and perform impeller replacement on two existing 7,000-hp electric motor-driven compressor units at C.S. 205 in Mercer County, New Jersey;[2]

Transco would also perform modifications to:

- Reduce pressure on Transco's 42-inch-diameter Mainline C from 1,200 psig to 800 psig at the existing

[1] Independence Pipeline Company, ANR Pipeline Company, National Fuel Gas Supply Corporation, and Transcontinental Gas Pipe Line Corporation's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] These facilities or portions of these facilities were previously proposed in Transco's Seaboard Expansion Project in Docket No. CP96–545–000. The Commission staff conducted an environmental review and had planned to publish an environmental assessment (EA) for Transco's Seaboard Expansion Project. Four comments were received during the public scoping period. However, Transco subsequently withdrew its application on April 4, 1997 and the EA was never issued.

Centerville Regulator Station at milepost 0.11 in Somerset County, New Jersey;

- Reduce pressure on Transco's 36-inch-diameter Mainline D from 800 psig to 638 psig at existing Roseland Regulator Station at milepost 1820.66 in Essex County, New Jersey;
- Reduce pressure on Transco's 42-inch diameter Mainline E from 800 psig to 638 psig at existing Linden Regulator Station at milepost 1808.19 in Union County, New Jersey;[2] and
- Inlet/outlet headers at existing C.S. 200 to provide flow control under certain operating conditions on Transco's Trenton Woodbury Lateral in Chester County, Pennsylvania.

The proposed project would deliver about 663,000 Dts/d for nine customers.

A general location map of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of Transco's proposed looping facilities would affect a total of about 2,485 acres. Of this total, about 1,604 would be disturbed by construction of the pipeline loops. Of the remaining 881 acres, about 352 acres are proposed for use as extra work spaces; and about 518 acres would be disturbed by construction and operation of the aboveground facilities.

About 150.8 miles of the proposed pipeline right-of-way would parallel existing rights-of-way (about 98 percent of the project). Transco would deviate from existing mainline in several locations to avoid environmental or engineering constraints. Transco states it would require a 85 to 90-footwide construction right-of-way. Transco would retain and operate an additional 35 feet from the south edge of its existing corridor as permanent pipeline right-of-way. About 516 acres would be maintained as new permanent right-of-way. Existing land uses on the remainder of the disturbed areas, as well as most land uses on the permanent right-of-way, would be allowed to continue following construction.

The EIS 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. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about the proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS 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 EIS. All comments received are considered during the preparation of the EIS. We encourage state and local government representatives to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Local agencies are requested to provide information on other projects, either ongoing or planned, which might conflict with, or have cumulative effects when considered in combination with, the Independence Pipeline Project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 7 and 8 of this notice.

Currently Identified Environmental Issues

We have identified a number of issues based upon our preliminary review of the proposed facilities, the environmental information provided by Transco, and interested parties. Some of these issues are listed below. Keep in mind that this is a preliminary list, and is *not* a complete list of site-specific issues. We may add to, subtract from, or change the list of issues based on your comments and our analysis.

- Geology and Soils
  - —Temporary and permanent impact on farmland soils.
  - —Mixing of topsoil and subsoil during construction.
  - —Compaction of soil by heavy equipment.
  - —Effects to acid soils in Burlington County, New Jersey.
  - —Effect of blasting during trench excavation.
  - —Erosion control and restoration of the right-of-way.
- Water Resources
  - —Crossing of 177 perennial waterbodies (81 in Pennsylvania; 96 in New Jersey).
  - —Crossing of 5 perennial waterbodies over 100 feet wide, including Pine Creek (twice) in Pennsylvania; and the North Branch of the Raritan, Passaic, and Rahway Rivers in New Jersey.
  - —Effect on water supplies, including at least 17 private wells within 150 fee of the construction work area (more to be determined).
- Vegetation and Wildlife
  - —Crossing of 137.3 acres of wetlands, including 41.8 acres forested wetlands.
  - —Clearing of about 146 acres of forest.
  - —Effect of construction on wildlife and fisheries habitat.
  - —Effect on federally listed endangered and threatened species or proposed listed species, including bald eagle, bog turtle, and shortnose sturgeon.
- Cultural Resources
  - —Impact on historic and prehistoric sites.
  - —Native American and tribal concerns.
- Land Use
  - —Use of eminent domain to acquire rights-of-way.
  - —Impact on crop production.
  - —Proximity to schools and residential developments.
  - —Effect on at least 36 residences within 50 feet of the construction work area.
  - —Crossings of septic fields and drains.
  - —Effect on local roads.
  - —Control of unauthorized access to rights-of-way.
- Recreation and Public Interest Areas
  - —Crossing of the Tiadaghton State Forest and Sproul State Forest, Pennsylvania.
  - —Crossing of the Hyner State Park and Lick Run, a Pennsylvania State Designated "Wild River".
  - —Crossing of South Branch Nature Preserve, Clinton Wildlife Management Area, in New Jersey.
  - —Crossing of the Great Swamp National Wildlife Refuge.
  - —Crossing of several municipal parks, and the McEvoy and Passaic River Parks in New Jersey.
- Socioeconomics
  - —Impact on property values.
  - —Effect of construction workforce on demands for services in surrounding areas.
- Air Quality and Noise
  - —Impact on local air quality during construction, and regional air quality during operation, of pipelines and compressor stations.
  - —Noise impact on nearby areas from construction and operation of pipelines and compressor stations.
- Reliability and Safety
  - —Assessment of hazards associated with natural gas pipelines, including placement in vicinity of schools, commercial areas and residential developments.
- Cumulative Impact
  - —Assessment of the combined effect of the proposed project with other projects which have been or may be proposed in the same region and similar time frame.

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. A number of alternatives have been identified to date, both in filings made by the applicants and in comments received. We will evaluate all feasible alternatives identified.

Our independent analysis of the issues will be in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will treat all comments received on the Draft EIS.

Public Participation and Scoping Meetings

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or compressor station sites), and measure 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:

- Reference Docket Nos. CP97–315–000 *et al.*
- Send *two* copies of your comments to: David P. Boergers, Acting Secretary Federal Energy Regulatory Commission 888 First St., NE Washington, DC 20426;
- Label one copy for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Please mail your comments so that they will be received in Washington, DC on or before September 11, 1998.

In addition to or in lieu of sending written comments, you are invited to attend one or more of the four public scoping meetings being held in the project area. Meetings will be held at the following times and locations:

Date	Time	Location
September 1, 1998	7:00 p.m.	Sheraton Inn, Williamsport, 100 Pine Street, Williamsport, Pennsylvania, (717) 327–8231.
September 2, 1998	7:00 p.m.	Hilton, Allentown, 904 East Hamilton Street, Allentown, Pennsylvania, (610) 433–2221.
September 3, 1998	7:00 p.m.	Sheraton Hotel Tara Parsippany, 199 Smith Road, Parsippany, New Jersey, (973) 515–2000.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate). Federal agencies are expected to file their written comments directly with the FERC and not use the scoping meetings for this purpose.

Transco will be invited to present a description of its Market Link Expansion Project. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. A transcript will be made of the meetings and will be made part of the Commission's record in this proceeding. Written comments and oral comments will be treated equally in our review.

We are asking a number of Federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities. The list of agencies is provided in appendix 3.[3]

[3] The appendices references 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., Washington, DC 20426, Room 2A or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

On the above dates we will also be conducting limited site visits to the project area in the vicinity of each scoping meeting location. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs, identified at the end of this notice, for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding, known as an "intervenor". Intervenors play a more formal role in the process. 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 14 copies of its filings to the Secretary of the Commission and must send a copy to all other parties on the Commission's service lists for these proceedings. 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 4). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed, having ended June 11, 1998. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.213(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. However, you do not need intervenor status to have your comments considered.

Environmental Mailing List

Anyone offering scoping comments will be automatically kept on our environmental mailing list for the project. If you do not want to offer comments at this time you will be taken off the environmental mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–20563 Filed 7–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 27, 1998, 63 FR 40116.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 29, 1998, 10:00 a.m.

CHANGE IN THE MEETING: The following docket Numbers and Companies have been added on the Agenda scheduled for the July 29, 1998 meeting.

Item No.	Docket No. and company
CAG–44	RP96–173–000, *et al.*, Williams Gas Pipelines
CAG–54	RP89–183–081, Williams Gas Pipelines Central, Inc.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20724 Filed 7–30–98; 10:52 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6134–1]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506 (c)(2)), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before October 2, 1998.

ADDRESS: U.S. Environmental Protection Agency, Assessment and Modeling Division, Emission Inventory Group, 2000 Traverwood Drive, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Carl Fulper, Telephone: (734) 214–4400, Facsimile: (734) 214–4939.

SUPPLEMENTARY INFORMATION:

Affected Entities: The entity affected by this action is the general public who own on-road motor vehicles.

Title: Mobile Source Emission Factor Survey—2060–0078

Abstract: The EPA Emission Inventory Group, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. The owner is also asked to complete a multiple choice form of nine questions that summarize vehicle usage. There are two methods used to solicit the general public for participation in Emission Factors Program (EFP):

1. Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists; and

2. A random selection of motor vehicle owners, who arrive at State inspection stations on an annual or biennial schedule, are solicited.

Information from the EFP provides a basis for developing State Implementation Plans (SIPs), Reasonable Further Progress (RFP) reports, are attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

The legislative basis for the Emission Factors Program is Section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to "conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution" and "conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *"

EPA uses the data from the EFP to verify predictions of the computer model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the automotive industry, and other parties that are interested in estimating mobile source emissions.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; and

(iii) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated technology (e.g., permitting electronic submission of responses).

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes to 2 hours per response, including the time for reviewing instructions, completing the questionnaire, and delivering the vehicle for testing. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460

and the Paperwork Reduction Project (OMB# 2060–0078),

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR, Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: July 28, 1998.

Michael G. Shields,

Director, Policy Budget and Planning Division.

[FR Doc. 98–20606 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6133–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Ambient Air Quality Surveillance, OMB Number (2060–0084), EPA ICR # 940.16 expires March 29, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before October 2, 1998.

ADDRESSES: Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Interested parties may obtain a copy of the ICR without change from David Lutz, EPA, Emissions, Monitoring, and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–5476.

FOR FURTHER INFORMATION CONTACT: David Lutz, Emissions, Monitoring, and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5476, FAX (919) 541–1903.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those State and local air pollution control agencies which collect and report ambient air quality data for the criteria pollutants to EPA.

Title: Ambient Air Quality Surveillance, (OMB Number (2060–0084), EPA ICR # 940.16) expires March 29, 1999.

Abstract: The general authority for the collection of ambient air quality data is contained in sections 110 and 319 of the Clean Air Act (42 U.S.C. 1857). Section 110 makes it clear that State generated air quality data are central to the air quality management process through a system of State implementation plans (SIP). Section 319 was added via the 1977 Amendments to the Act and spells out the key elements of an acceptable monitoring and reporting scheme. To a large extent, the requirements of section 319 had already been anticipated in the detailed strategy document prepared by EPA's Standing Air Monitoring Work Group (SAMWG). The regulatory provisions to implement these recommendations were developed through close consultation with the State and local agency representatives serving on SAMWG and through reviews by ad-hoc panels from the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials. These modifications to the previous regulations were issued as final rules on May, 10, 1979 (44 FR 27558) and are contained in 40 CFR part 58.

Major amendments which affect the hourly burdens were made in 1983 for lead, 1987 for PM–10, 1993 for enhanced monitoring for ozone, and 1997 for $PM_{2.5}$. The specific required activities for the burden include establishing and operating ambient air monitors and samplers, conducting sample analyses for all pollutants for which a national ambient air quality standard (NAAQS) has been established, preparing, editing, and quality assuring the data, and submitting the ambient air quality data and quality assurance data to EPA.

Some of the major uses of the data are for judging attainment of the NAAQS, evaluating progress in achieving/maintaining the NAAQS or State/local standards, developing or revising SIP's, evaluating control strategies, developing or revising national control policies, providing data for model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, documenting population exposure, and providing information to the public and other interested parties.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that there are presently 136 State and local agencies which are currently required to submit the ambient air quality data and quality assurance data to EPA on a quarterly basis. The current annual burden for the collection and reporting of ambient air quality data has been estimated on the existing ICR to be (2,253,359) hours, which would average out to be approximately (16,569) hours per respondent. As a part of this ICR renewal, an evaluation will be made of the labor burden associated with this activity.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 22, 1998

William F. Hunt, Jr.,

Director, Emissions, Monitoring, and Analysis Division.

[FR Doc. 98–20610 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6133–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Requirements for Locomotives and Locomotive Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Requirements for Locomotives and Locomotive Engines. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1800.01.

SUPPLEMENTARY INFORMATION:

Title: Information Requirements for Locomotives and Locomotive Engines (EPA ICR No. 1800.01). This is a new collection.

Abstract: Section 213(5) of the Clean Air Act (CAA), as amended in 1990, requires that EPA promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Information is needed to demonstrate compliance with emissions standards when a locomotive is freshly manufactured, in-use, and at each remanufacturing or upgrading event for the locomotive program's success. The information submission requirements are mandatory. Information such as engine family, rebuild system type, total numbers manufactured or remanufactured, megawatt hours or miles at remanufacture, and emissions

rates for specific pollutants are examples of what will be required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/16/98 (63 FR 18978).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 100 and 1000 hours per response, depending on which requirement of the rule the information is being submitted in response to. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Locomotive manufacturers and remanufacturers, and railroads.

Estimated Number of Respondents: 20.

Frequency of Response: Quarterly and annually.

Estimated Total Annual Hour Burden: 54384 hours.

Estimated Total Annualized Cost Burden: $3.6M.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1800.01 in any correspondence.

Ms. Sandy Farmer, M.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: July 28, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–20613 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6133–3]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a Reference Method and an Equivalent Method, and Receipt of Two New Applications for Reference Method Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of designations and receipt of applications.

SUMMARY: Notification is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of NO_2 in ambient air and a new equivalent method for measuring concentrations of PM_{10} in ambient air. Notification is also given that EPA has received two new applications for PM_{10} reference method determinations under 40 CFR part 53.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies in determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new reference method for measuring NO_2 in ambient air and a new equivalent method for measuring PM_{10} in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for NO_2 is an automated method (analyzer) that utilizes the reference method measurement principle based on the chemiluminescent reaction between nitric oxide and ozone and the associated calibration procedure specified in Appendix F of 40 CFR part 50. The new equivalent method for PM_{10} is an automated monitoring method that utilizes a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation. The newly designated methods are identified as follows:

RFNA–0798–121, "DKK Corporation Model GLN–114E Nitrogen Oxides Analyzer," operated within a temperature range of 20 to 30 degrees C on any of the following measurement ranges: 0–0.005, 0–0.100, 0–0.200, 0–0.500, and 0–1.000 ppm.

EQPM–0798–122, "Met One Instruments Models BAM 1020, GBAM 1020, BAM 1020–1, and GBAM 1020–1 PM10 Beta Attenuation Monitor," including the BX–802 sampling inlet, operated for 24-hour average measurements, with a filter change frequency of one hour, with glass fiber filter tape, and with or without any of the following options: BX–823, tube extension; BX–825, heater kit; BX–826, 230 Vac heater kit; BX–828, roof tripod; BX–902, exterior enclosure; BX–903, exterior enclosure with temperature control; BX–961, mass flow controller; and BX–967, internal calibration device.

An application for a reference method determination for the DKK Model GLN–114E NO_2 method was received by EPA on April 14, 1998, and a notice of the receipt of this application was published in the **Federal Register** on June 2, 1998. The Model GLN–114E analyzer is available from the applicant, DKK Corporation, 4–13–14, Kichijoji Katamachi, Musashino-shi, Tokyo, 180, Japan.

An application for an equivalent method determination for the Met One PM_{10} method was received by the EPA on September 12, 1997, and a notice of the receipt of this application was published in the **Federal Register** on December 16, 1997. The method is available commercially from the applicant, Met One Instruments, Inc., 1600 Washington Boulevard, Grants Pass, OR 97526.

Test analyzers representative of each of these methods have been tested by the respective applicants in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated as reference and equivalent methods,

respectively. The information submitted by the applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (*e.g.*, sample period or measurement range) specified in the applicable designation method description (see identification of the methods above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II (EPA/600/R–94/038b). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the designation application. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and show its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-registered facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Human Exposure and Atmospheric Sciences Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

Receipt of New Reference Method Applications

EPA is also hereby announcing that it has received two new applications for reference method determinations under 40 CFR part 53. Publication of a notice of receipt of such applications is required by § 53.5.

The new applications were received from BGI Incorporated, 58 Guinan Street, Waltham, Massachusetts 02154, for reference method determinations for that Company's Model PQ–100 PM10 Ambient Particulate Sampler (application received on May 4, 1998) and for its Model PQ–200 Ambient Fine Particle Sampler (application received on June 1, 1998). If, after appropriate technical study, the Administrator determines that either or both of these methods should be designated as reference methods, notice thereof will be published in a subsequent issue of the **Federal Register**.

Dated: July 23, 1998

Henry L. Longest II,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 98–20612 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50845; FRL–6021–4]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically-Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt from American Cyanamid Company of a notification (241-NMP-A) of intent to conduct small-scale field testing involving a microorganism, *Autographa californica* Multiple-embedded Nuclear Polyhedrosis Virus (AcMNPV). This modified AcMNPV has been genetically-engineered to: (1) Express an insect-

specific pesticidal toxin, TxP-I, from the straw itch mite, *Pyemotes tritici*, and (2) prevent expression of the ecdysteroid UDP-glucosyltransferase gene. American Cyanamid Company intends to test this microbial pesticide on cotton and leafy vegetables to evaluate the control of Lepidopteran pests. The Agency has determined that this notification may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this notification.

DATES: Written comments must be received on or before September 2, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, PM 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–8683), e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of receipt of this notification does not imply a decision by the Agency on this notification.

A Notification (241-NMP-A) was received from American Cyanamid Company. The proposed small-scale field trial involves the introduction of a baculovirus, *Autographa californica* Multiple-embedded Nuclear Polyhedrosis Virus (AcMNPV) which has been genetically-engineered to express an insect-specific pesticidal toxin, TxP-I, from the straw itch mite, *Pyemotes tritici*. In addition, the gene for ecdysteroid UDP-glucosyltransferase (EGT) has been replaced with the same gene containing a deletion so that this enzyme will not be produced in the infected insect larvae. When insects are infected with the naturally-occurring (wild-type) virus, EGT prevents the insect from molting, and the insect will continue to eat and grow without molting. In contrast, an insect infected with the engineered virus, will not eat or molt resulting in death 1 to 2 days earlier than seen for the wild-type virus.

American Cyanamid has previously field tested the same baculovirus with the same EGT deletion engineered to express a different insect-specific toxin from a scorpion in 1995, 1996, and 1997. They have submitted characterization data for the TxP-I toxin and an oral toxicity study in mice in addition to comparative host range studies in susceptible and less-susceptible Lepidopteran species. The purpose of the proposed testing will be to evaluate the efficacy of the baculovirus against lepidopteran pests, including tobacco budworm (*Heliothis virescens*), the cotton bollworm (*Helicoverpa zea*), the beet armyworm (*Spodoptera exigua*), and the cabbage looper (*Trichoplusia ni*) on cotton and leafy vegetables. The total acreage for all sites will not exceed 10 acres per pest and, on completion of the test, the crops will be destroyed.

Following the review of this notification and any comments received in response to this notice, EPA may approve the tests, ask for additional data, require additional modifications to the test protocols, or require EUP applications to be submitted. In accordance with 40 CFR 172.50, under no circumstances shall the proposed tests proceed until the submitters have received notice from EPA of its approval of such tests.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPP–50845" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–50845." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: July 27, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–20604 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6133–5]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT:

Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov," and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1696.02; Registration of Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers; in 40 CFR part 79, Subpart F; was approved 07/16/98; OMB No. 2060–0297; expires 07/31/99.

EPA ICR No. 1834.01; The Class V Underground Injection Control Study; was approved 07/14/98; OMB No. 2040–0194; expires 07/31/2001.

EPA ICR No. 1463.04; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); in 40 CFR part 300; was approved 07/06/98; OMB No. 2050–0096; expires 07/31/2001.

EPA ICR No. 1823–01; Reporting and Recordkeeping Requirements under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry; non-regulatory; was approved 06/29/98; OMB No. 2060–0382; expires 06/30/2001.

EPA ICR No. 1718.02; Regulation of Fuel and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; in 40 CFR 80.29; was approved 07/07/98; OMB No. 2060–0308; expires 07/31/2001.

OMB Disapprovals

EPA ICR No. 1802.01; Compliance Information Project; was disapproved by OMB 07/20/98.

EPA ICR No. 1832.01; Consumer Confidence Report; was disapproved by OMB 07/01/98.

EPA ICR No. 1633.11; Acid Rain Program under Title IV of the Clean Air Act with the Proposed Monitoring Revisions; was disapproved by OMB 07/21/98.

Extensions of Expiration Dates

EPA ICR No. 1687.03; National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework Operations; in 40 CFR part 63, Subpart GG; OMB No. 2060–0314; on 07/21/98 OMB extended the expiration date through 01/31/99.

EPA ICR No. 1601.03; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities: Reporting, Recording, Recordkeeping, and Testing Requirements; in 40 CFR part 55; OMB No. 2060–0249; on 07/21/98 OMB extended the expiration date through 02/28/99.

EPA ICR No. 0029.06; NPDES Modification and Variance Requests; in 40 CFR part 122; OMB No. 2040–0068; on 07/22/98 OMB extended the expiration date through 11/30/98.

EPA ICR No. 0226.12; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit; in 40 CFR parts 122, 501, and 503; OMB No. 2040–0086; on 07/22/98 OMB extended the expiration date through 11/30/98.

Dated: July 28, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–20611 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6133–1]

Clean Water Act Class I: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding City of Baldwin City, Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding City of Baldwin City, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g).

Class I proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation or Suspension of Permits. The procedures by which the public may submit written comment on a proposed Class I order or participate in a class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed class I order is thirty (30) days after issuance of public notice.

On June 30, 1998, EPA commenced the following class I proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of, the City of Baldwin City, Kansas; CWA Docket No. VII–98–W–0018. The Complainant seeks to assess a penalty of up to Eleven Thousand Dollars ($11,000) for failure to comply with the applicable vector attraction reduction requirements of section 405 of the Clean Water Act, 33 U.S.C. 1345.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Baldwin City, Kansas is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: July 16, 1998.

Nathaniel Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 98–20614 Filed 7–31–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 24, 1998

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a

collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 2, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0639.

Title: Implementation of Section 309 (j) of the Communications Act, Competitive Bidding, PP Docket No. 93–253, First Report and Order.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households.

Number of Respondents: 400.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 400 hours.

Cost to Respondents: $0.

Needs and Uses: Section 3002 of the Balanced Budget Act of 1997 amended Section 309 (j), to, in effect, reduce the situations in which the use of random selection is appropriate. While the Commission proposes to reduce the number of respondents, it does not reduce the burden hours required to complete an individual information collection. The Commission seeks comments on this proposal and other methods by which the burden on respondents may be reduced.

The Commission will use the information to determine whether the public interest would be served by granting a transfer of control or an assignment of a license awarded through lottery procedures. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–20526 Filed 7–31–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 24, 1998

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 2, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0430.

Title: Section 47 CFR 1.1206, Permit-But-Disclose Proceedings.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business and other for-profit entities; Not-for-profit institutions; Federal Government; State, Local or Tribal Govenment.

Number of Respondents: 10,000.

Estimated Time Per Response: 0.5 hour.

Frequency of Response: Recordkeeping and On occasion reporting requirements.

Total Annual Burden: 5,000 hours.

Cost to Respondents: $0.

Needs and Uses: The Commission's rules require that a public record be made of *ex parte* presentations (i.e., written presentations not served on all parties to the proceedings or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in "permit-but-disclose" proceedings, such as notice-and-comment rule makings and declaratory ruling proceedings. Persons making such presentations must file two copies of written presentations and two copies of a memorandum reflecting new data or arguments in oral presentations no later than the next business day after the presentation. Effective June 30, 1998, if *ex parte* presentations are filed electronically, only one copy need be filed. Parties to permit-but-disclose proceedings, including interested members of the public, use information regarding *ex parte* presentations to respond to the arguments made and data presented in the presentations. The responses may then be used by the Commission in its decision-making. The availability of the *ex parte* materials helps ensure that the interested persons have fair notice of presentations made to the Commission and the development of a complete record.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–20527 Filed 7–31–??; 8:45 am]
BILLING CODE 6712–01–F

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. The application also will 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. 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 August 28, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Summit Bancorp, Princeton, New Jersey; to acquire 100 percent of the voting shares of NSS Bancorp, Inc., Norwalk, Connecticut, and thereby indirectly acquire NSS Bank, Norwalk, Connecticut.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. RSNB Bancorp, Rock Springs, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Rock Springs National Bank, Rock Springs, Wyoming.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Northwest Bancorporation, Inc., Houston, Texas; to acquire 49 percent of the voting shares of Redstone Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire Redstone Bank, N.A., Houston, Texas.

In connection with this application, Redstone Bancorporation, Inc., Houston, Texas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Redstone Bank, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, July 29, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–20639 Filed 7–31–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

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, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) 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. The notice also will 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.

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 August 28, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Community West Bancshares, Goleta, California; to acquire Palomar Savings and Loan Association, Escondido, California, and thereby engage in activities of a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–20638 Filed 7–31–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 981–0111]

Nortek, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft compliant that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Andrew Caverly, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations of the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 27, 1998), on the World Wide Web, at "http://

www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment an agreement containing a proposed Consent Order from Nortek, Inc. ("Nortek"), which is designed to remedy the anticompetitive effects resulting from Nortek's acquisition of NuTone Inc. ("NuTone"). Under the terms of the agreement, Nortek will be required to divest M & S Systems LP ("M & S"), its wholly-owned subsidiary, to a Commission-approved buyer.

The agreement containing proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the agreement and proposed Consent Order or make final the proposed Order.

On March 9, 1998, Williams Y&N Holdings, Inc., NuTone's parent company, and NTK Sub, Inc., a wholly-owned subsidiary of Nortek, entered into a stock purchase and sale agreement whereby NTK Sub, Inc. agreed to acquire all of the outstanding shares of the capital stock of NuTone for approximately $242.5 million. According to the draft of the complaint that the Commission intends to issue, the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for the manufacture and sale of hard-wired residential intercoms.

Hard-wired residential intercoms are electrical devices that are installed in residences to provide room-to-room or room-to-entrance audio communication or monitoring functions through in-the-wall low voltage wiring. These intercoms often have the capability to provide background music from built-in AM/FM radios and/or cassette and CD players. In the United States hard-wired residential intercoms market, NuTone is the leading seller with about 56% of all sales, and Nortek, through its wholly-owned subsidiaries. M & S and Broan Mfg. Co. Inc., is the second largest competitor with about 31% of sales. Together, the merged firm would control approximately 87% of all U.S. hard-wired residential intercom sales. The proposed merger would increase the Herfindahl-Hirschmann Index ("HHI"), the customary measure of industry concentration, by over 3400 points and produce a market concentration of over 7600 points. By eliminating competition between the top two competitors in this highly concentrated market, the acquisition would allow Nortek to unilaterally exercise market power, thereby increasing the likelihood that prices of hard-wired residential intercoms will increase and that services and innovation will decline.

It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the U.S. hard-wired residential intercoms market or by expansion of sales by the remaining small competitors. A new entrant would need to undertake the difficult, expensive and time-consuming process of developing and marketing a competitive product, creating brand recognition among consumers, wholesalers and installers and establishing a viable distribution network. Because of the expense and difficulty of accomplishing these tasks, new entry into the U.S. hard-wired residential intercoms market is not likely to occur even if the merged firm were to increase prices significantly after the merger. Likewise, the remaining small competitors would not be in a position to replace the competition eliminated by the merger because of the difficulty they would have in expanding their sales.

The proposed Consent Order requires that Nortek divest its M & S subsidiary to a third party approved by the Commission. The assets to be divested, in addition to hard-wired residential intercom assets, also include all assets relating to the M & S central vacuum and wholehouse stereo products. The purpose of this is to ensure the continued viability of the M & S business and to maintain its presence in the channels of product distribution.

The divestiture is required to be completed within six months after Nortek signs the Consent Order. If Nortek fails to divest M & S within the six month period, the Commission may appoint a trustee to accomplish the divestiture. An Agreement to Hold Separate signed by Nortek and M & S requires that they preserve and maintain the competitive viability of all of the assets to be divested in order to ensure that the competitive value of these assets will be maintained, and provides further that until the required divestiture is completed, M & S will be operated separately from Nortek. To further ensure the competitive viability of the assets, the proposed Consent Order also requires Nortek to provide technical assistance to the acquirer, at the acquirer's request, for up to one year following the divestiture.

By accepting the proposed consent order, the Commission anticipates that the competitive problems alleged in the draft complaint will be resolved. The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–20656 Filed 7–31–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) 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, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Evaluating an Alert to Firefighters—New—National Institute of Occupational Safety and Health (NIOSH)—The mission of the National Institute of Occupational Safety and Health is to promote "safety and health at work for all people through research and prevention." NIOSH not only investigates and identifies occupational safety and health hazards, the Institute also develops recommendations for controlling those hazards and in some cases, distributes those recommendations directly to affected workplaces.

One way that NIOSH accomplishes this kind of intervention is through the *Alert*. The *Alert* is usually a six to ten page document that outlines the nature of the hazard, the risks to workers, and the recommendations for controlling the hazard. Again, the *Alert* is mailed to workplaces potentially affected by the hazard.

It is unclear, however, whether the *Alert* is effective in communicating the need for and methods for adopting NIOSH's recommendations for controlling the hazard. To-date, none of the *Alerts* have been rigorously evaluated, but preliminary research indicates that the *Alert* could be more effective at encouraging safer workplace practices.

The *Alert* has traditionally followed a standard format that does not reflect current "best practices" in applied communications. In this study, NIOSH proposes incorporating several alternative communication strategies into an Alert and evaluating the effectiveness of these alternatives.

The *Alert* chosen for this study is concerned with firefighters and the injuries and fatalities that result from structural collapse. In 1998, Congress appropriated funds for NIOSH to conduct research and proceed with interventions that will reduce the number of fatalities among firefighters. Congress further instructed NIOSH to evaluate the effectiveness of any interventions. This *Alert* is intended to be directed at the 36,000 fire stations and 1.2 million career and volunteer firefighters across the country.

NIOSH will vary the content of the *Alert* and add channels of information to inform, educate, and help fire stations adopt safer work practices. The goals of the study are twofold: (1) To reduce the risks of injury and fatality among firefighters, (2) identify the more effective ways to deliver vital health and safety information in NIOSH *Alerts*. The study design will allow NIOSH to minimize costs while identifying the most effective strategies. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Fire Chiefs	960	1	20/60	317
Total				317

2. Customer Information Survey for Internet Users of the Self-Study Modules on Tuberculosis for the Internet—NEW—National Centers for HIV/STD/TB Prevention, Division of Tuberculosis Elimination, Communications and Education Branch—The National Center for HIV/STD/TB Prevention, Division of Tuberculosis Prevention proposes to survey Internet users of the Self-Study Modules on Tuberculosis for the Internet. The print-based Self-Study Modules on Tuberculosis remains one of most popular educational and training resources produced by the Communications and Education Branch (CEB) of the Division of Tuberculosis Elimination (DTBE). The Self-Study Modules on Tuberculosis for the Internet has far reaching potential as access to Web-based training (WBT) increases. WBT may be particularly useful in training non-traditional TB health care providers such as managed care staff and private physicians. Furthermore, WBT provides quick access to TB training materials for geographically diverse and isolated populations.

The development of the Self-Study Modules on TB was a joint effort between CEB and the Division of Media and Training Services (DMTS). In order to continually enhance our web-based training, as well as assess who we are and are not reaching we propose to collect information from individuals who is access the Self-Study Modules on Tuberculosis for the Internet site. This information will include assessing why people are interested in the course, what their profession is, employment setting, country, how they heard about the training course, computer capabilities, education, age, and location. This information will assist in enhancing the training for future Internet users. It will target marketing efforts to promote this training activity. There is no cost to the respondent. We are requesting approval for a three year period.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Internet Users—Health Care Providers and others involved in the Prevention and Control of Tuberculosis	*900	1	.03	27
Total				27

*Based on 75 requests/month currently received for Print-based course. Projected for a 1 year period.

3. The Second Longitudinal Study of Aging (LSOA II)—(0920–0219)—Revision—National Center for Health Statistics (NCHS) The Second Longitudinal Study of Aging is a second-generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. The LSOA II replicates portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. In addition, the LSOA II is designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

In 1994, 9,447 persons aged 70 and over were interviewed as part of the National Health Interview Survey's Second Supplement on Aging (SOA II) between October of 1994 and March of 1996. The first LSOA II re-interview wave was conducted between May 1997 and March 1998. The LSOA II will re-interview the SOA II sample two additional times: in 1999 and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

The LSOA II contains substantive topics on scientifically important and policy-relevant domains, including: (1) Assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total cost to respondents is estimated at $106,275.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Sample adult	9,447	1	.75	7,085
Total				7,085

Dated: July 23, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–20576 Filed 7–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98100]

Grants for Minority Health Statistics Dissertation Research; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 98 funds for a dissertation research grants program for the Minority Health Statistics Grants Program of the National Center for Health Statistics (NCHS), CDC. This program addresses the "Healthy People 2000" priority area(s), Surveillance and Data Systems. The Minority Health Statistics Grants Program was established to award grants for (1) the conduct of special surveys or studies on the health of racial and ethnic populations or subpopulations; (2) analysis of data on ethnic and racial populations and subpopulations; and (3) research on improving methods for developing statistics on ethnic and racial populations and subpopulations. Grants for Minority Health Statistics Dissertations advance these purposes by supporting research and by improving the quality of minority health statistics dissertation research projects. These grants will enable doctoral students to undertake significant data gathering, analytic, and methodological research projects. The students will also gain invaluable training and research experience that will be beneficial to future careers in minority health research. The use of data from the National Center for Health Statistics is encouraged. More information about NCHS data systems may be obtained via the Internet at http://www.cdc.gov/nchswww/.

B. Eligible Applicants

Eligible applicants may be public or private nonprofit institutions that will administer the grant on behalf of the proposed Principal Investigator (doctoral candidate). Examples of public and private nonprofit organizations include universities, colleges, research institutions, hospitals, and other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

The proposed Principal Investigator must be a registered doctoral candidate in resident or nonresident status. All requirements for the doctoral degree other than the dissertation must be completed by the time of the award.

Students seeking a doctorate in any relevant research discipline are eligible.

A student enrolled in a doctoral program in a research discipline which requires a dissertation based on original research may apply through their institution for support to complete the research and dissertation. The dissertation must examine and/or develop some aspect of statistical research on racial and ethnic populations or subpopulations. It should focus on one or more of the following research program areas: community-based research, methods and theory development, health promotion and data standards development, and data analysis and dissemination.

Prior to submission of the application, the dissertation proposal must be approved by the dissertation faculty committee and certified by the faculty advisor. This information must be verified in a letter of certification from the thesis chairperson and submitted with the grant application.

Applications from doctoral students who are women, members of minority groups, persons with disability, students of Historically Black Colleges and Universities, Hispanic Serving Institutions, and other predominately minority and minority serving institutions are encouraged.

An applicant institution may be either the degree-granting institution or another non-profit institution with which the proposed Principal Investigator is professionally affiliated. In determining which institution is more appropriate, the Principal Investigator must consider the extent to which the resources of the designated institution are capable of supporting the proposed research effort.

The proposed investigator who receives support for dissertation research under a grant may not at the same time receive support under a predoctoral training grant or fellowship awarded by any other agency, or component, of the U.S. Department of Health and Human Services.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $250,000 is available in FY 98 to fund approximately 10 awards. It is expected that the average award will be $20,000 ranging from $15,000 to $30,000. It is expected that the awards will begin on or about September 30, 1998. The awards will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates are subject to change.

Funding support may only be requested for the amount of time necessary to complete the dissertation within the authorized project period.

Use of Funds

Responsibility for the planning, direction, and execution of the proposed project will be solely that of the proposed Principal Investigator (the doctoral candidate).

The total direct costs must not exceed $30,000 for the entire project period. An application that exceeds this amount will be returned to the applicant. No supplemental funds will be awarded.

Allowable costs include: the investigator's salary and direct project expenses such as travel, data processing, and supplies. Fees for maintaining matriculation or other fees imposed on those preparing dissertations are allowable costs, provided the fees are required of all students of similar standing, regardless of the source of funding. Applicants are expected to work full time on the project. Any level of effort that is less than full time must be fully justified.

Indirect costs under this grant program are limited to eight percent of direct costs, excluding tuition and related fees and expenditures for equipment. Indirect costs will be awarded at the actual indirect cost rate for the institution, if the rate is less than eight percent.

D. Program Requirements

The dissertation constitutes the final report of the grant. The dissertation must be officially accepted by the faculty committee or university official responsible for the candidate's dissertation and must be signed by the responsible officials. Three copies of the dissertation shall be submitted to the CDC.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one inch margins, and unreduced font. Applications will be eligible for support only during the review cycle for which they are submitted. No application can be submitted more than once even in revised form.

Applicants must follow the instructions in the research grant application PHS Form 398 in preparing the application with the following information/changes:

1. The graduate student should be identified as the Principal Investigator.
2. A questionnaire may be included as an appendix if it is essential to evaluate the proposal. A list of literature cited is required and may be included in the appendix. No other material should be provided in an appendix.
3. A letter from the faculty committee or the university official directly responsible for supervising the dissertation research must be submitted with the grant application. The letter must certify that (a) the committee has approved the formal proposal for the dissertation, (b) the grant application represents the dissertation proposal, and (c) the applicant will complete all requirements for the doctoral degree except the dissertation by the anticipated date of the grant award.
4. The application must identify all members of the faculty committee by listing the names on Form BB. A brief biographical sketch for each should be provided as explained in Form 398, page FF.
5. Applicants should give special attention to the sections of the application dealing with human subjects, protection and gender and minority representation by addressing the applicability and method of compliance.
6. The project description in the application must describe the scientific significance of the work, including its relationship to other current research, and the design of the project in sufficient detail to permit evaluation. It should also present and interpret progress to date if the research is already underway.
7. A detailed budget must be provided identifying the items for which funds are requested and their estimated costs. A budget justification explaining the necessity of these expenses for the research should also be included.
8. Statements of "Current and Pending Support" for both the student and the dissertation advisor must be identified on Form GG.

F. Submission and Deadline

Letter of Intent (LOI)

The LOI should identify program announcement number 98100, and the name of the principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently. The LOI should be submitted on or before August 17, 1998, to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98100, Centers for Disease Control and Prevention (CDC), Room 321, 255 East Paces Ferry Road, NE., M/S E13, Atlanta, Georgia 30305–2209.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 31, 1998, submit the application to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98100, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent

review group, it will not be considered unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Proposals are judged on the basis of their scientific merit, the theoretical importance of the research question and the appropriateness of the proposed data and methodology to be used in addressing the question.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Significance and originality of the research.
2. Knowledge of research relevant to the topic.
3. Appropriateness of methods and data, including a description and justification of the analytic techniques that will be employed and a discussion of the methodological problems that might be encountered.
4. Availability and adequacy of data.
5. Organization of the project.
6. Adequacy of facilities and resources. Human subjects involvement and protection (when appropriate).
7. Representation of women and minorities (when appropriate).
8. Appropriateness of the budget.

In evaluating applications and making recommendations reviewers assess the applicant's potential for making significant contributions to the field of minority health statistics research.

Three factors influence the final funding decisions on applications for support of dissertations: (1) Reviewers' evaluation of the application; (2) the potential of the applicant to contribute to the field; and (3) the general needs of the field.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to David Elswick, Grants Management Specialist, using the address information listed under Section J of this program announcement entitled "Where to Obtain Additional Information."

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I. included in the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR98–14 Accounting System Requirements
AR98–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 306(m) of the Public Health Service Act (42 U.S.C. 242k(m)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information call 1–888-GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 98100. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

Please refer to announcement number 98100 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained by contacting: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98100, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209, telephone (404)842–6521.

See also the CDC home page on the Internet: *http://www.cdc.gov*

For program technical assistance, contact: Audrey L. Burwell, M.S., Minority Health Statistics Grants Program Director, National Center for Health Statistics, CDC, 6525 Belcrest Road, Room 1100, Hyattsville, MD 20782, Telephone: (301) 436–7062, extension 127, Email: AZB2@CDC.GOV.

Website: www.cdc.gov/nchswww/about/grants/grants1.htm.

Dated: July 28, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–20575 Filed 7–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0314]

Determination of Regulatory Review Period for Purposes of Patent Extension; GEMZAR®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GEMZAR® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GEMZAR® (gemcitabine hydrochloride). GEMZAR® is indicated for use as a firstline treatment for patients with locally advanced (nonresectable stage II or stage III) or metastatic (stage IV) adenocarcinoma of the pancreas in patients previously treated with 5–FU. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GEMZAR® (U.S. Patent No. 4,808,614) from Eli Lilly & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 7, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GEMZAR® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GEMZAR® is 3,293 days. Of this time, 2,824 days occurred during the testing phase of the regulatory review period, 469 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 12, 1987. The applicant claims June 18, 1987, as the date the investigational new drug application (IND) for GEMZAR® became effective. However, FDA records indicate that the IND effective date was May 12, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: February 2, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for GEMZAR® (NDA 20–509) was initially submitted on February 2, 1995.

3. *The date the application was approved:* May 15, 1996. FDA has verified the applicant's claim that NDA 20–509 was approved on May 15, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,537 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 2, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 1, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–20593 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

District Consumer Forum; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration's (FDA's), Office of Consumer Affairs (OCA) the Office of Regulatory Affairs (ORA) offices in Illinois, Michigan, and Indiana in cooperation with the U.S. Dept. of Health and Human Services Office of Minority Health, Office of Public Health Sciences, Region V, Illinois Department of Public Health, Center for Minority Health Services and Asian Health Coalition of Illinois, Chicago Department of Health, Chicago Hispanic Health Coalition, U. S. Department of Agriculture Food and Nutrition Service, Regional Office, Midwest Field Office, Health Resources and Services Administration, and the University of Illinois Extension Chicago Cooperative Extension Center is announcing a district consumer forum. The forum will provide an opportunity for consumers, community-based organizations, patient advocates, health professionals, and industry to participate in open discussions on health issues and agency regulatory actions with FDA officials.

Date and Time: The forum will be held on Tuesday, August 18, 1998, from 10 a.m. to 1 p.m.

Location: The forum will be held at the Sears Tower, 233 South Wacker Dr., Lincoln Ballroom, 33d Fl., Chicago, IL 60606.

Contact: Kimberly Phillips, Chicago District Office, Office of Regulatory Affairs, 300 South Riverside Plaza, suite 550–South, Chicago, IL 60606, 312–353–7126, FAX 312–886–3280.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by August 10, 1998. Every effort will be made to accommodate all registrants. However because space is limited, admittance is on a "first come, first serve basis."

If you need special accommodations due to a disability, please contact Kimberly Phillips (address above) by August 10, 1998.

Transcripts: Transcripts of the forum may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the forum, at a cost of 10 cents per page.

Dated: July 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20595 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Cooperative Agreement With the National Rural Health Association

AGENCY: Health Resources and Services Administration (HRSA), DHHS.

ACTION: Notice of cooperative agreement award.

SUMMARY: The federal Office of Rural Health Policy (ORHP), Health Resources and Services Administration (HRSA), announces its intent to award funds in fiscal year (FY) 1998 to continue support of a cooperative agreement with the National Rural Health Association (NRHA), Kansas City, Missouri.

The Federal ORHP seeks solutions to the health care problems of rural communities by working with Federal agencies, the States, national associations, foundations, and private sector organizations. This award will continue a number of projects designed to (1) help build national, State, and community infrastructure through a variety of approaches including workshops, conferences, technical assistance, and other outreach efforts, and (2) help develop and provide current information to a wide audience through various mechanisms including journals, meetings, educational forums, and other dissemination efforts. This cooperative agreement will continue an ongoing partnership with significant involvement and input from ORHP staff in selection of all projects and in development and implementation of the work plan.

HRSA plans to award this cooperative agreement to the NRHA because of its unique characteristics, skills, and superior qualifications in the area of rural health care. NRHA is the only organization with a broad and diverse membership from rural areas throughout the country, a clear mission to improve the delivery of health services in rural areas, and the staff capability to provide research, educational, leadership, and information support to help rural citizens build, maintain, and improve the institutions that can meet their health care needs.

This cooperative agreement is authorized under Sec. 301 of the PHS Act, with funds appropriated under Pub. L. 105–78 (HHS Appropriations Act for FY 1998).

AVAILABILITY OF FUNDS: Approximately $460,000 will be made available for obligation to support this cooperative agreement for a budget period of one year and a project period of five years beginning in FY 1999.

OTHER AWARD INFORMATION: This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45CFR Part 100). The Catalog of Federal Domestic Assistance number is 93.912C.

FOR FURTHER INFORMATION CONTACT: Contact Jerry Coopey, Director of Government Affairs, Office of Rural Health Policy, Parklawn Building, Room 9–05, Rockville, Maryland 20857 at (301) 443–0835.

Dated: July 27, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–20536 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health, announces the establishment of the National Cancer Institute Director's Consumer Liaison Group (Committee)

This Committee will advise and make recommendations to the Director, National Cancer Institute, from the perspective and viewpoint of cancer consumer advocates on a wide variety of issues, programs and research priorities. The Committee will serve as a channel for consumer advocates to voice their views and concerns.

Unless renewed by appropriate action prior to its expiration, the charter for the National Cancer Institute Director's Consumer Liaison Group will expire two years from the date of establishment.

Dated: July 24, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–20552 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects Review Committee.

Date: August 5, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institute on Drug Abuse, Office of Extramural Program Review, Parklawn Bldg., Room 10–42, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, (HHS)

Dated: July 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20546 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Natuinal Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB B O1

Date: August 10–11, 1998

Time: August 10, 1998, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815

Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20547 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Drug Abuse Special Emphasis Panel, August 3, 1998, 8:30 a.m. to August 3, 1998, 5:00 p.m., Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA, 22202 which was published in the **Federal Register** on July 10, 1998, Citation #004683.

The date of this meeting has been changed to August 3–4, 1998. The Committee will convene from 8:30 a.m. to 5 p.m. on August 3, and from 8:30 a.m. to 1:00 p.m. on August 4. The meeting is closed to the public.

Dated: July 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20548 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualification and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: August 4, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Division of Intramural Research, NIDA, John Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, Research Psychologist, Clinical Pharmacology Branch, Addiction Research Center, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Nos., National Institutes of Health, HHS)

Dated: July 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, N.H.

[FR Doc. 98–20549 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 18, 1998.

Time: 9:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Parklawn Building—Room 17–94, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–3367.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20551 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The Meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 30, 1998.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Neurological Disorders, and Stroke, Federal Building, Rm. 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch Division of Extramural Activities NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20553 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: August 28, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sharee Pepper, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20550 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Working Group Report—Assessment of Health Effects From Exposure to Power-Line Frequency Electric and Magnetic Fields

The National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), and the National Toxicology Program, DHHS, announce the availability of the Working Group Report for public review and comment for a period beginning August 10 and ending October 9, 1998. Written comments can be sent to the address shown below and oral comments can be presented at any of the three scheduled public meetings discussed below. The working group report and the comments received will provide critical input to the NIEHS in the preparation of a Report to Congress on the potential for human health effects from exposure to EMF resulting from the production and distribution of electricity.

Background

The NIEHS/NIH is charged by Congress to prepare and submit an evaluation of the potential human health effects from exposure to extremely low frequency (50–60 Hz) electric and magnetic fields (EMF). To evaluate the quality of the science and the strength of the evidence for the potential human health effects, the NIEHS organized a comprehensive review of the data which included:

(1) Three scientific symposia to discuss and evaluate the quality of the research findings in these study areas: (a) theoretical and *in vitro* research findings; (b) epidemiological results; and (c) *in vivo* experimental and clinical laboratory findings. Symposia participants reviewed the quality and reproducibility of the studies and discussed the degree to which the scientific evidence can support a casual linkage between EMFs and biological and/or health effects in each of the study areas.

(2) A working group of scientists both within and outside the field of EMF research to ensure cross-disciplinary discussion of experimental findings, broad scientific perspective, and critical review and evaluation of the research data. Several different sources of information were reviewed by the working group including discussion reports from the three symposia; a comprehensive, critical review of the scientific literature; and other pertinent information and experimental data. The working group report draws conclusions on the strength and robustness of the experimental data related to extremely low frequency EMF exposure and its implication for human health and disease etiology.

The Working Group Report Available August 10, 1998

In brief, the panel of experts concluded that electric and magnetic fields like those surrounding electric power lines should be regarded as a "possible human carcinogen." The panel vote 19 to 9 was based largely on epidemiological evidence in the face of animal and other laboratory studies that the panel agreed did not support or refute the population studies. Because of the conflicting studies, eight of the nineteen panel members found the EMF fields not classifiable as to carcinogenicity, while one member of the panel said EMF probably is not carcinogenic to humans.

The working group report will be available August 10 and can be obtained free of charge by contacting by mail: EMF–RAPID Program/LCBRA NIEHS, NIH, P.O. Box 12233, MD EC–16, Research Triangle Park, NC 27709 or by fax: 919–541–0144, or by e-mail: emf-rapid@niehs.nih.gov. The document will be available in both *hard copy* and *CD–ROM*. Please provide the following information when requesting the report: Name, Mailing Address, and whether you prefer a hard copy or CD–ROM copy of the report.

The report will also be available on the internet and can be accessed from the NIEHS and NTP at www.niehs.nih.gov/emfrapid/home.htm.

Public Review and Comment Encouraged

In order to fulfill the request from Congress for a report on the potential for human health effects from exposure to EMF resulting from the production and distribution of electricity, the NIEHS will review the working group report and all public comments on the report

received during the open comment period, the information obtained from the three science symposia, and any other relevant information. The NIEHS Report to Congress will be prepared following the October 9 deadline for comments and is expected to be submitted to Congress late 1998.

Written and/or oral comments on the working group report are welcome as described below:

Written Comments

The NIEHS invites interested public to submit written comments providing their perspective on the implications of the Working Group Report to be considered by the NIEHS as it prepares a Report to Congress on the potential for human health effects from exposure to EMF resulting from the production and distribution of electricity. Written comments should be sent to the address given below. All comments must be received by October 9, 1998 and must identify the person making the comments and the sponsoring organization (if any).

Oral Comments

To encourage and facilitate the broadest base of input possible, the NIEHS is hosting three meetings to receive comments providing perspectives on the implications of the Working Group Report to be considered by the NIEHS as it prepares a Report to Congress on the potential for human health effects from exposure to EMF resulting from the production and distribution of electricity. Oral comments will be presented to NIEHS officials with responsibility for preparing the Report to Congress as well as to other officials associated with the implementation of the EMF Research and Public Information Dissemination (RAPID) Program, established by the 1992 Energy Policy Act (Section 2118 for Public Law 102–486). Meeting locations follow; the hours for each meeting will be 2–3:00 p.m. for registration/welcome and the public comment period will be held from 3–8:00 p.m. unless all speakers have been heard prior to that time (local time).

Date	City	Building	Address
September 28	Washington, DC	Ronald Reagan Trade Center	1300 Pennsylvania Ave. NW.
October 1	San Francisco, CA	US EPA, Region IX	75 Hawthorne St.
October 5	Chicago, IL	University of Chicago, Gleacher Center.	450 N Cityfront Plaza Drive.

Each speaker will be asked when registering to identify their sponsoring organization (if any). The number of speakers representing the same sponsoring organization may be limited to one in order to assure time for as many speakers and organizations to be represented as possible. Brief introductory comments will be presented by the agencies represented and the remainder of the time will be devoted to the receipt of public comments both oral and written. While the time allotted for each presentation will largely be dependent upon the number of individuals who wish to speak, it is anticipated that approximately 5–6 minutes would be available for each presenter to address the panel. Speakers will be registered and assigned time on a first-come, first-serve basis. To register to speak, provide the following information: name, affiliation, mailing address, phone, fax, e-mail, sponsoring organization (if any) to the address (mail, e-mail, fax) given below. Registration is accepted on site prior to the start of the meeting so that the time available to each speaker can be determined.

When oral comments are read from printed copy, it is requested that copies be provided when registering at the meeting to supplement the record of the meeting. Written statements may expand on the oral presentation as well, or may be submitted in lieu of an oral presentation. It is important, however, that all written statements, if not provided at the time of the meeting, be received by the October 9 deadline.

The meetings will be recorded to establish a record of the comments for use by the NIEHS in preparing the Report to Congress. NIEHS staff will be available to welcome and meet the interested public during the registration hour that will precede each meeting.

1998 Annual EMF Research Review—Tucson, Arizona

An additional public comment period on the Report will be held on the afternoons of September 14–15, 1998, in conjunction with the DOE/NIEHS/EEI Annual EMF Research Review Meeting. The meeting will be held at the InnSuites, 475 N. Granada Ave., Tucson, AZ 85701. Given that a number of research scientists will be in attendance, NIEHS and other officials with responsibility for preparing the Report to Congress will be available to receive comments from meeting attendees or from interested public. Anyone not attending the conference but interested in attending the afternoon open comment sessions are asked to contact the NIEHS EMF–RAPID Program as described below:

REQUESTS FOR THE REPORT, QUESTIONS, COMMENTS, OR TO REGISTER FOR A PUBLIC MEETING, please contact: by Mail: EMF–RAPID Program/LCBRA NIEHS, NIH, P.O. Box 12233, MD EC–16, Research Triangle Park, NC 27709, by fax: 919–541–0144, or by e-mail: emf-rapid@niehs.nih.gov.

Dated: July 27, 1998.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 98–20545 Filed 7–31–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave. West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave. Cincinnati, OH 45229, 513–569–2051 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876/403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, a Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199 (formerly: Methodist Medical Center Toxicology Laboratory)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400, (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/ 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640 / 704–943–3437

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–20573 Filed 7–31–98; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in August 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. *Telephone:* (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: August 10, 1998.

Place: Holiday Inn—Chevy Chase 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: August 10, 1998 9:00 a.m.–adjournment.

Contact: Constance M. Burtoff, Room 17–89, Parklawn Building, Telephone: (301) 443–8682 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 28, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–20537 Filed 7–31–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in August 1998.

A summary of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individuals named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 17–21, 1998.

Place: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Closed: August 17–20, 1998, 9:00 a.m.–5:00 p.m., August 21, 1998, 9:00 a.m.–adjournment.

Panels: Center for Substance Abuse Prevention Cooperative Agreements for Establishing a Mentoring/Advocacy Program for High Risk Youth and their Families SP 98–005 (Two panels will meet).

Contacts: Michael Koscinski, M.S.W., Telephone: 301–443–6094 and Marco Montoya, Ph.D., Telephone 301–443–7249, Room 17–89, Parklawn Building, FAX: 301–443–3437.

Dated: July 28, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental, Health Services Administration.

[FR Doc. 98–20592 Filed 7–31–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with an 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.*):

PRT–TE000965

Applicant: Dr. David D. Yager, College Park, Maryland.

The applicant requests authorization to take (harm, live capture and handle) the northeastern beach tiger beetle (*Cicindela dorsalis dorsali*) in Calvert County, Maryland for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review 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, 300 Westgate Center Drive, Hadley, Massachusetts 01035, Attention: Diane Lynch, Regional Permits Coordinator, Telephone: 413–253–8628 Fax: 413–253–8482.

Dated: July 24, 1998.

Gray Edwards,

Acting Regional Director, Region 5.

[FR Doc. 98–20577 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1540–01 24 1A; OMB Approval No. 1004–0107]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On May 7, 1998, BLM published a notice in the **Federal Register** (63 FR 25229) requesting comments on this proposed collection. The comment period closed on July 6, 1998. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related

documents and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–0107), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: 43 CFR Parts 2800 and 2880, Rights-of-Way.

OMB Approval Number: 1004–0107.

Abstract: BLM proposes to continue to collect information from applicants seeking to obtain grants for rights-of-way across public and federal lands. The information sought is in addition to that found on the standard right-of-way application form, SF–299.

Bureau Form Number: Not applicable.

Frequency: Once.

Description of Respondents: Applicants needing a right-of-way across public and federal lands.

Estimated Completion Time: 16.8 hours.

Annual Responses: 1,000.

Annual Burden Hours: 16,800.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: July 9, 1998.

Carole J. Smith,

Information Clearance Officer, Bureau of Land Management.

[FR Doc. 98–20620 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–02–24 1A]; OMB Approval Number 1004–0172]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On January 22, 1998, BLM published a notice in the **Federal Register** (63 FR 3343) requesting comment on this proposed collection. The comment period ended on March 22, 1998. BLM received one comment from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0172), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity fo the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: BLM's Generic Customer Satisfaction Surveys and Focus Groups, OMB approval number: 1004–0172

Abstract: BLM is proposing to extend, with revisions, the approval of an information collection for determining the satisfaction of its customers with its programs and services. The currently approved collection covered all survey instruments, both customer comment cards and telephone surveys, and the use of focus groups to determine what questions to ask and comments to solicit. The revised collection will concern only customer comment cards for specific programs and a generic comment card for all other programs and uses. The program-specific comment cards are as follows: rights-of-way, land management transactions, recreation permittees, mining claim recordation, information access centers, recreation and education users, and grazing permits and leases. The revised collection would also cover comment cards posted on the Internet, including the joint BLM/Forest Service electronic comment card posted at http://www.fs.fed.us/recreation/permits/survey.htm

Bureau Form Number: Not applicable.

Frequency: Once.

Description of Respondents: General customers (i.e., rights-of-way, land management transactions, recreational permits, mining claim recordation, oil and gas leases, information access centers, recreational and educational users, and grazing permits and leases) of the BLM who have program-specific or general comments to provide.

Annual Responses: 10,000.

Annual Burden Hours: 500, or 0.05 hour (3 minutes) per response.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: July 9, 1998.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 98–20621 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV–930–1430–01; NVN 59082)

Public Land Order No. 7349; Withdrawal of Public Land for National Weather Service Administration Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 15 acres of public land from surface entry and mining for a period of 20 years for use by the Department of Commerce,

National Weather Service as an administrative site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada, 89520, 702–861–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for use by the Department of Commerce, National Weather Service as an administrative site:

Mount Diablo Meridian

T. 34 N., R. 55 E.,
Sec. 2, S½NW¼NE¼SE¼ and SW¼NE¼SE¼.

The area described contains 15 acres in Elko County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 22, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–20622 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–1430–00; COC61614]

Notice of Realty Action; Recreation and Public Purposes Act Classification and Application for Recreation Development, COC61614; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Delta County, Colorado have been examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The purpose of the classification and application for R&PP lease and potential conveyance is to allow recreational development on the public land by the City of Delta, Colorado for use as a golf course.

Sixth Principal Meridian

T.14S., R.95W.
Sec. 30: SE¼SW¼,
Sec. 31: NE¼NW¼.
T.14S., R.96W.
Sec. 36: lot 1 (NE¼SE¼).
Containing 120 acres.

Lease and conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, if issued, would be subject to valid existing rights and the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the classification and proposed lease and conveyance of the lands to the District Manager, Montrose District Office, 2465 South Townsend, Montrose, CO 81401.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for recreational purposes for use as a golf course. Comments on the classification are restricted to whether the land is suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR MORE INFORMATION CONTACT: Teresa Pfifer, Uncompahgre Basin Resource Area, phone (970) 240–5316. Documents pertinent to this proposal may be reviewed at the Uncompahgre Basin Resource Area Office, 2505 South Townsend, Montrose, Colorado.

Dated: July 28, 1998.

Mark Stiles,

District Manager.

[FR Doc. 98–20574 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–08–1430–01; WIES–48123]

Realty Action: Classification of Public Lands for Recreation and Public Purposes; Marinette County, WI

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following described public land in Marinette County, Wisconsin has been examined and found suitable for conveyance to the Wisconsin Department of Natural Resources pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*).

Fourth Principal Meridian, Wisconsin

T.29N., R.23E.
Sec. 13, Tract 37
Containing 2.26 acres.

The subject island lies within the project boundary of the Peshtigo Harbor Wildlife Area, a part of the Green Bay West Shores Project under the management of the Wisconsin Department of Natural Resources and will be used for recreation purposes. The island is not needed for Federal purposes. Conveyance is consistent with current Bureau of Land Management land use planning and is deemed to be in the public interest. The patent, when issued, shall be subject to the provisions of the Recreation and Public Purposes Act, to all applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests herein.

EFFECTIVE DATE: Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Segregation will terminate upon issuance of a patent or eighteen (18) months from the date of this notice or upon publication of a notice of termination, whichever occurs first.

COMMENTS: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to Field Manager, Milwaukee Field Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, Realty Specialist, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, or (414) 297–4402.

Dated: July 23, 1998.

James W. Dryden,

Field Office Manager.

[FR Doc. 98–20226 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Amendment to Invitation for Bids on Crude Oil From Federal Leases in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of amendment to Invitation for Bids on Federal crude oil in the State of Wyoming.

SUMMARY: The Minerals Management Service (MMS) has amended its Invitation for Bids (IFB) offering of approximately 3,700 barrels per day (bpd) of crude oil to be taken as royalty-in-kind (RIK) from Federal leases in Wyoming's Bighorn and Powder River Basins, and has posted the amendment on MMS's Internet Home Page and made it available in hard copy. MMS will sell the oil publicly by competitive bid.

DATES: Due date for submission of bids to MMS has been extended to August 7, 1998. MMS will notify successful bidders on or about August 17, 1998. The Federal Government will begin actual taking of royalty volumes for a 6-month period beginning on or about October 1, 1998.

ADDRESSES: The amendment to the IFB is posted on MMS's Home Page under "What's New" at: http://www.rmp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Interested bidders with questions should contact Mr. Bonn J. Macy, telephone number (202)208–3827; fax (202)208–3918; e-mail Bonn.Macy@mms.gov; or Mr. Robert Kronebusch of MMS (the "COTR") telephone number(303) 275–7113; fax (303) 275–7124; e-mail Robert.Kronebusch@mms.gov.

SUPPLEMENTARY INFORMATION: Because the existing text was misinterpreted by several potential bidders, MMS made editorial changes to the document to clarify content. The specific amendments to the IFB follow:

AMENDMENT NUMBER (1) OF SOLICITATION IFB No. 3947 dated July 1, 1998.

Effective Date: July 20, 1998.

The hour and date of the bid opening is extended to August 7, 1998, at 1:00 PM EST.

ISSUED BY: Minerals Management Service, Procurement Operations Branch, 381 Elden Street, MS–2500, Herndon, Virginia 22070–4817.

The following Items are Amended:

1. Section G.1 "BIDDERS QUALIFICATIONS" Delete entire second paragraph and replace with the following: "Bidder was principally responsible for buying and selling not less than the sum of $20,000,000 (U.S. Dollars) of oil during each calendar year from 1994 through 1997."

2. Section G.8 "FINANCIAL STATEMENTS" First sentence: delete the word "published" and replace with the word "audited."

3. Section I.5 "DISCLOSURE STATEMENT REGARDING CONFLICT OF INTEREST" Delete entire section.

4. Section H.3 "PAPERWORK ACT OF 1995 STATEMENT" Last sentence add after the word "is" 1010–0115.

5. Section G.3 "SUBMISSION OF BIDS" Under (c) and (e) change the date from July 31, 1998, to August 7, 1998.

6. Except as provided herein, all terms and conditions of IFB 3947, as heretofore changed, remains unchanged and in full force and effect.

Betty M. Estey,

Contracting Officer.

July 20, 1998.

MMS has also announced the amendments to the IFB by Internet posting and has provided them to oil and gas trade journals.

Dated: July 29, 1998.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 98–20657 Filed 7–29–98; 4:10 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Issue a Prospectus for the Operation of a Marina at Willow Beach Site Within Lake Mead National Recreation Area

SUMMARY: The National Park Service will be releasing a concession Prospectus authorizing the operation of a marina at the Willow Beach Site within Lake Mead National Recreation Area. During the term of the new contract, improvements will be required to Government-owned facilities that consist of a restaurant/store, marina fuel/boat rental dock and maintenance building. In addition to these improvements, the concessioner will be required to construct a 125-slip marina, an on-site employee housing unit(s), and installation of new fuel tanks. This is a year-round operation with peak visitation use during the summer months. The term of the contract will be for fifteen (15) years. There is no current concession operator and this is a fully competitive solicitation.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00 by mail or $25.00 if picked up in person at the below address. Purchasing of the Prospectus will be by check only (NO CASH). The check must be made payable to "National Park Service". A Tax Identification Number (TIN) or Social Security Number (SSN) *MUST be provided on all checks.* Copies can be obtained at the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 145, San Francisco, California 94107–1372. If purchased by mail, the front of the envelope should be marked "Mailroom Do Not Open". Please include in your request a mailing address indicating where to send the Prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: July 23, 1998.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–20543 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region/Boston Support Office

In accordance with Public Law 103–332, the National Park Service announces that the public review period for the draft Erie Canalway report, a special resource study of the New York State Canal System, will be extended. Formal public comments regarding the study, which includes an environmental assessment, will be accepted until September 30, 1998.

A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for possible federal designation and further National Park Service involvement. Based on the results of this assessment, the study presents a range of possible management alternatives.

The draft Erie Canalway report, a special resource study of the New York State Canal System, is available for review at most local libraries throughout the canal corridor in Upstate New York. Copies are also available at the Boston Support Office of the National Park Service, 15 State Street, Attn: Ellen Levin Carlson, Boston, MA 02109. Call 617–223–5048 for further information. In addition, NPS staff will be participating in a number of meetings being sponsored by local community groups and institutions throughout the summer. Watch for meeting notices in local newspapers and newsletters.

Lawrence D. Gail,

Superintendent.

[FR Doc. 98–20541 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Supplement to the Final Environmental Impact Statement, Old Agency Road, Natchez Trace Parkway

AGENCY: National Park Service, Interior.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 Pub. L. 91–190), the National Park Service is initiating a supplemental environmental impact analysis process to identify and assess potential impacts of alternative options for the construction of a 1.5 mile segment of the Natchez Trace Parkway motor road which would affect a portion of Old Agency Road in the city of Ridgeland, Mississippi. Notice is hereby given that the National Park Service will prepare a Draft Supplemental Environmental Impact Statement (DSEIS).

DATES: A public scoping session will be held after publication of this notice, affording an additional early comment opportunity. The date, time, and location for this session will be announced in the local and regional news media and will be available by contacting the Superintendent at the following address or via telephone at (601) 680–4005.

ADDRESSES: Representatives of Federal, State and local agencies; private organizations and individuals from the general public wishing to provide initial scoping comments or suggestions on the DSEIS may send such information to: Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38801.

All such comments should be received no later than 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jerry Belson, Regional Director, Southeast Region, National Park Service, 1924 Building, 100 Alabama Street, SW, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The affected portion of Old Agency Road is a historic property listed on the National Register of Historic Places. In accordance with the implementing regulations of the National Historic Preservation Act of 1966, as amended, Title 36 Code of Federal Regulations § 800.5(e)(3), the National Park Service will concurrently utilize the public involvement procedures associated with the above analysis process to provide an opportunity for the public to receive information and express their views, and to meet with interested members of the public in assessing the potential effects of the alternative options on this National Register historic property.

The National Park Service will analyze a range of alternatives so as to evaluate differing options for resource protection, visitor use, access, safety and operations. As a conceptual framework for formulating these alternatives, the purposes of the parkway and associated significant cultural and natural resources, major visitor experiences and management objectives will be specified.

The subsequent availability of the DSEIS will be announced by formal notice and via local and regional news media. The DSEIS is anticipated to be completed and available for public review in 1999, final supplemental environmental impact statement (FSEIS) is expected to be completed approximately 6 months later. A Record of Decision will be published in the **Federal Register** not sooner than 30 days after distribution of the FSEIS documents.

Dated: July 21, 1998.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 98–20540 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Voyageurs National Park, Minnesota

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for Voyageurs National Park (hereinafter, "the park"), Minnesota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

A series of public meetings will be held during the development of the GMP and the preparation of the EIS. Notices of the dates, times, and locations of these public sessions will be advertised in local and regional media outlets prior to the event.

DATES: Public scoping meetings will be held in several Minnesota communities during the week of August 24–28. Specific locations and times for those meetings have not been finalized. Information about the scoping meetings can be obtained by telephoning Kathleen Przybylski at 218–283–9821 or by writing the Superintendent, Voyageurs National Park, at the address below.

ADDRESSES: Written comments and information should be directed to:

Superintendent, Voyageurs National Park, 3131 Highway 53, International Falls, Minnesota 56649–8904.

FOR FURTHER INFORMATION CONTACT: Superintendent, Voyageurs National Park, at the above address or at telephone number 218–283–9821.

SUPPLEMENTARY INFORMATION: The park currently does not have a GMP. Management of the park has been guided by a master plan completed in 1980. That plan is now out-of-date. In accordance with NPS Management Policies, the GMP will set forth a management concept for the Park; establish plans for conservation, recreation, and transportation in the park; and identify strategies for resolving issues and achieving management objectives. It is expected that the GMP will guide park management for a period of 15 to 20 years. Some of the issues that need to be addressed in the GMP are:

(1) Identify desired future conditions for visitor experiences and resource quality. These "desired futures" will serve as a qualitative basis from which a carrying capacity for the park can be developed, as required by NPS Director's Order 2.

(2) Identify appropriate access and use of the park, particularly related to the balance between different types of park uses and users.

(3) In association with the GMP, prepare a Visitor Use and Facilities Plan. The plan would outline methods of achieving an appropriate level and type of visitation to the Park. It would also indicate what visitor support facilities are needed. Preparation of a Visitor Use and Facilities Plan was directed by Public Law 97–405.

Other issues may be added to this list following completion of public scoping.

The GMP/EIS will investigate alternatives ranging from no-action to a variety of management approaches designed to guide visitor use and provide for resource protection.

The environmental review of the GMP for the park will be conducted in accordance with requirements of the NEPA (42 U.S.C. § 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

The NPS estimates the draft GMP and draft EIS will be available to the public by November 1999.

Dated: July 24, 1998.

Catherine A. Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 98–20542 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 25, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 18, 1998.

Carol D. Shull,

Keeper of the National Register.

Colorado

Denver County

Lowry Field Brick Barracks, 200 N. Rampart Way, Denver, 98001076

Louisiana

Bossier Parish

Bossier High School, 322 Colquitt St., Bossier City, 98001079

Jefferson Parish

Pitre, Vic House, 476 Sala Ave., Westwego, 98001080

Southern Pacific Steam Locomotive #745, Jefferson Hwy., between Betz Ave. and Coolidge St., Jefferson, 98001077

Orleans Parish

Carver Theater, 2101 Orleans Ave., New Orleans, 98001078

Massachusetts

Norfolk County

Brush Hill Historic District, Roughly Brush Hill Rd., from Robbins St. to Bradlee Rd., and Dana Ave., Brush Hill Ln. and Fairmount Ave., Milton, 98001081

Suffolk County

Boston Young Men's Christian Association, 312–320 Huntington Ave., Boston, 98001082

Michigan

Ingham County

Masonic Temple Building, 314 M.A.C. Ave., East Lansing, 98001083

Montana

Meagher County

Union League of America Hall, Crawford St. at Central Ave. S, White Sulphur Springs, 98001084

Park County

Chico Hot Springs, 2 mi. NE of Chico, 3.5 mi. SE of Emigrant, Pray, 98001085

Nevada

Storey County

King—McBride Mansion, 26–28 S. Howard St., Virginia City, 98001086

Texas

Lamar County

Santa Fe-Frisco Depot (Paris MRA), 1100 W. Kaufman, Paris, 88001939

Travis County

Scott, Zachary T. and Sallie Lee, Sr. House, 2408 Sweetbrush Dr., Austin, 98001087

Wisconsin

Calumet County

Stockbridge Harbor, Address Restricted, Stockbridge vicinity, 98001089

Columbia County

Kinsley Bend Mound Group (Late Woodland Stage in Archeological Region 8 MPS) Address Restricted, Wisconsin Dells vicinity, 98001088

Vilas County

Fort Eagle, 934 Fort Eagle Ln., Phelps, 98001090

A Request for a MOVE has been received for the following Resource:

Illinois

Cook County

Dempster Street Station, 5001 Dempster St., Skokie, 95001005.

The MOVE would be 140 Feet East. Station would remain along tracks.

[FR Doc. 98–20603 Filed 7–31–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Trail Markers, New Jersey

AGENCY: National Park Service, Department of Interior.

ACTION: I hereby designate the New Jersey Coastal Heritage Trail Route symbol (figure 1) as the official insignia of the New Jersey Coastal Heritage Trail Route (NJCHTR), an affiliated unit of the

National Park Service, United States Department of the Interior. The intent is to utilize trailblazers either black or white or bearing a distinctive colored design insignia (figure 1) to mark segments of the NJCHTR and to mark officially approved Trail sites, information centers, welcome centers, points of interest, exhibits, activities, events, publications, or similar materials.

SUMMARY: This notice is to advise that the National Park Service will mark the sites, facilities and routes affiliated with the NJCHTR insignia through the coastal area of New Jersey from Perth Amboy, south to Cape May and then north and west along the Delaware Bay and River to Deepwater. This usage is consistent with Pub. L. 100–515, October 20, 1988 that established the NJCHTR. The trailblazer insignia will be used on planning documents, brochures, exhibits, road signs and similar items.

Implementation will establish official use of the specific trailblazer logo design (figure 1). Notice is given that under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photograph, print, or impression in the likeness of any such badge, identification card or other insignia or any colorable imitation thereof, except as authorized under regulation made pursuant to law shall be fined under this title, or imprisoned not more than six months, or both.

DATES: Action will commence upon publication of this notice.

SUPPLEMENTARY INFORMATION: Uniform marking of the NJCHTR with an appropriate and distinctive symbol to guide the public is required by Public Law 100–515, Section 5. Notice is given to prevent proliferation of the distinctive insignia (figure 1) and to assure against its use for other than the purposes of the New Jersey Coastal Heritage Trail Route including commemorative, educational, public informational, and fundraising.

Trail markers bearing the trailblazer logo will be erected at appropriate points to direct the traveling public to sites, and other facilities officially associated with the NJCHTR. Approved written agreements with other governmental agencies or private organizations will be made for erection and maintenance of signs bearing the logo on non-federal land.

Dated: July 17, 1998.

Marie Rust,

Regional Director, Northeast Region.

BILLING CODE 4310–70–P

[FR Doc. 98–20544 Filed 7–31–98; 8:45 am]
BILLING CODE 4310–70–C

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–154 (Review)]

Acrylic Sheet From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on acrylic sheet from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on acrylic sheet from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202-205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1976, the Department of the Treasury issued an antidumping duty order on imports of acrylic sheet from Japan (41 F.R. 36497). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as acrylic sheet.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of acrylic sheet.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is August 30, 1976.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or

APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1975.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country Since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and acrylic sheet from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20650 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–127 (Review)]

Elemental Sulphur From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on elemental sulphur from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on elemental sulphur from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Department of the Treasury issued an antidumping duty order on imports of elemental sulphur from Canada (38 FR 34655). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Canada.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as elemental sulphur.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of elemental sulphur.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 17, 1973.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the

information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Canada that currently export or have exported Subject Merchandise to the United States or other countries since 1972.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of long tons and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of long tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Canada accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Canada.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of long tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Canada accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Canada accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and elemental sulphur from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20648 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Melamine From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on melamine from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on melamine from Japan would be likely to

lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1977, the Department of the Treasury issued an antidumping duty order on imports of melamine from Japan (42 F.R. 6366). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as melamine in crystal form.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of melamine in crystal form.

(5) The Order Date is the date that the antidumping duty order under review became effective was suspended. In this review, the Order Date is February 2, 1977.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification

(or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1975.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and melamine from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20651 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on polychloroprene rubber from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Department of the Treasury issued an antidumping duty order on imports of polychloroprene rubber from Japan (38 FR 33593). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as polychloroprene rubber.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of polychloroprene rubber.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 6, 1973.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1972.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and polychloroprene rubber from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20647 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–137 (Review)]

Racing Plates From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on racing plates from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on racing plates from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of

subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1974, the Department of the Treasury issued an antidumping duty order on imports of racing plates from Canada (39 FR 7579). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as racing plates (aluminum horseshoes).

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of racing plates (aluminum horseshoes).

(5) The *Order Date* is the date that the antidumping duty order under review became effective was suspended. In this review, the *Order Date* is February 27, 1974.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer

or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Canada that currently export or have exported Subject Merchandise to the United States or other countries since 1973.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in sets and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in sets and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Canada accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Canada.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in sets and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Canada accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Canada accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and racing plates from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20649 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–114 (Review)]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on stainless steel plate from Sweden.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on stainless steel plate from Sweden would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, the Department of the Treasury issued an antidumping duty order on imports of stainless steel plate from Sweden (38 FR 15079). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Sweden.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as stainless steel plate.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of stainless steel plate.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 8, 1973.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity

specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Sweden that currently export or have exported Subject Merchandise to the United States or other countries since 1972.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Sweden, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Sweden accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Sweden.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Sweden, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Sweden accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Sweden accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and stainless steel plate from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20645 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on synthetic methionine from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on synthetic methionine from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is September 22, 1998. Comments on the adequacy of responses may be filed with the Commission by October 16, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by

accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1973, the Department of the Treasury issued an antidumping duty order on imports of synthetic methionine from Japan (38 FR 18382). The Commission recommended that the order be modified to exclude synthetic L-methionine from Japan, pursuant to its review determination in Synthetic L-Methionine from Japan, Inv. No. 751–TA–4, USITC Pub. 1167 (July 1981). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as synthetic methionine.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of synthetic methionine.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 10, 1973.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant To section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is October 16, 998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in

section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1972.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and synthetic methionine from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–20646 Filed 7–31–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. City of Stilwell, OK, et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Oklahoma in *United States* v. *City of Stilwell, Oklahoma, et al.*, CIV 96–196B. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory sixty-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On April 25, 1996, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendants City of Stilwell, Oklahoma and the Stilwell Area Development Authority adopted and enforced a policy by which defendants, the sole suppliers of public water and sewer services to customers within Stilwell city limits, refused to provide water or sewer services to those unless they agreed to purchase electric service from the City's Utility Department. The complaint alleged that this "all-or-none" utility policy violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2, and sought a judgment by the Court declaring the defendants' policy to be an unlawful restraint of trade. The complaint also sought an order by the Court to enjoin the defendants from requiring any consumer of electricity to purchase retail electric service from the City as a condition of receiving water and sewer service, or otherwise discriminating against any customer that purchases or may purchase electric service elsewhere.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed Final Judgment will terminate this civil action against the defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify, terminate or enforce the judgment, or to punish violations of any of its provisions.

The proposed Final Judgment contains three principal forms of relief. First, the defendants are enjoined from requiring any consumer of electricity to

purchase retail electric service from the defendants as a condition of receiving water or sewer service from the defendants. Second, defendants are required to include a disclaimer on any application for water or sewer service or other written materials distributed by defendants to prospective applicants for water and sewer that states that defendants do not require any applicants to purchase electric service from them as a condition of receiving water or sewer service. Third, the proposed Final Judgment requires defendants to implement an antitrust compliance program directed toward avoiding a repetition of their anticompetitive behavior.

Public comment is invited within the sixty days of the publication of this notice. All comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530 (telephone: (202) 307–6351). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the Eastern District of Oklahoma, United States Courthouse, 5th and Okmulgee Streets, Muskogee, Oklahoma 74401.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Acting Director of Civil Non-Merger Enforcement Antitrust Division.

United States of America, Plaintiff, v. City of Stilwell, Oklahoma, et al., Defendants.

[Case No. CIV 96–196B]

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of Oklahoma.

2. The parties stipulated that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Each defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Respectfully submitted,

For Plaintiff, United States of America:

John R. Read,

Michele B. Cano,

Michael D. Billiel,

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–0468.

For Defendants, City of Stilwell and Stilwell Area Development Authority:

Lloyd E. Cole, Jr.,

Nason Morton,

Cole Law Office, 120 W. Division Street, Stilwell, OK 74960, (918) 696–7331.

Order

It is so ordered, this ____ day of ____, 1998.

United States District Court Judge

United States of America, Plaintiff, v. City of Stilwell, Oklahoma, et al. Defendants.

Final Judgment

[Case No. CIV 96–196–B]

Plaintiff, United States of America, filed its Complaint on April 25, 1996. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby Ordered, Adjudged, and Decreed, as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Venue is proper in the Eastern District of Oklahoma. The Complaint states a claim upon which relief may be granted against the defendants under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2.

II. Definitions

As used herein:

(A) the term "defendants" means the City of Stilwell, Oklahoma ("City") and the Stilwell Area Development Authority;

(B) the term "document" means all "writing and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(C) two or more products are "unbundled" when available separately and priced such that the seller's charge for the combination is no less than the sum of the individual product prices;

(D) the term "person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, public trust, or other legal entity.

III. Applicability

(A) This Final Judgment applies to the defendants, jointly and severally, and to their respective successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited and Mandated Conduct

(A) The defendants, and each of them, are enjoined and restrained from requiring any consumer of electric energy to purchase retail electric service from a defendant as a condition of receiving water or sewer service from a defendant.

(B) Any application for water or sewer service or other written materials distributed by a defendant to prospective applicants for water or sewer service shall include, in a conspicuous manner, the following disclaimer:

Although we provide electric service, as well as water and sewer services, we do not require you to purchase electric service from us as a condition of receiving water or sewer service and we will not discriminate against

you if you do not purchase electric service from us.

(C) The defendants, and each of them, are enjoined and restrained from denying, withholding, or delaying any service, license or permit, or otherwise threatening, discriminating or retaliating against any person that has not agreed to purchase or does not purchase electric service from a defendant, unless defendants' reason for such conduct is unrelated to such person's choice of retail electric provider.

V. Limiting Conditions

Nothing in this Final Judgment shall prohibit a defendant from:

(A) Exercising any valid right now or hereafter conferred by State law to expropriate facilities used by any retail electric supplier to furnish electric energy within the City's corporate boundaries;

(B) Commencing or prosecuting, in good faith, litigation to ascertain or protect any right now or hereafter conferred by State law to restrict the furnishing of electric energy within the City's corporate boundaries to retail electric suppliers authorized by law to do so; and

(C) Furnishing any premises with more than one utility service on an unbundled basis.

VI. Compliance Program

(A) Defendants are ordered to maintain an antitrust compliance program which shall include the following:

(1) Designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of defendants to ensure that they comply with this Final Judgment.

(2) The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(a) providing copies of this Final Judgment to individuals currently serving on the governing boards, and to non-clerical employees of the Stilwell Utility Department and the Stilwell Area Development Authority, and to each individual hereafter assuming any such position, and obtaining a written certification from such individuals that they received, read, understand to the best of their ability, and agree to abide by this Final Judgment and that they have been advised that noncompliance with the Final Judgment may result in conviction for criminal contempt of court; and

(b) briefing annually the governing boards and the non-clerical employees of the Stilwell Utility Department and the Stilwell Area Development Authority on this Final Judgment and the antitrust laws.

VII. Certification

(A) Within 75 days after the entry of this Final Judgment, the defendants shall certify to the plaintiff that they have complied with Section IV above, designated an Antitrust Compliance Officer, and distributed the Final Judgment in accordance with Section VI(A) above.

(B) For each year of the term of this Final Judgment, the defendants shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of their compliance with the provisions of Section IV and VI above.

VIII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during such defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any or all of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Each party shall bear their respective costs and attorneys fees.

(D) Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge

United States of America, Plaintiff, v. City of Stilwell, Oklahoma, et al., Defendants.

[Case No. CIV 96–196 B]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On April 25, 1996, the United States filed a Complaint alleging that the defendants City of Stilwell, Oklahoma ("City") and Stilwell Area Development Authority ("ADA") (collectively "Defendants") had violated the Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. The Complaint challenged a utility policy adopted and implemented by Defendants, the sole suppliers of public water and sewer services to

customers within the Stilwell city limits, by which Defendants refused to extend or connect water or sewer lines to customers unless the customers also agreed to purchase electric service from the City's Utility Department. The effect of this policy, commonly referred to as the "all-or-none utility policy," has been to restrict competition in the provision of electric services in newly annexed areas of Stilwell.

On July 15, 1998, the United States and Defendants filed a Stipulation and Order consenting to the entry of a proposed Final Judgment designed to eliminate the all-or-none utility policy and prevent Defendants from implementing any similar restriction in the future. Under the proposed Final Judgment, Defendants would be enjoined from requiring any consumer of electric energy to purchase retail electric service from Defendants as a condition of receiving water or sewer service from Defendants, and would be enjoined from taking actions to impose any similar restrictions on City residents in the future. The proposed Final Judgment also requires that any application for water or sewer service or other written materials distributed by Defendants to prospective applicants include a disclaimer stating that customers are not required to purchase City electricity as a condition of receiving water or sewer service.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

The City of Stilwell is a charter municipality, organized and existing under the laws of the State of Oklahoma. Its Utility Department was established by Section 106 of the City's Charter as a business enterprise to provide electricity within and around the City's corporate boundaries. The Utility Department is governed by a Utility Board of five members appointed by the Mayor with the approval of the City Council and is subject to the Council's oversight.

The Stilwell Area Development Authority ("ADA") is a public trust, organized and existing under Oklahoma law, to provide water and sewer service for compensation within and around the City's corporate boundaries. It is governed by a Board of Trustees whose membership is identical to that of the City's Utility Board and which is likewise subject to the Council's oversight.

Defendants provide water, sewer, and electric service in Stilwell. Within the pre–1961 boundaries of Stilwell, the City's Utility Department is the sole provider of electric service. But in areas of Stilwell annexed since that time, the City competes with Ozarks Rural Electric Cooperative ("Ozarks") for sales to new electric service customers. In both pre-1961 Stilwell and areas subsequently annexed, Defendants have virtual monopoly on the sale of water and sewer services.

Beginning as early as 1985, the Defendants adopted an all-or-none utility policy, refusing water and sewer services to any customer who did not agree to purchase electric service from the City. The purpose of the policy was to prevent Ozarks from obtaining new electric customers in the annexed areas. The Utility Department and ADA formalized the all-or-none utility policy in 1994, and the Stilwell City Council subsequently approved the policy.

To enforce its all-or-none policy, the Defendants denied water and sewer connections, turned off already connected lines, and otherwise discriminated against those customers in annexed areas who tried to obtain electric service from Ozarks. Defendants' enforcement of the policy deprived customers of their right to choose freely among competing electric service providers on the basis of price and quality of service and eliminated competition in the provision of electric service in the annexed areas.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate Defendants' all-or-none utility policy and to prevent future actions by Defendants to place similar restrictions on electric consumers. The proposed Final Judgment would enjoin Defendants from requiring any consumer of electricity to purchase the City's retail electric service as a condition of receiving water or sewer service from the City (Section IV(A)). In addition,the proposed Final Judgment would require defendants to include the following disclaimer in a conspicuous manner in any application for water or sewer service or in any other written materials they distribute to prospective applicants for water or sewer services:

> Although we provide electric service, as well as water and sewer services, we do not require you to purchase electric service from us as a condition of receiving water or sewer service and we will not discriminate against you if you do not purchase electric service from us.

(Section IV(B)). Defendants would also be enjoined from threatening or discriminating or retaliating against any person because that person had not agreed to purchase or did not purchase electric service from Defendants (Section IV(C)).

The proposed Final Judgment would further require Defendants to establish and maintain an antitrust compliance program (Section VI) and file an annual certificate of compliance with the United States (Section VII). It would also provide that the United States may obtain information from the Defendants concerning possible violations of the Final Judgment (Section VIII).

The proposed Final Judgment would not prohibit Defendants from exercising any right under State law to expropriate facilities used by any retail electric supplier to furnish electricity within the City's corporate boundaries, or from commencing or prosecuting, in good faith, litigation to ascertain or protect any right they might have under State law to restrict the furnishing of electricity within the City's corporate boundaries to retail electric suppliers authorized by law to do so (Section V(A) and (B)).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective

date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20004.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The Proposed Final Judgment would expire ten (10) years from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted. The proposed Final Judgment provides relief that fully remedies the alleged violations of the Sherman Act set forth in the Complaint.

VII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Dated: July _____, 1998.

Respectfully submitted,

John R. Read,

Michele B. Cano,

Michael D. Billiel,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20004, 202–307–0468, 202–616–2441 (Facsimile).

[FR Doc. 98–20578 Filed 7–31–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Notice of Information Collection Under Review; New Collection; Federal Firearms Licensee Execution of Acknowledgment of Obligations and Responsibilities Under the National Instant Criminal Background Check System (NICS).

[1]The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with 5 CFR 1320.13 (1)(i)(ii)(2)(iii) Emergency Processing of the Paperwork Reduction Act of 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by July 30, 1998. If granted, this emergency approval is only valid for 180 days. A copy of this information collection request, with applicable supporting documentation, may be obtained by calling Allen Nash, Management Analyst, Federal Bureau of Investigation, CJIS Division, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625–2738.

Comments should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this collection is also being undertaken. Public comments are encouraged and will be accepted until October 2, 1998. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New data collection.

(2) Title of the Form/Collection: Federal Firearms Licensee Execution of Acknowledgement of Obligations and Responsibilities Under the National Instant Criminal Background Check System (NICS).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers).

Brief Abstract: The Brady Handgun Violence Prevention Act of 1994, requires the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law. The FFLs are requested to sign a legal document in order to ensure the privacy and security of NICS information.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 60,000 Federal Firearms Licensees at an average of 15 minutes to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 15,000.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington DC 20530.

Dated: July 27, 1998.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 98–20572 Filed 7–31–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Availability of Benefit Accuracy Measurement Program Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of the Unemployment Insurance Benefit Accuracy Measurement Program Data for Calendar Year (CY) 1997.

SUMMARY: The purpose of this notice is to announce the availability of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program Data for CY 1997, which contains the results of each State's BAM program, and information on how copies may be obtained. The BAM Annual Report data are published as part of a UI PERFORMS report, which also includes data from the Benefit Timeliness and Quality and Tax Performance System programs. UI PERFORMS is the Department's management system for promoting continuous improvement in UI performance.

DATES: The Report will be available after August 31, 1998.

ADDRESSES: Copies of the Report may be obtained by writing to Ms. Grace A. Kilbane, Director, Unemployment Insurance Service, U. S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room S–4231, Washington, DC 20210. The Report and this notice contain a list of names and addresses of persons in each State who will provide additional information and clarifications regarding the individual State reports upon request.

FOR FURTHER INFORMATION CONTACT: Andrew Spisak, Division of Performance Review, Data Analysis and Data Validation Team, 202–219–5223, extension 157. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI BAM program. Five items are reported for each State: The amount of UI benefits paid to the population of claimants, the size of the BAM samples, and the percentages of proper payments, overpayments, and underpayments in the population estimated from the BAM investigations. Ninety-five percent confidence intervals are presented for each of the three percentages as measures of the precision of the estimates. States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

Since States' laws, policies, and procedures vary considerably, the data cannot be used to draw comparisons among States.

Effective with the release of calendar year 1995 data, States were no longer required to publish their BAM program data; however, persons wanting clarification or additional information concerning a specific State's report are encouraged to contact the individual identified in the following mailing list.

Signed at Washington, DC, on July 28, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor for Employment and Training.

Unemployment Insurance Benefit Accuracy Measurement State Contacts

Alabama

Bill Mauldin, Quality Assurance Supervisor, Department of Industrial Relations, 649 Monroe Street, Room 321, Montgomery, AL 36131, (334) 242–8130

Alaska

Karen Van Dusseldorp, Q.C. Data Analyst, Alaska Department of Labor, P.O. Box 21149, Juneau, AK 99802–1149, (907) 465–3000

Arizona

Dave Berggren, Employment Security Administration, Technical Support Section, Department of Economic Security, P.O. Box 6123, SC 701B–4, Phoenix, AZ 85005, (602) 542–3771

Arkansas

Fred Trowell, UI Administrator, (501) 682–3200

Or

Norma Madden, BAM Supervisor, (501) 682–3087

Both at:

Arkansas Employment Security Dept., PO Box 2981, Little Rock, AR 72203–2981

California

Suzanne Schroeder, Office of Constituent Affairs, Employment Development Department, P.O. Box 826880, Sacramento, CA 94280–0001, (916) 654–9029

Colorado

Kay Gilbert, BQC Supervisor, Colorado Divison Employment & Training, UI Division, 1120 Lincoln St., Suite 1490, Denver, CO 80203, (303) 894–2272

Connecticut

Robert Obie, Director of Communications, State of Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (860) 566–4375

Delaware

W. Thomas MacPherson, Director, Division of Unemployment Insurance, Department of Labor, P.O. Box 9950, Wilmington, DE 19809, (302) 761–8350

District of Columbia

Roberta Bauer, Assistant Director, Compliance & Independent Monitoring, DC Department of Employment Services, 500 C Street, NW, Room 511, Washington, DC 20001, (202) 724–7492

Florida

Kenneth E. Holmes, UC Director, Division of Unemployment Compensation, Caldwell Building, Room 201, 107 East Madison St., Tallahassee, FL 32399–0209, (850) 921–3889

Georgia

Paul Crawford, Chief, Quality Assurance, Georgia Department of Labor, Room 822, 148 International Blvd., NE., Atlanta, GA 30305–1751, (404) 656–7242

Hawaii

Douglas Odo, UI Administrator, Department of Labor & Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, (808) 586–9069

Idaho

Jane Perez, QC Supervisor, Idaho Department of Employment, 317 Main Street, Boise, ID 83735, (208) 334–6285

Illinois

Matthew Dix, QC Supervisor. Illinois Department of Employment Security, 401 South State Street, Chicago, IL 60605, (312) 793–6222

Indiana

Sandy Jessee, QC Supervisor, Indiana Dept. of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204, (317) 233–6676

Iowa

LeLoie Dutemple, Supervisor, Iowa Workforce Development, Unemployment Insurance Services Division, 1000 East Grand Avenue, Des Moines, IA 50319–0209, (515) 281–8386

Kansas

Joseph Ybarra, Department of Human Resources, 401 Topeka Blvd., Topeka, KS 66603, (785) 296–6313

Kentucky

Ron Holland, Director, Div. of Unemployment Insurance, 2nd floor East, 275 East Main Street, Frankfort, KY 40621, (502) 564–2900

Louisiana

Marianne Sullivan, Program Compliance Manager, Louisiana Department of Labor, PO Box 94094–9094, Baton Rouge, LA 70804, (504) 342–7103

Maine

Gail Thayer, UI Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207) 287–2316

Maryland

Thomas S. Wendel, Exec. Director, Unemployment Insurance Division, Dept. of Labor, Licensing and Regulation, 1100 North Eutaw Street, Baltimore, MD 21201, (410) 767–2464

Massachusetts

Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617) 626–6556

Michigan

Manuel Mejia, Director, Bureau of Audits and Investigations, Michigan Unemployment Agency, 7310 Woodward Avenue, Detroit, MI 48202, (313) 876–5906

Minnesota

Barbara Vickers, QC Supervisor, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, MN 55101, (612) 296–5863

Mississippi

Gary Harthcock, QC Supervisor, Quality Control Unit, Mississippi Employment Security Comm., PO Box 23088, Jackson, MS 39225–3088 (601) 961–7764

Missouri

Marilyn A. Hutcherson, Acting Deputy Dir., Missouri Division of Employment Security, PO Box 59, Jefferson City, MO 65104, (573) 751–3670

Montana

Ken Stephens, Dept. of Labor and Industry Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406) 444–2679

Nebraska

Will Sheehan, Administrator, UI Benefits
Or
Don Gammill, Administrator, UI Program Evaluation
Both at:
PO Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

Nevada

Karen Rhodes, Public Information Officer, Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City, NV 89713, (702) 687–4620

New Hampshire

Carolyn Angle, QC Supervisor, Quality Control Unit, NH Department of Employment Security, 10 West Street, Concord, NH 03301, (603) 228–4073

New Jersey

Paulette Laubsch, Assistant Commissioner, New Jersey Department of Labor, CN 110, Trenton, NJ 08625–0110, (609) 984–5666

New Mexico

Betty Campbell, BQC Supervisor, Quality Control Section, New Mexico Department of Labor, 401 Broadway NE., PO Box 1928, Albuquerque, NM 87103, (505) 841–8499

New York

Ina Lawson, QC Manager, Division of Audit & Compliance, New York State Department of Labor, State Campus-Building 12, Albany, NY 12240, (518) 457–3638

North Carolina

W. Howard Phillips Jr., Supervisor, UI Customer Services and Technical Support, Employment Security Commission of NC, PO Box 25903, Raleigh, NC 27611, (919) 733–4893

North Dakota

Bill Steckler, Job Service North Dakota, PO Box 5507, Bismarck, ND 58506–5507, (701) 328–3355

Ohio

William Anderson, Chief, Benefit Payment Control, Ohio Bureau of Employment Services, 145 South Front Street, PO Box 1618, Columbus, OH 43216, (614) 466–2148

Oklahoma

Terry W. McHale, QC Supervisor, OK Employment Security Commission, 715 S. Service Road, Moore, OK 73160, (405) 793–7286

Oregon

James Mosley, QC Supervisor, Oregon Employment Department, 875 Union Street NE., Salem, OR 97311, (503) 373–7963

Pennsylavnia

Pete Cope, Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 615 Labor and Industry Building, Harrisburg, PA 17121, (717) 787–3547

Puerto Rico

Carmen Otero de McCulloch, Assistant Secretary, PR Dept. of Labor and Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (787) 754–2130

Rhode Island

Lawrence Fitch, Director, Department of Employment, Security 24 Mason Street, Providence, RI 02903, (401) 277–3648

South Carolina

Leleand H. Teal, Director, UI Quality Performance Assurance, PO Box 8117, Columbia, SC 29202, (803) 737–3048

South Dakota

Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, PO Box 4730, Aberdeen, SD, 57402–4730, (605) 626–2005

Tennessee

Ann Ridings, Supervisor, UI Benefit Accuracy Measurement Unit, TN Department of Employment Security, Davy Crockett Tower, 10th Floor, 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190

Texas

Gerald Smart, UI QC Supervisor, Texas Workforce Commission, 101 East 15th Street, Room 362, Austin, TX 78778–0001, (512) 475–1719

Utah

Robert Comfort, Dept. of Employment Security, PO Box 778, Salt Lake City, UT 84110–0778, (801) 533–9954

Vermont

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, PO Box 488, Montpelier, VT 05602, (802) 828–4382

Virginia

F.W. Tucker, IV; Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032

Washington

Teresa Morris, Director, WA Employment Security Dept., Office of Management Review, PO Box 90465, Olympia, WA 98507–9046, (360) 493–9511

West Virginia

Dennis D. Redden, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2256

Wisconsin

Chet Frederick, QC Director, WI Dept. of Workforce Development, 201 East Washington Avenue, PO Box 7905, Madison, WI 53707, (608) 266–8260

Wyoming

Marian Sisneros, UI Administration, PO Box 2760, Casper, WY 82602, (307) 235–3691

[FR Doc. 98–20617 Filed 7–31–98; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–31]

Electrical Standards for Construction; Information Collection Requirements

ACTION: Notice, Opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general pubic and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, Subpart K). The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g, permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before October 2, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–31, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone : (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on the Electrical Standards for Construction (29 CFR part 1926, Subpart K), contact OSHA's WebPage on the Internet at http://www.osha.gov and click on "Regulations and Compliance."

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specially authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The written description of the Assured Equipment Grounding Conductor Program (AEGP) required by § 1926.404(b)(1)(iii) allows employers, employees, and OSHA compliance officers to determine how the requirements of the standard are being met, including the method of recording tests. For example, the employer's written program might specify the use of yellow tape to color code every tool and cord set. By referring to the written program, OSHA compliance officers and other persons can easily determine if the employer is complying with the program.

The posting of warning signs enables employees to avoid accidental contact of electrical equipment used on construction sites. Contact with unguarded live electrical parts, especially at high voltage, can be hazardous to employees.

The tagging of controls, equipment and circuits is intended to prevent the inadvertent reactivation of the controls, equipment and circuits while they are being serviced.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, Subpart K).

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Electrical Standards for Construction (29 CFR part 1926, Subpart K).

OMB Number: 1218–0130.

Agency Number: Docket Number ICR–98–31.

Affected Public: Business or other for-profit.

Number of Respondents: 278,500.

Frequency: Initially, On Occasion.

Average Time per Response: Varies from .02 to .17 hours.

Estimated Total Burden Hours: 53,001.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, DC, this 27th day of July 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–20618 Filed 7–31–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–102]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration(NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 2, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Office of Aeronautics & Space Transportation Technology, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Grant programs, intergovernmental relations.

OMB Number: 2700–0093.

Type of review: Extension.

Need and Uses: Recordkeeping and reporting is required to ensure proper accounting of Federal funds and property provided under grants and

cooperative agreements to state and local governments.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 16.

Responses Per Respondent: 6.

Annual Responses: 95.

Hours Per Request: 5 hrs.

Annual Burden Hours: 485.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–20529 Filed 7–31–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–101]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 2, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Office of Aeronautics & Space Transportation Technology, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Cooperative Agreements with Commercial Firms.

OMB Number: 2700–0092.

Type of Review: Extension.

Need and Uses: Recordkeeping and reporting is required to ensure proper accounting of Federal funds and property provided under cooperative agreements with commercial firms.

Affected Public: Business or other for-profit.

Number of Respondents: 107.

Responses Per Respondent: 6.

Annual Responses: 658.

Hours Per Request: 7.

Annual Burden Hours: 4,592.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–20530 Filed 7–31–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 17, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information con-cerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2. nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal

memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Energy, Agency-wide (N1–434–98–21, 59 items, 53 temporary items). Routine security, emergency planning, and safety records. Files proposed for disposal relate to such matters as classified document control, declassification operations, security alarms and access control systems, safeguards and security agreements and plans, surveys and inspections, security training, visitor access approval, security clearances, nondisclosure agreements, and emergency planning. Policy documents for the Declassification Program, Operations Security Program, and Access Authorization Program are proposed for permanent retention. Records that document exposure to ionizing radiation or other hazardous materials as well as training in the safe handling of these materials will be retained for 75 years.

2. Department of Energy, Agency-wide (N1–434–98–19, 16 items, 14 temporary items). Routine administrative management records. Files relate to such matters as management improvement programs, performance indicators, baseline management, and management control. Issuances documenting substantive functions and correspondence files documenting the development of plans and policies are proposed for permanent retention.

3. Department of Energy, Agency-wide (N1–434–98–4, 29 items, 29 temporary items). Routine personnel records. Files relate to such matters as position classification, employee health, employee training, treatment and investigation of on-the-job injuries, implementation of the Americans with Disabilities Act, educational outreach activities, apprenticeship programs, tuition reimbursement for agency employees, postings of vacancies, promotional materials used for recruitment, the testing of job applicants, and labor-management relations. Records that document exposure to ionizing radiation or other hazardous materials as well as training in the safe handling of these materials will be retained for 75 years.

4. Department of the Interior, Minerals Management Service (N1–473–98–2, 11 items, 11 temporary items). Records created by several offices within the Minerals Management Service, including Environmental Analysis Files, Financial Responsibility Files, Gas Meter Reports, Applications for Deepwater Royalty Relief Files, and End-of-Life Royalty Relief Applications.

5. Department of the Interior, Minerals Management Service (N1–473–98–1, 1 item, 1 temporary item). Reduction in retention period for Lease Sale Activity History Files, which were previously approved for disposal. These records provide general information regarding each lease sale from block selection phase through the acceptance or rejection phase of bids.

6. Department of the Navy, Marine Corps, Agency-wide (N1–NU–98–6, 3 items, 3 temporary items). Leave records accumulated by members of the Marine Corps while awaiting punitive separation through dismissal, dishonorable discharge, or bad-conduct discharge.

7. Department of State, Bureau of Consular Affairs, Office of Passport Policy and Advisory Services (N1–59–98–3, 1 item, 1 temporary item). E-mail messages regarding the status of passport applications and requests for expedited service.

8. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–97–4, 4 items, 2 temporary items). Hard copy inputs and outputs for an electronic system relating to explosives incidents. System master file and system documentation are proposed for permanent retention.

9. Civil Liberties Public Education Fund (N1–220–98–8, 11 items, 5 temporary items). News clippings of Fund-related activities, proof sets and negatives for conferences and panel discussions, routine correspondence, electronic version of records created by electronic mail and word processing applications, and nonfunded grant applications are proposed for disposal. Substantive program records, including meeting transcripts and correspondence, are proposed for permanent retention.

10. Federal Communications Commission, Mass Media Bureau (N1–173–98–3, 1 item, 1 temporary item). Reduction in retention period for Dismissed Broadcast Applications, which were previously approved for disposal. The files consist of the original application, official correspondence, and supporting information.

Dated: July 22, 1998.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–20525 Filed 7–31–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–445]

TU Electric; Comanche Peak; Confirmatory Order Modifying License, Effective Immediately

I

TU Electric, (the Licensee) is the holder of Facility Operating License No. NPF–87, which authorizes operation of Comanche Peak, Unit 1 located in, Somervell County, TX.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers" and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. The discussions with TU Electric, to resolve Thermo-Lag corrective actions have been numerous. In addition to telephone conversations and letter responses, two public meetings were held, the first on December 5, 1996, at the Region IV Office in Arlington, Texas and the second on November 12, 1997, at the NRC Headquarters Office in Rockville, Maryland.

Based on the information submitted by TU Electric, the NRC staff has concluded that the schedules presented by TU Electric are reasonable. This conclusion is based on (1) the amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the

need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant but unrelated issues that TU Electric is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by TU Electric must be completed in accordance with current TU Electric schedules. By letter dated May 20, 1998, the NRC staff notified TU Electric of its plan to incorporate TU Electric's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated June 2, 1998, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of June 2, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its June 2, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, it is hereby ordered, effective immediately, that:

TU Electric shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Comanche Peak, Unit 1, described in TU Electric submittals to the NRC dated April 9 and May 1, 1998, by December 31, 1998.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011 and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 28 day of July 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–20601 Filed 7–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on August 26, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 26, 1998—10:00 a.m. until the conclusion of business

The Subcommittee will discuss issues in the Staff Requirements Memorandum dated April 20, 1998, regarding situation-specific cases where probabilistic risk assessment (PRA) results and insights have improved the existing regulatory system and specific areas in which PRA, when applied properly, can have a positive impact on the regulatory system. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 28, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–20599 Filed 7–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft NUREG Report; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment Draft NUREG–1521 titled "Technical Review of Risk-Informed, Performance-Based Methods for Nuclear Power Plant Fire Protection Analyses."

As part of the staff's efforts to focus licensee and NRC resources on risk-significant activities, and to decrease the prescriptiveness of its regulations through performance-based methods that allow licensees increased flexibility in implementing NRC regulations, the staff has conducted a technical review to identify opportunities in the fire protection area. Draft NUREG–1521 presents a technical review and analysis of risk-informed, performance-based methods that are alternatives to those in current prescriptive fire protection requirements or guidance that could allow cost-effective methods for implementing safety objectives, focusing licensee efforts, and achieving greater efficiency in the use of resources for plant safety. A technical analysis of the usefulness of the results and insights derived from these methods (including accounting for the uncertainties in the results) in improving regulatory decision making is presented.

Public comments are being solicited on Draft NUREG–1521. Comments may be accompanied by additional relevant information or supporting data. The staff specifically requests comments on (1) whether information on any other technical methods and models for risk-informed, performance applications not covered in the report exist and should be reviewed and included, and (2) risk-informed, performance-based applications beyond those discussed in the report that would provide regulatory focus on risk significant issues, and flexibility to licensees in implementing NRC safety objectives.

A free single copy of Draft NUREG–1521 may be requested by written request to the U.S. Nuclear Regulatory Commission, ATTN: Distribution and Mail Services Section, Office of Administration, Washington, DC 20555–0001. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments on draft NUREG–1521 to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m on Federal Workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 30, 1998. This document is also available at the NRC Web Site, http://www.nrc.gov. See the link under "Technical Reports in the NUREG Series" on the "Reference Library" page. You may also provide comments at this NRC Web Site. Instructions for sending comments electronically are included with the document, NUREG–1521, at the web site.

Dated at Rockville, Maryland, this 28th day of July 1998.

For the Nuclear Regulatory Commission.

Thomas L. King,

Director, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–20600 Filed 7–31–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one proposed rescission of budgetary resources, totaling $5.2 million.

The proposed rescission affects programs of the Department of the Interior.

William J. Clinton

THE WHITE HOUSE,
July 24, 1998.

Rescission Proposal No. R98–25

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93–344

Agency: DEPARTMENT OF THE INTERIOR
Bureau: Bureau of Land Management
Account: Mineral leasing and associated payments
New budget authority: $5,200,000
Other budgetary resources:——
Total budgetary resources: 5,200,000
Amount proposed for rescission: 5,200,000

Proposed appropriations language:

The budget authority provided by section 503 of Public Law 105–83 is hereby rescinded.

Justification: The proposal would rescind $5,200 thousand for a conveyance to the State of Montana of Federal mineral rights. This amount was canceled under the Line Item Veto Act, which the Supreme Court ruled unconstitutional on June 25, 1998.

In connection with the Crown Butte/New World Mine acquisition (addressed in section 502 of P. L. 105–83), section 503 provides for the uncompensated conveyance to the State of Montana of either $10 million in Federal mineral rights in Montana or the Federal mineral rights in Otter Creek Tracts 1, 2, and 3 (in Montana).

Section 503 would cause Federal taxpayers to lose their share of royalties from Federally-owned lands, which would normally be split between the State where the Federally-owned lands are located and the U.S. Treasury upon development of Federal mineral rights. The Federal share would be $5.2 million. The section would set a costly, unnecessary precedent by requiring the Federal Government to "compensate" a State for a purchase or exchange of lands between the Federal Government and a willing seller. This precedent could, therefore, discourage innovative, cost-effective land protection solutions in the future.

This proposed rescission applies to the budget authority under each of the alternative conveyances under sections 503(a)(1) and 503(a)(2).

This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated programmatic effect: As a result of the proposed rescission, net Federal outlays will decrease, as specified below.

(Note: The amount of the effect depends on whether mineral rights would have been conveyed under section 503(a)(1) or under section 503(a)(2). As discussed below, the Administration estimates that mineral rights would more likely have been conveyed under section 503(a)(1).) This will have a commensurate effect on the Federal budget deficit.

OUTLAY CHANGES UNDER RESCISSION OF SECTION 503(A)(1)

Effect on outlays (in thousands of dollars)					
FY 1998	FY 1999	FY 2000	FY 2001	FY 2003	Total
−1,300	−1,300	−1,300	−1,300	.....	−5,200

OUTLAY CHANGES UNDER RESCISSION OF SECTION 503(A)(2)

Effect on outlays (in thousands of dollars)					
FY 1998	FY 1999	FY 2000	FY 2001	FY 2003	Total
.....	.....	.....	.....	−1,352	−1,352

The negotiations requirement in section 503(b), and the legislative history of section 503, make clear that the intent of the section was that the Secretary of the Interior would convey $10 million in Federal mineral rights in the State of Montana under section 503(a)(1), rather than all Federal mineral rights in Otter Creek Tracts 1, 2, and 3 under section 503(a)(2), and it is most likely that this is what the Secretary would have done.

The discretionary budget authority in both section 503(a)(1) and section 503(a)(2) is proposed to be rescinded, but because the Secretary could not have made both conveyances, and the dollar amount of discretionary budget authority for the intended and most likely conveyance under section 503(a)(1) exceeds the dollar amount of discretionary budget authority for the alternative conveyance under section 503(a)(2) through FY 2003, the dollar amount of discretionary budget authority proposed for rescission above of $5,200,000 is based upon the most likely conveyance under section 503(a)(1).

[FR Doc. 98–20571 Filed 7–31–98; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23332; 812–10754]

Great Plains Funds, et al.; Notice of Application

July 27, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a "fund of funds" arrangement. The fund of funds would invest in funds in the same group of investment companies and in other funds within the limits of section 12(d)(1)(F) of the Act. Applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act.

APPLICANTS: Great Plains Fund (the "Trust") and First Commerce Investors, Inc. (the "Adviser").

FILING DATES: The application was filed on August 13, 1997, and amended on May 15, 1998 and July 14, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 21, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Great Plains Funds, 5800 Corporate Drive, Pittsburgh, PA 15237–7010. First Commerce Investors, Inc., 610 NBC Center, Lincoln, NB 68508.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch (tel. 202–942–8090).

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and currently consists of five portfolios: Great Plains Equity Fund, Great Plains Premier Fund, Great Plains International Equity Fund, Great Plains Intermediate Bond Fund, and Great Plains Tax-Free Bond Fund. The portfolios are advised by the Adviser, which is registered under the Investment Advisers Act of 1940.

2. Applicants request relief to permit certain portfolios of the Trust (the "Portfolios") to invest in certain other portfolios of the Trust (the "Underlying Portfolios") that are in the same group of investment companies as the Portfolios.[1] Applicants also request relief to permit the Portfolios to invest in other registered open-end management investment companies that are not part of the same group of investment companies as the Portfolios (the "Other portfolios") in accordance with section 12(d)(1)(F) of the Act discussed below.[2] The Portfolios also

[1] Initially, the Great Plains Equity Fund will be the only Portfolio investing in an Underlying Portfolio, which will be the Great Plains International Equity Fund.

[2] Applicants also request relief for each registered open-end management investment company that currently, or in the future, is part of the same "group of investment companies" as the Trust as defined in section 12(d)(1)(G)(ii) of the Act. All registered open-end management investment companies which currently intend to rely on the order are named as applicants. Any registered open-

will invest a portion of their assets directly in securities ("Direct Investments"). With respect to Portfolio's investment in Other Portfolios, applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act. Applicants believe that the proposed structure of the Portfolios will provide a consolidated and efficient means through which investors can have access to a comprehensive investment vehicle.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (ii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term "group of investment companies" to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Portfolios will invest in shares of the Other Portfolios and make Direct Investments, they cannot relay on the exemption from section 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Portfolios will invest in Other Portfolios in reliance on section 12(d)(1)(F). if the requested relief is granted, shares of the Portfolios will be sold with a sales load that exceeds 1.5%.

4. Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Portfolios to invest in the Underlying Portfolios and the Portfolios to sell shares to the public with a sales load that exceeds 1.5%.

6. Applicants state that the Portfolios' investments in the Underlying Portfolios do not raise the concerns about undue influence that sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees. The Portfolios will invest in Other Portfolios only within the limits of section 12(d)(1)(F). Applicants believe that an exemption from the sales load limitation in that section is consistent with the protection of investors because applicants' proposed sales load limit would cap the aggregate sales charges of both the Portfolio and the Other Portfolio in which it invests. Applicants have agreed, as a condition to the relief, that any sales charges, asset-based distribution and service fees relating to the Portfolios' shares, when aggregated with any sales charges, asset-based distribution and service fees paid by the Portfolios relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the NASD Conduct Rules.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Portfolios and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of the Adviser, or because the Portfolios own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Portfolios could be deemed to be principal transactions between affiliated persons under section 17(a).

8. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

9. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b)

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end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

to permit the Portfolios to purchase and redeem shares of the Underlying Portfolios.

10. Applicants believe that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Portfolios in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Portfolios and will be consistent with the policies as set forth in the registration statement of the Portfolios.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Portfolio and each Underlying Portfolio will be part of the same "group of investment companies," as defined in section 12(d)(G)(ii) of the Act.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Portfolios, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Portfolios relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set froth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of a Portfolio, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20560 Filed 7–31–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40264; File No. SR–CBOE–98–31]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees.

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder notice is hereby given that on June 30, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 15, 1998, the Exchange filed a letter amendment to the proposed rule change ("Amendment No. 1").[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend and add certain fees, as well as renew and amend (i) its Prospective Fee Reduction Program; and (ii) its Customer "Large" Trade Discount Program. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrected an error in the original filing regarding the trade match fee reduction for a threshold volume of 925,000 contracts and above, and made other clarifying changes. *See* letter from Stephanie C. Mullins, Attorney, CBOE to S. Kevin An, Special Counsel, Division of Market Regulation, Commission (July 14, 1998).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change its to make certain fee changes and additions, and to renew and amend (i) the Exchange's Prospective Fee Reduction Program; and (ii) its Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and will take effect on July 1, 1998.

The Exchange is amending the following fees: (1) Trade Match Fee will be increased to $.05 from $.04 per contract side; (2) Trade Match Report Fees will be changed to $.0025 per contract side for all matched and unmatched information. Previously the fee was $.0008 for paper reports per contract side, per copy, for matched and unmatched information; $.0003 for data transmission per contract side, per pass; and $.0003 for unmatched report transmission per contract, per pass; (3) CBOE Market-Maker Handheld Terminals Fee will be increased to $.08 per record from $.05 per record; (4) DPM Regulatory Fee will be changed to $.40 per $1,000 of gross revenue from a flat fee of $150 per quarter; (5) Dow Jones Booth Fee will be changed to a flat $300 per month, which previously was $300 per month for OCC firms and $625 per month for Non-OCC firms (the fee also formerly included a variable fee for insufficient fee credits for both OCC and Non-OCC firms). The Exchange is proposing to add the following fees: (1) Technology Fee of $200 per month; and (2) Book Manual Entry Fee of $1 per order.

The Exchange's Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-

to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees, floor broker fees, and member dues will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The program is scheduled to terminate on June 30, 1998 at the end of the Exchange's 1998 fiscal year. The program is proposed to be amended to replace the market-maker transaction fee and floor broker fee reduction with a trade match fee reduction, and to continue the program during the Exchange's 1999 fiscal year, terminating June 30, 1999. The program also is proposed to be amended to increase the volume thresholds at which the discount commences.

The Exchange has decided to amend the name of the program and the fees associated with it because market-maker transaction fees and floor broker fees are not being increased, and the Exchange feels that it is not in the best interest of the financial welfare of the Exchange to give any further discount on those fees. However, the Exchange is increasing trade match fees, and the Exchange feels that to compensate for that increase, during high volume quarters, the trade match fee will be discounted. Additionally, the trade match fee discount is an across-the-board discount, applying fairly to both market-makers and floor brokers.

Specifically, the threshold volume at which the $.005 trade match fee reduction applies will be 800,000 contracts. Currently, a $.005 fee reduction only applies to floor broker fees when the volume threshold is between 725,000 and 775,000 contracts. The threshold volume at which the $.01 trade match fee reduction applies will be 825,000 contracts. Currently the $.01 fee reduction only applies to market-maker transaction fees when the threshold volume is between 700,000 and 775,000 contracts. Also, there will be a $.015 trade match fee reduction for a threshold volume of 925,000 contracts and above. Currently, there is no $.015 fee reduction in the program.

Finally, the member dues fee reduction, which currently ranges from 25% to 75% for volumes ranging from 675,000 to 775,000 contracts, as amended will range from 25% to 100% for volumes ranging from 800,000 to 900,000. The 25% discount will commence at 800,000 contracts, the 50% discount will commence at 850,000 contract, the 75% discount will commence at 875,000 contract, and the 100% discount will commence at 900,000 contract.

The Exchange's Customer "Large" Trade Discount Program currently provides for discounts on the transaction fees that CBOE members pay with respect to public customer orders for 500 or more contracts. Specifically, for any month the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The program is scheduled to terminate on June 30, 1998 at the end of the Exchange's 1998 fiscal year. The program is proposed to be amended to provide that the program will continue in effect during the Exchange's 1999 fiscal year and will terminate on June 30, 1999. In addition to renewing the current fee discount percentages under the program, the program is also proposed to be amended to increase by 50,000 contracts all the threshold levels to which the discount rates apply, increasing the minimum threshold level from 600,000 to 650,000, contracts at which the 30% discount rate applies. Additionally, the Exchange proposes to discontinue its Dow Jones Large Trade Discount Program as of June 30, 1998. Dow Jones customer orders will now be included in the CBOE's Customer Large Trade Discount Program. In all other respect the program remains unchanged.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program for Trade Match Fees and Member Dues, and the Exchange's Customer "Large" Trade Discount Program will terminate at the end of the Exchange's 1999 fiscal year, the Exchange intends to evaluate these programs prior to the beginning of the 2000 fiscal year and may renew these programs in the same or modified form for the 2000 fiscal year.

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (e)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submission should refer to File No. SR–CBOE–98–31 and should be submitted by August 24, 1998.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] In receiving this proposal, the Commission considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20558 Filed 7–31–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40262; File No. SR–NYSE–98–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Seeking Permanent Approval of the Exchange's Pilot Program Concerning Entry of LOC Orders

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 1998, the New York Stock Exehange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. On July 16, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of the procedures for handling limit-at-the-close ("LOC") orders. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to David Sieradzki, Attorney, Division of Market Regulation, Commission dated July 13, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange requests accelerated approval for the proposal to allow the Exchange's procedures for limit-at-the-close orders to continue on an uninterrupted basis. As noted below, the Exchange's pilot program expires on July 31, 1998. *See infra* note 9 and accompanying text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to make permanent the Exchange's pilot program for entry of LOC orders, which was first approved by the Commission on March 3, 1994.[3] A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. NYSE Rule 13 provides, in part, that "the term 'at the close order' shall also include a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order pursuant to such procedures as the Exchange may from time to time establish." The LOC order type has been available, on a pilot basis, for all NYSE-listed stocks since July 1995.[4] Under the original pilot, LOC orders could be entered only to offset published imbalances of market-on-close ("MOC") order[5] and had to be entered by 3:55 p.m. on both expiration and non-expiration days.[6] In addition, on expiration days, LOC orders could not be canceled after 3:40 p.m., except for legitimate errors. On non-expiration days, LOC orders could not be canceled after 3:55 p.m., except for legitimate errors.[7]

[3] *See* Securities Exchange Act Release No. 33706 (March 3, 1994), 59 FR 11093 (March 9, 1994) ("LOC Pilot Program Approval Order").

[4] *See* Securities Exchange Act Release No. 35854 (June 16, 1995), 60 FR 32723 (June 23, 1995) (order approving SR–NYSE–95–09).

[5] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *See* NYSE Rule 13.

[6] The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

[7] *See* LOC Pilot Program Approval Order, *supra* note 3.

In May 1997, the Exchange implemented an amended policy regarding LOC orders to permit their entry at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days.[8] Thereafter, as with MOC orders, LOC orders could not be canceled (except for legitimate errors), and could be entered only to offset published imbalances. LOC orders are subject to the same restrictions regarding order entry and cancellation as are MOC orders, as well as to the additional limitation that LOC orders yield priority to conventional limit orders at the same price.

In June 1998, the Exchange further amended its policy regarding MOC and LOC orders.[9] Under the amended procedures, the deadline for entry of all MOC and LOC orders was set at 3:40 p.m. on all trading days. Thereafter, MOC and LOC orders cannot be canceled (except for legitimate errors), and can only be entered to offset a published imbalance. In addition, the Exchange made several changes to its rules regarding the publication of order imbalances. First, the Exchange now requires publication of all MOC/LOC imbalances of 50,000 shares or more in all stocks on any trading day as soon as practicable after 3:40 p.m. Second, the Exchange includes marketable LOC orders as well as MOC orders in the imbalance publication. Third, the Exchange is now allowing publication of MOC/LOC imbalances of any size between 3:00 p.m. and 3:40 p.m. with Floor Official approval. Finally, an additional imbalance publication will be made at 3:50 p.m. for stock that has an imbalance published at 3:40 p.m.[10] These procedures are part of the current pilot for LOC orders which expires July 31, 1998.[11]

The Commission has commented on the appropriateness of LOC orders in previous releases. For example, in its release approving the original proposal for the creation of LOC orders, the Commission noted that LOC orders could help curb excess price volatility at the close "without diminishing any benefit to investors from trading strategies which rely on MOC orders to

[8] *See* Securities Exchange Act Release No. 37969 (November 20, 1996), 61 FR 60735 (November 29, 1996) (order approving SR–NYSE–96–21).

[9] *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR–NYSE–97–36).

[10] For a more complete description of the changes to the MOC/LOC program, *see* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR–NYSE–97–36).

[11] *See* Securities Exchange Act Release No. 38865 (July 23, 1997), 62 FR 40881 (July 30, 1998), (order approving SR–NYSE–97–19).

guarantee a fill at the closing price." [12] In its most recent approval order for the LOC pilot, the Commission commented that since LOC orders are required to yield priority to conventional limit orders at the same price, "it is satisfied that public customer orders on the specialist book will not be disadvantaged by this proposal."[13] The Commission has also stated that it does not believe that allowing the use of LOC orders throughout the day would have harmful effects on other orders for on the market in general.[14]

The Exchange has submitted three monitoring reports on LOC orders to the Commission. The reports suggest that use of LOC orders, while limited, may contribute to reducing volatility at the close. Although use of LOC orders remains limited, the Exchange believes it is appropriate to seek permanent approval for the use of LOC orders to continue to provide Exchange members with the flexibility to enter such orders, which help them to manage risk at the close.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [15] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change perfects the mechanism of a fee and open market by providing investors with the ability to use LOC orders as a vehicle for managing risk at the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–15 and should be submitted by August 24, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[16] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[17] 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.[18]

This pilot program has been a part of the Exchange's effort to institute safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a situation in which member firms and their customers would be unwilling to acquire significant positions.

The Commission believes that LOC orders may provide the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. The Commission believes that LOC orders may appeal to certain market participants who might otherwise be reluctant to commit capital of the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, LOC orders allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter LOC orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders may be a useful investment vehicle for curbing excess price volatility at the close.

The Commission also believes that the NYSE has established appropriate procedures for handling LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customers order on the specialist's book will not be disadvantaged by this proposal. The Commission believes that the prohibition on canceling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission notes that the LOC order pilot program has been ongoing since 1994 and the NYSE has submitted detailed reports describing its experience with the pilot program. Although the use LOC orders has been

[12] *See* LOC Pilot Program Approval Order, *supra* note 3.

[13] *See* supra note 9.

[14] *See* supra note 8.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

limited, the use of such orders could help reduce volatility at the close. Accordingly, the Commission believes that it is reasonable and consistent with the Act for the Exchange to seek permanent approval of the LOC procedures.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval of the proposal will allow the NYSE to continue to use its procedures for entering LOC orders to continue on an uninterrupted basis. The Commission notes that this proposal does not make any substantive changes to the Exchange's existing LOC program. In its proposal, the Exchange simply requests permanent approval of its existing LOC program. Further, the Commission notes that the last substantive change to the LOC program was published for the full notice and comment period and the Commission received no comments on that proposal.[19] Accordingly, the Commission does not believe that the current filing raises any new regulatory issues. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–98–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20557 Filed 7–31–98; 8:45 am]

BILLING CODE 8010–01–M

[19] *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR–NYSE–97–36).

[20] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40266; File No. SR–NYSE–98–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Exempted Borrowers and Good Faith Accounts

July 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NYSE Rule 431, "Margin Requirements," to accommodate certain recent changes to the federal margin requirements. The proposal, which is described in Items I, II, and III below, which Items have been prepared by the NYSE, originally was approved by the Commission on a temporary basis until July 27, 1998.[3] On July 24, 1998, the NYSE amended its proposal to request that the Commission approve the NYSE's proposal for six months on an accelerated bases.[4] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change and to grant accelerated approval to the portion of the proposal that requests an extension of the proposal for six months, until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39813 (March 27, 1998), 63 FR 16849 (April 6, 1998) (order approving File No. SR–NYSE–98–08) ("March Approval Order").

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated July 23, 1998 ("Amendment No. 1"). In addition, Amendment No. 1 modifies the proposal to: (1) clarify that the proposal amends the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that exempted borrowers will remain exempt from the provisions of NYSE Rule 431; and (2) correct a reference in NYSE Rule 431(a)(2) to the Board of Governors of the Federal Reserve System ("FRB").

[5] The NYSE confirmed that the Exchange is seeking to extend the changes to NYSE Rule 431 that were approved in the March Approval Order for six months or until the Commission approves the changes on a permanent basis, whichever occurs first. Telephone conversation between Mary Anne Furlong, Attorney, NYSE, and Yvonne Fraticelli, Attorney, Division of Market Regulation, Commission, on July 27, 1998 ("July 27 Conversation").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 27, 1998, the Commission approved until July 27, 1998, an NYSE proposal to apply the maintenance margin requirements of NYSE Rule 431 to good faith accounts and to provide that the proprietary accounts of introducing broker-dealers that are "exempted borrowers" as that term is defined in Regulation T[6] will continue to be subject to NYSE Rule 431(e)(6) as applicable.[7] The NYSE requests permanent approval of the changes to NYSE Rule 431 that were approved on a temporary basis in the March Approval Order. In addition, the NYSE requests that the Commission extend the changes to NYSE Rule 431 that were approved in the March Approval Order for six months, until January 27, 1999, or until the Commission approves the changes to NYSE Rule 431 on a permanent basis, whichever occurs first.[8]

Copies of the proposed rule change are available at the NYSE and at the Commission

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements maybe examined at the places specified in Item V below. The NYSE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1998 the FRB amended Regulation T, which governs initial extensions of credit to customers and broker-dealers.[9] Among other things, these amendments established a "good faith" account, which can be used for transactions in non-equity securities.[10]

[6] 12 CFR 220. Regulation T, "Credit by Brokers and Dealers," is administered by the FRB pursuant to section 7 of the Act.

[7] *See* March Approval Order, *supra* note 3.

[8] *See* Amendment No. 1, *supra* note 4, and July 27 Conversation, *supra* note 5.

[9] *See* Docket Nos. R–905, R–0923, and R–0944, 63 FR 2806 (January 16, 1998).

[10] 12 CFR 220.6.

Unlike transactions in a cash or margin account, transactions in the good faith account are *not* subject to the requirements of Regulation T with respect to initial margin and payment and liquidation time frames.

The NYSE believes that transactions in a good faith account raise the same safety and soundness concerns from a maintenance margin perspective as cash and margin account transactions. Accordingly, the NYSE proposes to amend NYSE Rule–431 so that transactions in all accounts of customers (except for cash accounts, as discussed below), including the new good faith account, will be subject to the current applicable maintenance margin requirements of NYSE Rule 431(c).[11] As is currently the case, cash accounts subject to Regulation T will not be subject to the overall NYSE Rule 431 requirements, but in certain cases will be covered by specific rule provisions. In this regard, the NYSE notes that NYSE Rule 431 requirements currently apply to cash account transactions in exempted securities (NYSE Rule 431(e)(2)(F)); for certain options (NYSE Rule 431(f)(2)(M)); and for "when issued" and "when distributed" securities (NYSE Rule 431(f)(3)(B)).

In the Regulation T amendments adopted in January 1998, the FRB also established a class of borrowers that is exempt from Regulation T. An "exempted borrower," as defined in Regulation T, is a broker-dealer " a substantial portion of whose business consists of transactions with persons other than brokers or dealers." [12] The NYSE historically has not applied the requirements of NYSE Rule 431 to member organization accounts, except for transactions in the proprietary accounts of registered broker-dealers that are carried by a member organization. In this regard, NYSE Rule 431(e)(6) provides that a member organization may carry the proprietary account of another registered broker-dealer upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition. In addition, NYSE Rule 431(e)(6) requires that the amount of any deficiency between the equity in the proprietary account and the margin required under NYSE Rule 431 be deducted in computing the net capital of the member carrying the proprietary account.

The NYSE believes that exempted borrowers would remain exempt from the requirements of NYSE Rule 431, and the Exchange proposes to amend the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that such borrowers are exempt from NYSE Rule 431.[13] Specially, the NYSE proposes to amend NYSE Rule 431(a)(2) to exclude from the definition of "customer" and "exempted borrower" as defined by Regulation T of the FRB, except for the proprietary accounts of a broker-dealer carried by a member pursuant to NYSE Rule 431(e)(6).[14]

Under the new Regulation T definition of exempted borrower, the proprietary transactions of an introducing organization that qualifies as an exempted borrower (*i.e.*, an organization that conducts a substantial public business) will not be subject to Regulation T. Accordingly, the requirement in NYSE Rule 431(e)(6) that member adhere to the requirements of Regulation T will not apply to the proprietary accounts of exempted borrowers. However, for safety and soundness purposes, the proprietary account of a broker-dealer that are carried or cleared by another broker-dealer member organization will remain subject to the NYSE Rule 431(e)(6) equity requirements, which prohibit a member from carrying a proprietary account in a deficit equity condition and require that the amount of any deficiency between the equity maintained in the proprietary account and the margin required by NYSE Rule 431 be deducted in computing the net capital of the member carrying the proprietary account.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public. The NYSE believes that the proposed rule change also is consistent with the rules and regulations of the FRB in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the purpose rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

The NYSE has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the portion of the proposal that requests a six-month extension of the changes to NYSE Rule 431 that were approved in the March Approval Order prior to the 30th day after publication of the proposed rule change in the **Federal Register.**[15] Accelerated approval, until January 27, 1999, will ensure the uninterrupted effectiveness of the changes to NYSE Rule 431 that were approved in the March Approval Order, so that transactions in good faith accounts and in the proprietary accounts of non-carrying/clearing member organizations will continue to be subject to NYSE Rule 431(e)(6).

With regard to the portion of the proposal requesting permanent approval of the changes to NYSE Rule 431 that were approved in the March Approval Order, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

After careful review of the NYSE's proposal and for the reasons discussed below, the Commission finds that the portion of the current proposal that extends through January 27, 1999, the effectiveness of the changes to NYSE

[11] NYSE Rule 431(c), as amended, will specify the margin that must be maintained in all customer accounts, except for cash accounts subject to Regulation T, unless a transaction in a cash account is subject to other provisions of NYSE Rule 431.

[12] 12 CFR 220.2.

[13] *See* Amendment No. 1, *supra* note 3.

[14] Specifically, NYSE Rule 431(a)(2), as amended, excluded from the definition of "customer" (a) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an "exempted borrower" as defined by Regulation T, except for the proprietary account of a broker-dealer carried by a member organization pursuant to NYSE Rule 431(e)(6).

[15] *See* Amendment No. 1, *supra* note 4.

Rule 431 that originally were approved in the March Approval Order is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, this portion of the proposal is consistent with Section 6(b)(5) of the Act,[16] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[17]

Specifically, the Commission finds, as it has concluded previously,[18] that it is appropriate for the NYSE to apply the existing maintenance margin requirements of NYSE Rule 431(c) to transactions in the new "good faith" account adopted under Regulation T. Although non-equity transactions permitted in the good faith account will not be subject to the initial margin requirements and payment and liquidation time frames of Regulation T, as the NYSE notes, transactions in the good faith account may raise the same safety and soundness concerns with regard to maintenance margin as do transactions in cash and margin accounts. Accordingly, the Commission believes that it is appropriate for the NYSE to apply the existing maintenance margin requirements specified in NYSE Rule 431(c) to transactions in the good faith account. The Commission believes that applying the maintenance margin requirements of NYSE rule 431(c) to transactions in the good faith account will protect investors and the public interest and help to maintain fair and orderly markets by ensuring that good faith accounts contain adequate margin reserves.

In addition, the Commission believes that it is appropriate for the NYSE to revise the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that exempt borrowers will remain exempt from the requirements of NYSE Rule 431, except for the proprietary account of a broker-dealer carried by a member pursuant to NYSE Rule 431(e)(6). The Commission believes that it is appropriate for the NYSE to continue to apply the equity requirements of NYSE Rule 431(e)(6) to the proprietary accounts of introducing broker-dealers that qualify as "exempted borrowers" under Regulation T if these accounts are carried by another Exchange member. By continuing to apply the equity requirements of NYSE Rule 431(e)(6) to these proprietary accounts, the Commission believes that the proposal will help to ensure that these accounts contain adequate margin, thereby protecting investors and the public interest.[19]

The Commission finds good cause for approving the portion of the proposed rule change requesting approval for six months, until January 27, 1999, of the changes to NYSE Rule 431 that were approved in the March Approval Order prior to the thirtieth day after the date of publication of notice in the **Federal Register** to ensure that the changes to NYSE Rule 431 that were approved in the March Approval Order remain in effect without interruption. The Commission continues to believe that the changes to NYSE rule 431 that were approved in the March Approval Order should help to ensure appropriate margin requirements for good faith accounts and for the proprietary accounts of introducing broker-dealers that qualify as exempted borrowers which accounts are carried by Exchange members. Accordingly, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to grant accelerated approval to the portion of the NYSE's proposal that extends for six months, until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first, the changes to NYSE Rule 431 that were approved in the March Approval Order.

The Commission also finds good cause for approving Amendment No. 1 to the proposal on an accelerated basis. In Amendment No. 1, the NYSE clarified several provisions in its proposal and requested accelerated approval of a six-month extension, through January 27, 1999, of the changes to NYSE Rule 431 that were approved in the March Approval Order. The Commission believes that it is appropriate to approve Amendment No. 1 on an accelerated basis to permit the changes to NYSE Rule 431 that were approved in the March Approval Order to continue to apply without interruption. Therefore, the Commission believes that Amendment No. 1 is consistent with Sections 6(b) and 19(b)(2) of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with request to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–16 and should be submitted by August 24, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the portion of the NYSE's proposal (SR–NYSE–98–16), as amended, to extend the changes approved by the Commission in the March Approval Order on an accelerated basis until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20559 Filed 7–31–98; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] In approving this potion of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See* March Approval Order, *supra* note 3.

[19] As noted above, because exempted borrowers are exempt from Regulation T, the provision in NYSE Rule 431(e)(6) requiring adherence to Regulation T will not apply to the proprietary accounts of exempted borrowers.

[20] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40263; File No. SR–PCX–98–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Automatic Execution of Option Orders

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 12, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by the PCX. On July 14, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend PCX Rule 6.87 ("Automatic Execution System") to permit automatic executions of option orders on the Exchange at prices reflecting the National Best Bid or Offer ("NBBO"). The text of the proposed rule change is available at the principal office of the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Orders entered via the Exchange's Member Firm Interface ("MFI") are delivered to one of three destinations: (a) to the Exchange's Automatic Execution System for options trading ("Auto-Ex"), where they are automatically executed at the disseminated bid or offering price; (b) to Auto-Book, which maintains non-marketable limit orders based on limit price and time of receipt; or (c) to a Member Firm's default destination, a particular firm booth or remote entry site, if the order fails to meet the eligibility criteria necessary for using either Auto-Ex or Auto-Book or if the Member Firm requests such default for its orders.[3] Only non-broker/dealer customer orders for up to ten option contracts (or 20 option contracts, depending on the option issue) are eligible to be executed on Auto-Ex.[4]

The Exchange is now proposing to adopt new PCX Rule 6.87(d), which would provide that the Exchange's Options Floor Trading Committee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the NBBO, provided that the OFTC may designate, for an option issue, that an order will default for manual representation by a floor broker in the trading crowd if (1) the order would be executed at a price that is more than one trading increment away from the PCX disseminated market price; or (2) the NBBO is crossed or locked.

For example, under the proposal, if the PCX market in an option series is 6 bid, 6½ asked, and if another market is disseminating a market in the same series of 6⅜ bid, 6⅞ asked—so that the NBBO is 6⅜ bid, 6½ asked, then, in the absence of the OFTC designating the orders for manual representation, the PCX will automatically execute customer sell orders at 6⅜ even though the PCX disseminated bid is only 6, and will automatically execute customer buy orders at 6½.

The proposal would also allow the OFTC to designate, for an option issue, that an order will default for manual representation by a floor broker in the trading crowd if the order would be executed at a price that is more than one trading increment away from the PCX market price.[6] Should such a designation be made, for the example above, where the PCX bid is 6 and the competing market's bid is 6⅜, a customer sell order entered on the PCX would default for manual representation because 6⅜ is ore than one trading increment away from the PCX disseminated bid price of 6.[6] But if the PCX bid is 6 and the competing market's bid is 6⅛, a customer sell order on the PCX would be executed at 6⅛ because 6⅛ is only one trading increment away from the PCX disseminated bid of 6.

The proposal would also permit the OFTC to designate, for an option issue, that if the NBBO is crossed (*e.g.*, 6⅛ bid, 6 asked) or locked (*e.g.*, 6 bid, 6 asked), then customer orders to buy or sell the series would default for manual representation in the trading crowd. However, the Exchange is proposing to maintain the flexibility to provide for automatic executions on the Exchange when the NBBO is locked or crossed. Such action may be appropriate, for example, when there is a large influx of electronic orders and a fair and orderly market would be better served by a reduction in the number of orders that default to a firm booth for manual representation in the trading crowd. In such situations, public customers would receive very favorable prices on their orders.

The Exchange believes that implementation of the proposal will provide public investors with better prices on their orders, thus making the Exchange a more competitive marketplace to which order flow providers may send their option orders for execution.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities; to protect investors and the public interest; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and to promote just and equitable principles of trade.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[2] In Amendment No. 1 the Exchange altered the proposed rule language to clarify that exceptions to the rule would be applied on an option issue by option issue basis. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, to Ken Rosen, Attorney, Division of Market Supervision, Commission, dated July 13, 1998 ("Amendment No. 1").

[3] *See* Securities Exchange Act Release No. 27633 (January 18, 1990) 55 FR 2466 (January 24, 1990); Securities Exchange Act Release No. 39970 (May 7, 1998) 63 FR 26662 (May 13, 1998).

[4] *See* PCX Rule 6.87.

[5] The Exchange notes that the Chicago Board Options Exchange proposed a similar feature for its Retail Automatic Execution System (RAES), designated as the "RAES Auto-Step-Up." *See* Securities Exchange Act Release No. 39992 (May 14, 1998) 63 FR 28019 (May 21, 1998); Securities Exchange Act Release No. 40096 (June 16, 1998) 63 FR 34209 (June 23, 1998) (approving feature).

[6] *See* PCX Rule 6.72, which provides that bids and offers above $3 must be expressed in eights of one dollar (*e.g.*, 3⅛) and bids and offers below $3 must be expressed in sixteenths of one dollar (*e.g.*, 1 1/16).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–27 and should be submitted by August 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20556 Filed 7–31–98; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Form Submitted To The Office of Management and Budget For Clearance

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Need and/or use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: July 24, 1998.

Gil Coronado,

Director.

[FR Doc. 98–20569 Filed 7–31–98; 8:45 am]

BILLING CODE 8015–01–M

SOCIAL SECURITY ADMINISTRATION

Finding Regarding the Social Insurance System of the Slovak Republic

AGENCY: Social Security Administration.

ACTION: Notice of Finding Regarding the Social Insurance System of the Slovak Republic.

FINDING: Section 202(t)(1) of the Social Security Act(42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance system which is of general application in such country and which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Programs. Under that authority, the Associate Commissioner for International Programs has approved a finding that the Slovak Republic, as of January 1, 1993, has a social insurance system of general application which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits United States citizens who are not citizens of the Slovak Republic and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of the Slovak Republic regardless of the duration of the absence of these individuals from the Slovak Republic.

Accordingly, it is hereby determined and found that the Slovak Republic has in effect, as of January 1, 1993, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for the Slovak Republic. Before January 1993, the United States did not recognize the Slovak Republic as an independent nation. Czechoslovakia divided into two separate states, the Czech Republic and the Slovak Republic, on January 1, 1993. At that time, the Slovak Republic adopted the Czechoslovak basic law on social insurance which continues to govern the country's social insurance system.

Although the Slovak Republic added several amendments to the old law, these provisions did not affect the determination under section 202(t)(2) of the Social Security Act. In addition, the Slovak Republic considers itself bound by the Diplomatic Notes on reciprocity of payments which were exchanged between the United States and Czechoslovakia in 1968. Since all such agreements are binding on the Slovak Republic by right of succession, the

[7] 17 CFR 200.30–3(a)(12).

1969 addendum to the 1968 Diplomatic Notes is also being honored.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: July 24, 1998.

James A. Kissko,

Associate Commissioner for International Programs.

[FR Doc. 98–20554 Filed 7–31–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Chapter TE covers the Deputy Commissioner for Communications. Notice is given that Chapter TE, the Office of Communications is being amended to reflect the establishment of subordinate components within the Office of External Affairs (TEG) and the abolishment of the Office of National Affairs (TEE).

The changes are as follows:

Section TE.10 *Office of Communications*—(Organization):

Delete:

F. The Office of National Affairs (TEE).

Reletter:

"G" to "F".

F. The Office of External Affairs (TEG).

Establish:

1. The Office of National Communications (TEGA).

2. The Office of Regional Communications and Community Affairs (TEGB).

Section TE.20 *The Office of Communications*—(Functions):

Delete:

F. The Office of National Affairs (TEE) in its entirety.

Reletter:

"G" to "F".

F. The Office of External Affairs (TEG).

Establish:

1. The Office of National Communications (TEGA).

a. Oversees the monitoring of plans, administrative and policy proposals, and work products of other SSA components in headquarters and the regions to assess their impact on institutions, public and private organizations and special interest groups.

b. Initiates short- and long-range projects or assignments of substantial importance to the Office of Communications. The projects are initiated to solve problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

c. Provides leadership in advising agency component management on the interests of groups and organizations and their potential reaction to administrative and policy proposals and work products.

d. Identifies techniques and strategies that assist in implementing SSA's Communication Plan initiatives; analyzes and identifies target markets; plans, promotes, and distributes ideas, products and services to create exchanges that satisfy customer and organizational goals.

e. Plans, directs and implements a program designed to develop and preserve working relationships with a wide variety of national organizations, special interests and advocacy groups in order to secure understanding, cooperation and acceptance of SSA programs, policies and procedures.

f. Provides overall direction in the development of a liaison program with national special interest and advocacy groups through their leaders to elicit their concerns and reactions to SSA initiatives.

2. The Office of Regional Communications and Community Affairs (TEGB).

a. Directs the design and development of SSA's regional external affairs program, including liaison with outside groups and organizations; Federal/State interface; and preparation and dissemination of information through the media.

b. Develops national communication strategies for use in disseminating information through the ten Regional Public Affairs Officers (RPAO) who report to the Office Director. Assures that field office and other personnel in the regions speak with one voice on matters related to public affairs.

c. Serves as SSA liaison to the greater Baltimore community through contacts with community leaders, private businesses and local government agencies and ensuring that their opinions and expectations are relayed to the Agency. Represents SSA on boards of Federal and local agencies, and communicates with the appropriate offices of major businesses, the Mayor, County Executives and the Governor.

d. Develops and implements plans for expansion of a model community relations program which involves White House and Domestic Policy Council issues.

Dated: July 17, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–20555 Filed 7–31–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2864]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2000) Visa Program

ACTION: Notice of registration for the sixth year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 50,000 immigrant visas to be made available in the Diversity Immigrant Visa (DV) category during Fiscal Year 2000. (Note: The Nicaraguan and Central American Relief Act (NCARA) passed by Congress in November 1997 stipulates that beginning with DV–99, and for as long as necessary, 5,000 annually-allocated diversity visas will be made available for use under the NCARA Program). This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)). The Department published regulations related to this Notice in the **Federal Register** on March 31, 1994 (59 FR 15303) and on January 22, 1996 (61 FR1523).

Entry Procedures for the 50,000 Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2000.

Entries for the DV–2000 mail-in period must be received between noon (Eastern time) on Thursday, October 1, 1998 and noon (Eastern time) on Saturday, October 31, 1998. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries sent to an incorrect address will also be disqualified.

How Visas Are Apportioned

Visas are apportioned among six geographic regions with a greater number of visas going to regions with

lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. No one country can receive more than 3,500 diversity visas in any one year. For DV–2000, natives of the following are NOT ELIGIBLE to apply:

CANADA
CHINA (mainland and Taiwan, except Hong Kong S.A.R.)
COLOMBIA
DOMINICAN REPUBLIC
EL SALVADOR
HAITI
INDIA
JAMAICA
MEXICO
PHILIPPINES
POLAND
SOUTH KOREA
UNITED KINGDOM (except Northern Ireland) and its dependent territories
VIETNAM

Requirements

To enter, an applicant must be able to claim nativity in an eligible country, AND must meet either the education or training requirement of the DV program. Nativity in most cases is determined by the applicant's place of birth. However, if a person was born in an ineligible country but his/her spouse was born in an eligible country, such person can claim the spouse's country of birth rather than his/her own. Also, if a person was born in an ineligible country, but neither of his/her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in one of the parents' country of birth. Education or Training: To enter, an applicant MUST have EITHER a high school education or its equivalent, defined in the U.S. as successful completion of a 12-year course of elementary and secondary education; OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. U.S. Department of Labor definitions will apply. If a person does not meet these requirements, he/she SHOULD NOT submit an entry to the DV program.

Procedures for Submitting an Entry Form

Only ONE entry form may be submitted by or for each applicant during the registration period. Submission of more than one entry will disqualify the person. The applicant must personally sign the entry, preferably in his/her native alphabet. Failure of the applicant to personally sign his/her own entry will result in disqualification.

Completing the Entry Form

There is no specific format for the entry. Simply use a plain sheet of paper and type or clearly print in the English alphabet (preferably in the following order): Failure to provide ALL of this information will disqualify the applicant.

FULL NAME, with the last (surname/family) name italicized.

EXAMPLES: *Public,* Sara Jane (or) *Lopez,* Juan Antonio.

2. DATE AND PLACE OF BIRTH:

Date: Day, Month, Year EXAMPLE: November 15, 1961.

Place: City/Town, District/County/Province, Country EXAMPLE: Munich, Bavaria, Germany.

The name of the country should be that which is currently in use for the place where the applicant was born (Slovenia, rather than Yugoslavia; Kazakstan rather than Soviet Union, for example).

3. THE APPLICANT'S NATIVE COUNTRY IF DIFFERENT FROM COUNTRY OF BIRTH.

If the applicant is claiming nativity in a country other than his/her place of birth, this must be clearly indicated on the entry. This information must match with what is put on the upper left corner of the entry envelope. (See "MAILING THE ENTRY" below.) If an applicant is claiming nativity through spouse or parent, please indicate this on the entry. (See "Requirements" section for more information on this item.

4. NAME, DATE AND PLACE OF BIRTH OF THE APPLICANT'S SPOUSE AND CHILDREN (IF ANY).

5. FULL MAILING ADDRESS.

This must be clear and complete, as any communications will be sent there. A telephone number is optional, but useful.

6. PHOTOGRAPH. Attach a recent, preferably less than 6 months old, photograph of the applicant, 1.5 inches (37 mm) square in size, with the applicant's name *printed* on the back. The photograph (not a photocopy) should be attached to the entry with clear tape—DO NOT use staples or paperclips, which can jam the mail processing equipment.

7. SIGNATURE: Failure to personally sign the entry will disqualify the applicant.

Mailing the Entry

Submit the entry by regular or air mail to the address matching the region of the applicant's country of nativity. Entries sent by express or priority mail, fax, hand, messenger, or any means requiring receipts or special handling will not be processed.

The envelope must between 6 and 10 inches (15 to 25 cm) long and 3½ and 4½ inches (9 to 11 cm) wide. Postcards are NOT acceptable, nor are envelopes inside express or oversized mail packets. In the upper left hand corner of the envelope the applicant must show his/her country of nativity, followed by the applicant's name and full return address. The applicant must provide both the country of nativity and the country of the address, even if both are the same. Failure to provide this information will disqualify the entry. The mailing address for all entries is the same EXCEPT for the ZIP (POSTAL) CODE. The address is: DV–2000 Program, National Visa Center, Portsmouth NH (ZIP CODE as appropriate. See below.) U.S.A.

The Zip Codes are:

ASIA—00210
SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN—00211
EUROPE—00212
AFRICA—00213
OCEANIA—00214
NORTH AMERICA—00215

For the DV Program, the regions are divided as follows:

(1) ASIA: *ZIP CODE: 00210* (extends from Israel to the northern Pacific islands, and includes Indonesia):

AFGHANISTAN
BAHRAIN
BANGLADESH
BHUTAN
BRUNEI
BURMA
CAMBODIA
HONG KONG S.A.R.
INDONESIA
IRAN
IRAQ
ISRAEL
JAPAN
JORDAN
NORTH KOREA
KUWAIT
LAOS
LEBANON
MALAYSIA
MALDIVES
MONGOLIA
NEPAL
OMAN
PAKISTAN
QATAR
SAUDI ARABIA
SINGAPORE
SRI LANKA
SYRIA
THAILAND
UNITED ARAB EMIRATES
YEMEN

In Asia CHINA-mainland born and Taiwan born, INDIA, PHILIPPINES, SOUTH KOREA, and VIETNAM DO

NOT QUALIFY for this year's diversity program. HONG KONG S.A.R. DOES QUALIFY. MACAU WILL BECOME INELIGIBLE ON DECEMBER 20, 1999. All DV–2000 visas for Macau-born selected entries must be issued by that date.

(2) SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN: ZIP CODE: 00211 (extends from Central America (Guatemala) and the Caribbean nations to Chile.)

ANTIGUA & BARBUDA
ARGENTINA
ARGENTINA
BARBADOS
BELIZE
BOLIVIA
BRAZIL
CHILE
COSTA RICA
CUBA
DOMINICA
ECUADOR
GRENADA
GUATEMALA
GUYANA
HONDURAS
NICARAGUA
PANAMA
PARAGUAY
PERU
ST. KITTS & NEVIS
ST. LUCIA
ST. VINCENT & THE GRENADINES
SURINAME
TRINIDAD & TOBAGO
URUGUAY
VENEZUELA

In South America COLOMBIA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, JAMAICA, AND MEXICO DO NOT QUALIFY for this year's Diversity Program.

(3) EUROPE : ZIP CODE: 00212 (Extends from Greenland to Russia, and includes all countries of the former USSR):

ALBANIA
ANDORRA
ARMENIA
AUSTRIA
AZERBAIJAN
BELARUS
BELGIUM
BOSNIA & HERZEGOVINA
BULGARIA
CROATIA
CYPRUS
CZECH REPUBLIC
DENMARK*
ESTONIA
FINLAND
FRANCE*
GEORGIA
GERMANY
GREECE
HUNGARY
ICELAND
IRELAND
ITALY
KAZAKSTAN
KYRGYZSTAN
LATVIA
LICHTENSTEIN
LITHUANIA
LUXEMBOURG
MACEDONIA, THE FORMER YUGOSLAV REPUBLIC OF
MALTA
MOLDOVA
MONACO
MONTENEGRO
NETHERLANDS*
NORTHERN IRELAND
NORWAY
PORTUGAL* **
ROMANIA
RUSSIA
SAN MARINO
SERBIA
SLOVAKIA
SLOVENIA
SPAIN
SWEDEN
SWITZERLAND
TAJIKISTAN
TURKEY
TURKMENISTAN
UKRAINE
UZBEKISTAN
VATICAN CITY

NB: In Europe GREAT BRITAIN and POLAND DO NOT QUALIFY for this year's diversity program. GREAT BRITAIN (UNITED KINGDOM) includes the following dependent areas: ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, FAULKLAND ISLANDS, GIBRALTAR, MONTSERRAT, PITCAIRN, ST. HELENA, TURKS AND CAICOS ISLANDS. Note that for purposes of the Diversity Program only, Northern Ireland is treated separately; NORTHERN IRELAND DOES QUALIFY and is listed among the qualifying areas.

* Includes components and dependent areas overseas.

** Macau-born selected registrants must receive their visas by December 20, 1999 in order to qualify for DV–2000.

(4) AFRICA: ZIP CODE: 00213 (includes all countries on the African continent and adjacent islands):

ALGERIA
ANGOLA
BENIN
BOTSWANA
BURKINA FASO
BURUNDI
CAMEROON
CAPE VERDE
CENTRAL AFRICAN REPUBLIC
CHAD
COMOROS
CONGO
CONGO, DEMOCRATIC REPUBLIC OF THE
COTE D'IVOIRE (IVORY COAST)
DJIBOUTI
EGYPT
EQUATORIAL GUINEA
ERITREA
ETHIOPIA
GABON
GAMBIA, THE
GHANA
GUINEA
GUINEA-BISSAU
KENYA
LESOTHO
LIBERIA
LIBYA
MADAGASCAR
MALAWI
MALI
MAURITANIA
MAURITIUS
MOROCCO
MOZAMBIQUE
NAMIBIA
NIGER
NIGERIA
RWANDA
SAO TOME & PRINCIPE
SENEGAL
SEYCHELLES
SIERRA LEONE
SOMALIA
SOUTH AFRICA
SUDAN
SWAZILAND
TANZANIA
TOGO
TUNISIA
UGANDA
ZAMBIA
ZIMBABWE

(5) OCEANIA: ZIP CODE: 00214 (includes Australia, New Zealand, Papua New Guinea and all countries and islands of the South Pacific):

AUSTRALIA*
FIJI
KIRIBATI
MARSHALL ISLANDS
MICRONESIA, FEDERATED STATES OF
NAURU
NEW ZEALAND*
PALAU
PAPUA NEW GUINEA
SOLOMON ISLANDS
TONGA
TUVALU
VANUATU

WESTERN SAMOA

* Includes components and dependent areas overseas.

(6) NORTH AMERICA: ZIP CODE: 00215 (includes the Bahamas):

BAHAMAS, THE

(In North America, CANADA DOES NOT QUALIFY for this year's Diversity Program.)

Applicants must meet ALL eligibility requirements under the U.S. law in order to be issued visas. Processing of applications and issuance of diversity visas to successful applicants and their eligible family members MUST occur by September 30, 2000. Family members may not obtain diversity visas to follow to join the applicant in the U.S. after this date.

IMPORTANT NOTICE: There is NO initial fee, other than postage required to enter the DV–2000 program. The use of an outside intermediary or assistance to prepare a DV–2000 entry is entirely at the applicant's discretion. Qualified entries received directly from applicants or through intermediaries have equal chances of being selected by computer. There is no advantage to mailing early, or mailing from any particular locale. Every application received during the mail-in period will have an equal random chance of being selected within its region. However, more than one application per person will disqualify the person from registration.

Selection of Winners

The selection of winners is made at random and no outside service can legitimately improve an applicant's chances of being chosen or guarantee that an entry will win. Any service that claims it can improve an applicant's odds is promising something it cannot lawfully deliver.

Persons who think they have been cheated by a U.S. company or consultant in connection with the Diversity Visa Lottery may wish to contact their local consumer affairs office or the National Fraud Information Center at 1–800–876–7060 or 1–202–835–0159 from 9:00 am to 5:30 p.m. (EST), Monday through Friday or 1–202–835–0159; Internet address: http://www/fraud.org. The U.S. Department of State does not investigate consumer complaints against businesses in the United States.

Notifying Winners

Only successful entrants will be notified. They will be notified by mail between April and July of 1999 at the address listed on their entry. Winners will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all 50,000 visas have been issued or on September 30, 1999, whichever is sooner, the DV Program for Fiscal Year 2000 will end.

Obtaining Instructions on Entering the DV Lottery

The above information on entering the DV–2000 Program is also available 24 hours a day to persons within the United States by calling the Department of State's Visa Lottery Information Center at 1–900–884–8840 at a flat rate of $5.10 per call. Callers will first hear some basic information about the DV Lottery and will be requested to provide their name and address so that printed instructions can be mailed to them. Applicants overseas may continue to contact the nearest U.S. Embassy or Consulate for instructions on the DV Lottery.

Dated: July 29, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–20637 Filed 7–31–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–15]

Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain partitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 24, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 27, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28672
Petitioner: Alaska Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.709(b)(3)
Description of Relief Sought: To permit Alaska Airlines' certificated mechanics to train flight operations instructors who would then train flight crewmembers in the installation and removal procedures for medevac stretchers in Alaska Airlines' aircraft

Docket No.: 29210
Petitioner: Simulator Training, Inc.
Sections of the FAR Affected: 14 CFR 63.37(b)(1), (2), (3), (4), and (6) and paragraphs (a)(3)(i), (iv)(a) and (v) of appendix C to part 63
Description of Relief Sought: To permit Simulator Training, Inc., to allow an applicant for the initial Federal Aviation Administration (FAA) flight engineer (FE) certificate, who does not

hold an FAA commercial pilot certificate with an instrument rating, to satisfy the FE certificate in-flight aeronautical experience requirement by completing a structured FAA-approved line-oriented observation program (LOOP) in lieu of the flight instruction time required in an airplane. The LOOP would be conducted only following an FE applicant's successful completion of flight simulator, flight training device, and line-oriented flight training

Docket No.: 29250
Petitioner: True North, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit True North, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 29274
Petitioner: Airborne Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Airborne, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 29233
Petitioner: Elite Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Elite Aviation Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 29276
Petitioner: Excelaire Services, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Excelaire Services, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 29251
Petitioner: Alamo Jet, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Alamo Jet, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 29273
Petitioner: Air Response, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Air Response, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Docket No.: 22690
Petitioner: The Boeing Company
Sections of the FAR Affected: 14 CFR 61.57(c)(3)(ii) and (d)(2)(ii)
Description of Relief Sought: To permit Boeing and pilots employed as crewmenbers for Boeing to continue to use any type of Boeing airplane or a Level B, C, or D simulator to meet the takeoff and landing regency of experience requirements of § 61.57

Dispositions of Petitions

Docket No.: 581
Petitioner: Department of the Air Force
Sections of the FAR Affected: 14 CFR 91.159
Description of Relief Sought/ Disposition: To permit the Air Force to conduct hurricane reconnaissance flights without maintaining the appropriate cruising altitudes as prescribed by the Federal Aviation Regulations governing operations for flights conducted under visual flight rules. *GRANT, July 13, 1998, Exemption No. 131H*

Docket No.: 29237
Petitioner: Mr. Ernest Maresca
Sections of the FAR Affected: 14 CFR 121.383
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *DENIAL, July 9, 19998, Exemption No. 6797*

Docket No.: 29182
Petitioner: Continental Express
Sections of the FAR Affected: 14 CFR 121.434 (c)(1)(ii)
Description of Relief Sought/ Dispositions: To permit Continental Express to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC while the PIC is performing prescribed duties during at least one flight that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424, subject to certain conditions and limitations. *GRANT, July 16, 1998, Exemption No. 6798*

Docket No.: 29172
Petitioner: Heli-Jet Corporation
Sections of the FAR Affected: 14 CFR 135.152(a)
Description of Relief Sought/ Disposition: To permit Heli-Jet to operate its five Bell 212 helicopters under part 135 without each of those helicopters being equipped with an approved DFDR installed, subject to certain conditions and limitations. *GRANT, July 2, 1998, Exemption No. 6796*

Docket No.: 28975
Petitioner: AOG, Inc.
Sections of the FAR Affected: 14 CFR 145.37 (b)
Description of Relief Sought/ Disposition: To permit AOG, Inc., to perform maintenance on flexible and integral fuel cells at its customer's facilities and maintenance on flexible fuel cells at the petitioner's facility without providing suitable permanent housing for at least one of the heaviest aircraft for which it is rated. *DENIAL June 11, 1998, Exemption No. 6795*

Docket No.: 29211
Petitioner: United Parcel Service
Sections of the FAR Affected: 14 CFR 61.157 and 61.158
Description of Relief Sought/ Disposition: To permit UPS and persons who contract for services from UPS to use FAA-approved flight simulators to meet certain flight experience requirements of part 61 without UPS holding a 14 CFR part 142 certificate. *GRANT, July 10, 1998, Exemption No. 6794*

Docket No.: 26582
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 61.3(a) and (c), 63.3(a), and 121.383(a)(2)
Description of Relief Sought/ Disposition: To permit an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system. *GRANT, July 10, 1998, Exemption No. 5487C*

Docket No.: 27354
Petitioner: Mr. August J. Blake, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to conduct aerial application of insecticide materials from a Piper PA–23–250 aircraft not equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operating over a congested area. *GRANT, July 17, 1998, Exemption No. 5676C*

Docket No.: 29263
Petitioner: Mr. Edward E. Moon
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after

reaching his 60th birthday. *DENIAL, July 22, 1998, Exemption No. 6799*

Docket No.: 144CE
Petitioner: Sino Swearingen Aircraft Company
Sections of the FAR Affected: 14 CFR 23.25; 23.29; 23.235; 23.471; 23.473; 23.477; 23.479; 23.481; 23.483; 23.485; 23.493; 23.499; 23.723; 23.725; 23.726; 23.727; 23.959; 23.1583(c) (1) and (2), Appendix C23.1, Appendix D23.1, through Amendment 23–52
Description of Relief Sought/ Disposition: To allow type certification of the Sino Swearingen SJ30–2 390 airplane without an exact showing of compliance 14 CFR part 23 requirements, subject to certain conditions and limitations. *GRANT, June 29, 1998, Exemption No. 6791*

Docket No.: 29041
Petitioner: Estumkeda, Ltd
Sections of the FAR Affected: 14 CFR 47.65
Description of Relief Sought/ Disposition: To permit the petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements. *DENIAL, June 23, 1998, Exemption No. 6793*

[FR Doc. 98–20632 Filed 7–31–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held August 19, 1998, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, in the Bessie Coleman Conference Center, Room 2AB.

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report and Recommendations from the Free Flight Select Committee on a Restructured Flight 2000 Program; (4) Report on the status and plans for the GPS/WAAS Sole Means Risk Assessment; (5) Other Business; (6) Date and Location of Next Meeting; (7) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile), or dclarke@rtca.org (e-mail). Members of the public may present a written statement at any time.

Issued in Washington, DC, on July 27, 1998.

Janice L. Peters,
Designated Official.

[FR Doc. 98–20631 Filed 7–31–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4075]

General Motors; Grant of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, determined that some of its 1997 model Chevrolet Corvettes failed to meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 124, "Accelerator Control Systems," and filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." GM also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on September 16, 1997, and an opportunity afforded for comment (Docket No. 97–58, Notice 1; 62 FR 48708).

Paragraph S5.2 of FMVSS No. 124 requires the throttle to return to idle position within the time limits specified in S5.3, whenever any component of the accelerator control system is disconnected or severed at a single point. S5.3 requires return to idle within 3 seconds for any vehicle exposed to temperatures of 0 degrees to −40 degrees F (−18 degrees to −40 degrees C). During the 1997 model year, GM produced 9,500 Chevrolet Corvettes, which will not comply with FMVSS No. 124 because, when tested with one return spring removed at temperatures below −26 degrees F, their accelerator pedal module assembly does not move quickly enough to cause the throttle to return to the idle position within 3 seconds.

GM described the noncompliance and supported its application with the following arguments:

The Chevrolet Corvette employs an electronic throttle control which adjusts the throttle position based on input from the accelerator pedal position. The accelerator pedal is equipped with three springs, any two of which are capable of returning the pedal to rest position. Once this occurs, the throttle returns to idle position approximately 0.2 seconds later. A test run in early May, however, raised a question about the ability of the pedal assembly to return at low temperatures.

GM believes that the failure of the pedal assembly to meet the throttle closing time requirements of FMVSS No. 124 at extremely low temperatures is inconsequential to motor vehicle safety for the following reasons.

1. *Vehicle Controllability*—In the unlikely event that all of the prerequisites necessary for the noncompliance occurred—that is, a return spring was disconnected or severed on a pedal assembly with residual oil, and the vehicle soaked at ambient temperatures below −32 degrees C—the vehicle would continue to be controllable both by the service brakes and as a result of the Brake Torque Management System.

2. *Reliability of the Accelerator Springs*—The condition which is the subject of GM's noncompliance decision can only occur if one of the return springs is severed or disconnected. The springs in the Corvette pedal assembly, however, have extremely high reliability and are not likely to fail in the real world.

3. *Condition Requires Extreme Temperatures; Pedal Assembly Warms Quickly*—As mentioned above, the root cause of the noncompliance condition is the residual oil on the pedal assemblies congealing below −32 degrees C. Testing at temperatures above that level resulted in full compliance with the FMVSS No. 124 time limits for all pedal assemblies tested. Therefore, the ambient temperatures required for the possibility of this noncompliance to exist are severe. Even if a vehicle with a disconnected return spring soaked under the necessary harsh conditions for a sufficient time to congeal the residual oil, the potential for the noncompliance to occur would exist for only a short time, because the pedal assembly would warm up quickly with activation of the vehicle heating system.

4. *Condition is Self-correcting*—Durability testing indicates that the condition improves with wear. Bench testing was conducted on five production pedal assemblies with poor

return times. The pedals on these assemblies were cycled at room temperature. Since the vast majority of driving is done with a only limited pedal movement, each cycle consisted of a 10 per cent application of pedal travel. Every 2,000 cycles the pedal return at −40 degrees F (−40 degrees C) was checked. The results, shown in Figure 5 [of the application], indicate that most pedals will return within the specified time limit after 10,000 cycles, and all pedals will easily meet the time limits after 15,000 cycles.

5. *Warranty Data*—GM has reviewed recent warranty data for the 1997 Corvette, as well as complaint data. We are unaware of any data suggesting the subject condition is a real world safety issue.

No comments were received on the application.

FMVSS No. 124 requires that the accelerator control system return to the idle position in the event of a single point disconnection or severance of the system in no more than three seconds after the pedal is released when tested at temperatures from −18 degrees C (0 degrees F) to −40 degrees C (−40 degrees F also). If the severance is of one of the three pedal return springs inside the passenger compartment, full return will take longer than three seconds when the temperature of the passenger compartment is below −32 degrees C (−26 degrees F).

In this instance, there are many mitigating circumstances that render the noncompliance inconsequential to safety. First, the noncompliance does not result in the throttle sticking open at extreme low temperatures. It merely closes more slowly as a result of congealed lubricant on a new pedal assembly with tightly fitting parts. (GM determined that the lubricant was not necessary for long term durability or corrosion protection and discontinued its use to avoid further non-compliances.) Even with one return spring removed, the accelerator pedal returns at least 85 percent of full travel within the specified time. The worst consequence is merely the duration of an elevated idle speed for about six seconds, and the vehicle is subject to this condition only for periods when the temperature in the passenger compartment is below −26 degrees F. Second, the pedal assemblies loosen up enough in about 2000 miles of normal driving to correct the noncompliance. While pedal assemblies with all three return springs satisfy the performance requirements of FMVSS No. 124 under all temperature conditions regardless of congealed lubrication or tight fit of parts, even those with one spring removed will satisfy the standard after about 2,000 miles of use despite the congealed lubrication at −40 degrees F. It is unlikely that many of the first 9,500 1997 Corvettes, which had lubricated pedal assemblies, have not yet corrected themselves. Third, it is extremely unlikely that a pedal return spring would fail during the first 2000 miles of driving. The springs are designed for an infinite fatigue life, and they are mounted in a protected area. Also, they are direct acting compression springs not dependent upon connections.

In consideration of the foregoing, it is hereby found that General Motors Corporation has met its burden of persuasion that the noncompliance discussed herein is inconsequential to motor vehicle safety, and its application is granted.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 28, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–20654 Filed 7–31–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3146]

Toyota Technical Center, U.S.A., Inc., Grant of Application for Decision of Inconsequential Noncompliance

Toyota Technical Center, U.S.A., Inc. (Toyota) of Washington, DC on behalf of the Toyota Motor Manufacturing, Kentucky, Inc. (TMMK) has determined that some 1998 model Toyota Sienna vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Toyota has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on December 10, 1997, in the **Federal Register** (62 FR 65127). NHTSA received no comments on this application during the 30-day comment period.

In FMVSS No. 120, paragraph S5.3 states that the recommended cold inflation pressure for the designated tire must appear either on the certification label or a tire information label.

Toyota produced 4,358 vehicles from May 12, 1997 through October 13, 1997 which do not meet the labeling requirements stated in the standard. The recommended 240KPa (35 PSI) cold inflation pressure for the designated tire (P205/70R15) is misstated on the certification label as 220 KPa (33 PSI).

Toyota supported its application for inconsequential noncompliance with the following three statements:

1. On these vehicles, Toyota has applied a voluntary tire information label, on which the correct recommended pressure, "240 KPa/35 PSI" (at maximum loaded vehicle weight) appears, [located at] the door opening portion of the driver side B-pillar. Toyota believes that owners will refer to this tire information label rather than the certification label, making the possibility of confusion due to the different tire inflation pressures quite low.

2. The vehicle owner's manual also indicates the correct recommended inflation pressure.

3. The Maximum Loaded Vehicle Weight (MLVW)—the weight of the heaviest vehicle of the car line with full accessories, passengers in all designated seating positions, and maximum cargo and luggage load—of the Toyota Sienna is 2,365 kg. In such [a] fully-loaded condition, the rear axle is loaded more than the front [axle], resulting in a rear axle load of 1,204 kg or 602 kg on each rear tire. The load limit of the subject P205/70R15 tire inflated to 220 KPa (33 PSI) is 650 kg. Therefore, there still exists a 48 kg margin under the MLVW. Since the Sienna is a passenger vehicle—as opposed to a cargo vehicle—it is unlikely that the owner will overload it.

The reason for requiring the maximum permissible tire inflation pressure to be provided on a permanent label in the vehicle is to give the vehicle user the necessary information to minimize the likelihood that the tires will be overloaded or overinflated. In this case, the too-low maximum inflation pressure shown on the vehicle label raises concerns that the tires will be overloaded when the vehicle is fully loaded. However, NHTSA believes Toyota has provided sound reasons to conclude that these concerns are unlikely in the circumstances of this application. First, the vans have correct maximum inflation pressures shown on a tire information label on the vehicle and in the owner's manual, but a too-low maximum inflation pressure on the certification label. Second, and most

significantly, even if the tires are inflated to the too-low maximum inflation pressure shown on the vehicle certification label, the tires would still not be overloaded.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. (49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: July 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–20629 Filed 7–31–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automated Commercial System Surety Data Element Enhancements

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the enhancement of Surety Data Elements collected by the Customs Automated Commercial System (ACS) by the addition of two new data elements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 2, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW., Room 3.2C Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426; or to Mr. Byron Kissane, Room 5.2C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–0380.

SUPPLEMENTARY INFORMATION: At the request of the American Surety Trade Association, the Customs Service proposes to add two additional data elements to the Automated Broker Interface (ABI) module of ACS. These new data elements are bond amount and producer account number. The new data elements, which are each ten characters in length, shall be captured in the ABI environment only and will not be entered on-line by Customs field personnel for non-ABI entry summary transactions. Additionally, these new data elements will be added to the Automated Surety Interface download. This will facilitate the surety accounting procedures. Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry and Entry Summary (Electronic Record).

OMB Number: 1515–0065.

Form Number: Customs Form 7501 and Electronic Record A–40.

Abstract: Customs Form 7501 and Electronic Record A–40 are used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

Current Actions: This change will add two data elements to the electronic record only. There are no other changes to the information collection.

Type of Review: Extension (with change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 50,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: July 24, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–20624 Filed 7–31–98; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 63, No. 148
Monday, August 3, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket Nos. FV97-997-1 FIR and FV97-998-1-FIR]

Peanuts Marketed in the United States; Relaxation of Handling Regulations

Correction

In rule document 98–16259 beginning on page 33237, in the issue of Thursday, June 18, 1998, make the following correction:

On page 33243, in the table, under the heading "Sound split and broken kernels", in the first line "300 %" should read "3.00 %".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–8185–06]

RIN 0694–AB60

Additions to Entity List: Russian Entities

Correction

In rule document 98–20272, beginning on page 40363, in the issue of Wednesday, July 29, 1998, make the following correction.

§ 744.10 [Corrected]

On page 40364, in the third column, in § 744.10, under Supplement No. 4, in the 11th line, "Garfit" should read "Grafit".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–42]

Revision of Class E Airspace; Dallas–Fort Worth, TX

Correction

In rule document 98–19421, beginning on page 39233, in the issue of Wednesday, July 22, 1998, make the following corrections.

§ 71.1 [Corrected]

1. On page 39234, in the the second column, under **ASW TX E5 Dallas–Fort Worth, TX [Revised]**, in the 21st line, "Celburne" should read "Cleburne".

2. On the same page in the third column, in the ninth line, "each" should read "east".

3. On the same page in the same column, in the 33rd line, "bering" should read "bearing".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-29]

Establishment of Class E Airspace; Beaver Dam, WI

Correction

In rule document 98–19851, beginning on page 39707 in the issue of Friday July 24, 1998, make the following correction.

71.1 [Corrected]

On page 39708, in the first column, under **AGL WI E5 Beaver Dam, WI [New]** the coordinates should read:

(lat. 43° 26′ 45″N., long. 88° 48′ 36″W.)

BILLING CODE 1505-01-D

federal register

Monday
August 3, 1998

Part II

Environmental Protection Agency

40 CFR Part 52

Promulgation of Federal Implementation Plan for Arizona; Phoenix PM-10 Moderate Area; Disapproval of State Implementation Plan for Arizona; Phoenix PM–10 Moderate Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6131–6]

RIN 2060–ZA02

Promulgation of Federal Implementation Plan for Arizona—Phoenix PM–10 Moderate Area; Disapproval of State Implementation Plan for Arizona—Phoenix PM–10 Moderate Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or "the Act"), EPA is today promulgating a federal implementation plan (FIP) to address the moderate area PM–10 requirements for the Phoenix PM–10 nonattainment area. Specifically, for both the annual and 24-hour PM–10 standards, EPA is promulgating a demonstration that reasonably available control measures (RACM) will be implemented as soon as possible, a demonstration that it is impracticable for the area to attain the standards by the statutory attainment deadline and a demonstration that reasonable further progress (RFP) is being met.

As part of the FIP, EPA is promulgating a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads, and is also promulgating an enforceable commitment to ensure that RACM for agricultural sources will be proposed by September 1999, finalized by April 2000 and implemented by June 2000.

In addition, EPA is today finalizing its disapproval of the Arizona moderate area plan's RACM, RFP and impracticability, demonstrations because those demonstrations do not adequately address the Act's moderate area PM–10 requirements.

EPA recently established a new standard for PM–2.5 and also revised the PM–10 standards; however, today's action does not address those standards.

EFFECTIVE DATES: The FIP and SIP actions in this document are effective on September 2, 1998.

ADDRESSES: A copy of the docket no. A–09–98, containing material relevant to EPA's proposed and final actions, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, California 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket no. A–09–98 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217, and at the EPA Air Docket Section, Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7549.

FOR FURTHER INFORMATION CONTACT: For questions and issues regarding the final measure for agricultural fields and aprons contact John Ungvarsky (415) 744–1286; for questions and issues regarding the final rule for unpaved parking lots, unpaved roads and vacant lots contact Karen Irwin (415) 744–1903; and for other general FIP and SIP questions and issues contact Doris Lo (415) 744–1287.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Background

The Phoenix area violates both the annual and 24-hour national air quality standards for particulate matter with diameters of 10 microns or less (PM–10). Particulate matter affects the respiratory system and can cause damage to lung tissue and premature death. The elderly, children, and people with chronic lung disease, influenza, or asthma are especially sensitive to high levels of particulate matter. EPA recently established a new standard for particulate matter with diameters of 2.5 microns or less and revised the PM–10 standards. However, EPA also retained the pre-existing PM–10 standards for a limited amount of time. Today's action only addresses those pre-existing PM–10 standards.

The primary cause of the PM–10 problem in the Phoenix area is dust on paved roads kicked up by vehicle traffic, and windblown dust from construction sites, earth moving operations, unpaved parking lots and roads, disturbed vacant lots, agricultural fields and aprons, and other disturbed areas.

When an area violates an air quality standard, the Clean Air Act (CAA) requires that the area be designated as nonattainment for that pollutant. Phoenix was originally designated and classified as a moderate nonattainment area for particulate matter, and Arizona was required to develop a plan that put into place a basic set of control measures. These measures did not adequately control the particulate pollution problem. When the area failed to attain the standards in 1994 it was reclassified as a serious nonattainment area, and the State is now required to develop a plan with more comprehensive control measures.

Despite the fact that the State is now working on its serious area plan, EPA is under court order, as a result of a lawsuit by the Arizona Center for Law in the Public Interest (ACLPI), to develop a moderate area federal implementation plan (FIP) for the Maricopa area. EPA is required to prepare this FIP because the State does not have an approved moderate area plan. Under the court order, EPA was required to issue the FIP by July 18, 1998.

In its FIP proposal (63 FR 15920; April 1, 1998), EPA determined that not all the basic controls on sources contributing to violations of the particulate standards were in place. While the State had implemented a

number of measures, including controls on construction and earth moving operations, there remained a need for additional emissions reductions. Having considered its authority and resource constraints, EPA proposed two measures in that rulemaking for the control of dust from unpaved roads, parking lots, and vacant lots and agricultural fields and aprons. Specifically, EPA proposed a fugitive dust rule and an enforceable commitment in regulatory form to implement control measures for agricultural PM–10 sources by June 2000. These measures will contribute to the eventual attainment of both the annual and 24-hour PM–10 standards. EPA received comments from the public on the FIP proposal and has made changes to the proposed FIP rule for fugitive dust sources that it is finalizing today.

The State now intends to submit its serious area particulate plan in December of 1998. If the plan includes control measures for the sources covered by the FIP and those measures are approved by EPA, the Agency will be able to withdraw the final FIP measures. EPA will continue working with the appropriate State and local agencies, as well as the agricultural community and the cities in the metropolitan area, to replace the FIP measures with State measures. EPA believes that clean air is likely to be achieved faster, and in greater harmony with local economic and community goals, if its role as a backstop is minimized by effective State and local actions. Because of the willingness of the State and local communities to identify and pursue solutions to their air quality problems, as evidenced by the Governor's Air Quality Strategies Task Force and the recently adopted Air Quality Measures Bill (SB 1427), EPA expects successful State and local action.

B. Public Involvement in the FIP Process

On April 16, 1998, EPA held a workshop and public hearing on its proposal in Phoenix. The workshop provided an opportunity for EPA to explain to the community why the Agency is imposing this FIP, what measures are included in the FIP, and who will potentially be impacted by the FIP. The workshop also provided the community the opportunity to ask questions of EPA, and to make suggestions with respect to its proposed action. Following the workshop, EPA took formal testimony at a public hearing on the FIP proposal. In addition to the hearing testimony, EPA received 18 comment letters on the proposed FIP.

The comments generally fell into two categories. Environmental and health organizations supported the dust rule, but commented that the FIP did not impose enough PM–10 controls for other source categories in the Phoenix PM–10 nonattainment area. On the other hand, several of the local jurisdictions and regulatory agencies commented that the FIP-imposed controls were too stringent. EPA evaluated all the comments, did additional fieldwork and technical analysis, and revised the FIP accordingly.

C. The Final FIP

In response to public comments, EPA revised the fugitive dust rule, but did not change the enforceable commitment for agriculture.

Fugitive Dust Rule

Although EPA has approved a Maricopa County rule (MCESD Rule 310) which requires controls for unpaved roads, unpaved parking lots and vacant lots, the County is not adequately enforcing its rule for these three sources due to lack of resources. Consequently, EPA promulgated a FIP rule for these sources. EPA's fugitive dust rule is intended to establish basic levels of control that are substantially equivalent to those established by Maricopa County Rule 310. The primary difference between the FIP rule and Rule 310 is the greater specificity and detail regarding which control measures are appropriate for which sources. For each source category, the FIP rule includes three to four control measure options and allows alternative control measures.

In order to effectively implement the FIP rule, EPA is providing additional inspection resources to the Maricopa County Environmental Services Department (MCESD) through a CAA section 105 grant. EPA will rely on these resources to assist the Agency in verifying compliance with the FIP rule. In order to remove the FIP requirement, MCESD will have to submit to EPA a credible implementation strategy for Rule 310, including the provision of its own additional inspection and enforcement resources that are not provided under an EPA grant. It is EPA's understanding that MCESD is trying to obtain these additional resources. EPA will continue working with the County to assist that effort so that the FIP rule can eventually be rescinded.

Until the FIP is rescinded, however, EPA intends to work cooperatively with MCESD to inform the regulated community of the FIP rule's requirements. EPA plans to provide compliance assistance through informational brochures, toll free numbers and internet access. These tools will help EPA disseminate as much information as possible to the public. As new information becomes available, including alternative control measures that are being developed by regulated parties to comply with the rule, EPA will collaboratively work with these regulated parties to provide information to the public.

EPA would like to clarify the Agency's position with respect to a major issue that was raised by several commenters on the proposed fugitive dust rule. These commenters believe that the FIP rule requires a more stringent level of control than Maricopa County Rule 310 and that, consequently, EPA is imposing an additional economic burden on local municipalities, and others impacted by the FIP rule. EPA believes that the FIP rule does not impose any additional compliance burden beyond that required by Rule 310. Because EPA will fully enforce the FIP rule, which has not occurred under Rule 310, regulated entities who have not been in compliance with existing requirements to date will need to spend the resources necessary to come into compliance. This is not an additional economic burden, but rather one that some members of the regulated community have deferred. However, should EPA receive new information in the future that indicates that the FIP controls are more stringent than those required by the Clean Air Act, the Agency will propose appropriate revisions to the FIP.

Enforceable Commitment for Agriculture

As mentioned above, EPA has approved Maricopa County Rule 310 which requires control of fugitive dust sources, including agricultural sources. However, MCESD is not ensuring adequate enforcement of the rule for agricultural fields and aprons. Therefore, EPA is promulgating an enforceable commitment in regulatory form for the FIP that requires EPA to propose controls on agricultural sources by September 1999 and implement these controls by June 2000. The enforceable commitment has not changed from the April 1, 1998 proposal. In discussions with key stakeholders, general agreement was reached that these controls will be in the form of best management practices. EPA believes that this approach will ensure successful dust control in Maricopa's unique environment. We have worked closely with the Phoenix

farming community to develop this commitment, and their comments on the proposal support it.

In order to remove the FIP requirements, the State will need to submit and receive approval of a SIP measure that replaces the enforceable commitment. In fact, the Arizona legislature has passed, and Governor Hull has signed, the legislative language needed to establish a state process to develop best management practices for control of PM–10. EPA expects to receive this legislative language as a SIP revision very shortly and will act on it expeditiously.

Tribal Issues

There are three Indian reservations located within the Phoenix nonattainment area. However, since this FIP is designed to fill a gap that exists in the State plan which does not apply to sources within Indian country, EPA has not included Indian reservations in this FIP. All three tribes have expressed an interest in developing air quality programs. EPA will develop the data, in cooperation with the tribes, that is needed to properly assess whether controls are required to attain the standards. EPA will ensure that controls are implemented either through EPA-approved tribal measures or, if necessary, federal measures.

Conclusion

EPA appreciates the comments that were made on the proposed FIP and will continue to work with the community as the Agency moves forward to implement the FIP measures. EPA will also continue to work with the community on the development of the State's serious area plan. EPA is hopeful that the local planning effort will result in an approvable SIP that will allow EPA to withdraw its FIP.

II. Background

A. SIP/FIP Background

Today's federal implementation plan (FIP) is the result of over six years of planning and litigation regarding the control of PM–10 emissions in the Phoenix area. On November 15, 1991, as required by the CAA, the State of Arizona submitted to EPA a moderate area PM–10 state implementation plan (SIP). EPA found that plan to be incomplete and, as a result, the State revised and resubmitted it on March 3, 1994. On April 10, 1995, EPA approved the revised plan which included reasonably available control measure (RACM) and reasonable further progress (RFP) demonstrations, and a demonstration that it was impracticable for the Phoenix area to attain the PM–10 national ambient air quality standards (NAAQS) by the statutory deadline of December 31, 1994.

On May 1, 1996, the Arizona Center for Law in the Public Interest (ACLPI) filed in the United States Court of Appeals for the Ninth Circuit a petition for review of EPA's April 10, 1995 approval of the State's PM–10 moderate area plan. On May 14, 1996, the Ninth Circuit vacated EPA's approval of the plan for failing to adequately address the moderate area PM–10 requirements. *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996). Specifically, the Ninth Circuit found that the State's plan failed to meet the CAA's requirements for attainment, RFP and RACM for the 24-hour PM–10 standard and that EPA had failed to provide a sufficient opportunity for public comment on the RFP and RACM demonstrations for the annual PM–10 standard.

As a result of the Ninth Circuit's ruling, EPA instructed the State of Arizona to submit by May 9, 1997 a plan addressing the Act's moderate area requirements for the 24-hour PM–10 standard at certain specified monitoring sites and to submit, by December 10, 1997, a full regional plan addressing those requirements for both the 24-hour and annual PM–10 standards.[1]

Arizona submitted its 24-hour plan[2] (known as the microscale plan) on May 9, 1997. On August 4, 1997, EPA approved the microscale plan in part and disapproved it in part. 62 FR 41856. The State has not yet submitted the full regional plan, but has indicated that it intends to do so in December 1998.

Because EPA was unable to fully approve the State's microscale plan, the Agency is required by a U.S. District Court order to promulgate a FIP by July 18, 1998 that addresses the CAA's moderate area requirements for RACM, RFP and attainment for both the 24-hour and annual standards. *Ober* v. *Browner*, CIV 94–1318 PHX PGR (D. Ariz.).[3]

B. Summary of SIP/FIP Proposal

On April 1, 1998, EPA proposed a FIP for the Phoenix PM–10 nonattainment area that was published in the **Federal Register** at 63 FR 15920. The proposed FIP included a demonstration that all RACM are being implemented, a demonstration that it is impracticable to attain the PM–10 standards with the implementation of all RACM and a demonstration that RFP in emissions reductions is being made.

As part of its proposed RACM demonstration, EPA proposed a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads, and an enforceable commitment to ensure that RACM for agricultural sources will be proposed by September 1999, finalized by April 2000 and implemented by June 2000. Further detail on the proposed rule and commitment is provided in connection with the discussion of EPA's final actions in section IV. below and in the proposed rulemaking at 63 FR 15920, 15935.

On April 1, 1998, EPA also withdrew a 1996 proposed action to restore its approval of portions of the State's moderate area SIP for the annual standard and proposed to disapprove the RACM and impracticability demonstrations in Arizona's moderate area plan because those demonstrations do not adequately address the Act's moderate area PM–10 requirements. Further discussion of the SIP actions is provided in section III. below and in the proposed rulemaking at 63 FR 15920, 15925.

EPA received 18 public comment letters from a wide range of parties including private citizens, state and local agencies, industry representatives, and environmentalists. EPA also held a public hearing on the proposed FIP in Phoenix at which 7 groups or individuals testified. Copies of the comment letters and the transcript of the public hearing can be found in the docket for this rulemaking.

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[1] As a result of the litigation and the reclassification of the Phoenix area as a serious PM–10 nonattainment area, both plans were also required to address the best available control measure (BACM), RFP and attainment requirements in the CAA for serious areas.

[2] *Plan for Attainment of the 24-Hour PM–10 Standard, Maricopa County PM–10 Nonattainment Area, Final*. ADEQ, May 1997.

[3] The Arizona Center for Law In the Public Interest (ACLPI), representing the plaintiffs in *Ober*, in a comment on the FIP proposal, contends that the proposed FIP does not contain contingency measures as required by section 172(c)(9) of the CAA. EPA disagrees. In today's final FIP, EPA is fulfilling an obligation under the consent decree in the district court *Ober* case that specifically requires the Agency to promulgate a federal plan for Phoenix that meets the moderate area RACM requirement in CAA section 189(a)(1)(C), RFP requirement in section 172(c)(2) or 189(c)(1), and attainment requirement in section 189(a)(1)(B) of the Clean Air Act. See paragraph 6 of the Modified Second Consent Decree. EPA's obligation under the *Ober* decree does not extend to the section 172(c)(9) contingency measures. The section 172(c)(9) contingency measure requirement is a separate and distinct statutory requirement and is not an integral part of RFP or attainment demonstrations under part D of the CAA. See, e.g., 57 FR 13498, 13543 (April 16, 1992) and 61 FR 51599, 51607 (October 6, 1996). See also footnote 1 in EPA's orginal proposed approval of the State moderate area PM–10 plan for the Phoenix area, 59 FR 38402 (July 28, 1994).

III. Disapproval of Arizona's Moderate Area PM–10 Plan

In its proposed action for this rulemaking, EPA withdrew its earlier proposal at 61 FR 54972 (October 23, 1996) to restore the Agency's approval of Arizona's moderate area PM–10 plan for the Phoenix nonattainment area.[4] At the same time, EPA proposed to disapprove the RACM demonstration and the demonstration that attainment by the moderate area attainment deadline was impracticable in the State's moderate area plan. See 63 FR 15920, 15925–15926. EPA is today taking final action to disapprove that plan.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction, including disapproval by EPA of a State's submission based on its failure to meet one or more required CAA elements. EPA has issued a regulation, codified at 40 CFR 51.31, interpreting the application of sanctions under section 179 (a) and (b).

Generally, if EPA has not approved a revised SIP revision correcting the deficiency, within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. Similarly, if EPA has still not approved a SIP revision correcting the deficiency 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[5] In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the revised plan correcting the deficiency within 2 years of EPA's findings.

There are, however, certain exceptions to the general rule for the application of sanctions described above. The reader is referred to 40 CFR 52.31(d) for the circumstances under which the application of sanctions may be stayed or deferred.

IV. Final FIP

A. RACM/RACT Demonstration

1. RACT and PM–10 Precursors

In its proposed rulemaking, EPA determined that the SIP already included reasonably available control technology (RACT) for major sources of PM–10 and that the FIP did not need to further address this requirement. See 63 FR 15920, 15927. No comments were received on this determination.

EPA also proposed to find, based on existing modeling, that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels in the Maricopa area which exceed the PM–10 air quality standards, and therefore, RACT on these major sources is not required under CAA section 189(e). See 63 FR 15920, 15928. Under CAA section 189(e), the control requirements applicable to major stationary sources of PM–10 must also be applied 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 standards in the area. EPA received one comment, addressed below, on this proposed finding.

Comment: ACLPI asserts that EPA's proposal to waive the RACT requirement for major sources of PM–10 precursors on the ground that such sources do not significantly contribute to PM–10 levels is flawed because: (1) it is based on unapproved, draft modeling; (2) it is based on the unsupported and unwarranted assumption that major source contributions to secondary particulate levels are proportional to their presence in the inventory; and (3) it is based on the use of "significance" levels from the Act's new source review program, which are not automatically transferrable to determinations under CAA section 189(e).

Response: EPA used the State's modeling as the technical basis for this FIP. As such, the modeling was subject to public comment as part of the FIP proposal and did not require a prior CAA section 110(k) approval for EPA to use it.

Given the very small presence of major stationary sources in the precursor inventory (less than 7 percent of the entire precursor inventory is from major stationary sources), assuming a linear relationship between major stationary source emissions and their impact on ambient secondary concentrations is reasonable. EPA estimated that major stationary sources contribute 0.6 $\mu g/m^3$ to exceedances of the 24-hour standard and 0.3 $\mu g/m^3$ to exceedances of the annual standard, so even if major stationary sources contribute to secondary particulate formation at 2 to 3 times their presence in the inventory, they would still be an insignificant source of PM–10 in the Maricopa area.

The use of significance levels from the new source review program to determine if a source contributes significantly to PM-10 levels in excess of the air quality standards in the Phoenix area is discussed in the next section.

2. RACM Demonstration

In order to determine which RACM to include in the FIP, EPA first identified a list of 99 potential control measures. See Table 1 in the proposed rulemaking (63 FR 15920, 15929). This list of measures was taken from the list of measures developed for the State's 1991 moderate area plan and included the measures found in EPA's guidance[6] as well as measures recommended by the Maricopa air agencies and in public comments on the State's moderate area SIP. Nine additional potential measures were recommended during the public comment period on FIP: the California Air Resources Board's diesel fuel standards, a mandatory roadside testing program for diesels, enhanced diesel inspection and maintenance (I/M), accelerated replacement/retrofit of pre-1988 heavy duty diesel commercial vehicles, retrofit existing diesel vehicles (for example, with catalysts), California's off-road vehicle and engine standards, California's low emission vehicle standards, continuing expansion of the enforcement of Rule 310, and a smoking vehicle identification and repair program. See Letter, ACLPI to EPA, Region 9, May 18, 1998, p. 4 and Public Hearing to Comment on the Proposed FIP, Reporter's Transcript of Proceedings, p. 7–10 (12:00 p.m. session), p. 5–9 (7:00 p.m. session). EPA added these nine additional measures to its list of 99, for a total of 108 potential measures.

Before evaluating the measures as RACM, EPA screened the list to determine which measures were applicable to the Phoenix area and for which EPA had legal authority. EPA then screened the list to determine

[4] EPA received one public comment from ACLPI which supported EPA's withdrawal of its prior proposal to restore the approval of the State's moderate area SIP as well as the RACM and impracticability demonstrations therein.

[5] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39859 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

[6] See 57 FR 18070, 18072 (Appendix C) (April 28, 1992).

which measures it has already approved as State RACM or adopted at the federal level and considers RACM. Where EPA had already determined a measure to be RACM, no further analysis of the measure was necessary. Finally, the Agency evaluated the resulting shorter list of measures based on EPA's RACM criteria[7] to identify which measures constituted RACM for the Phoenix area. These three criteria are de minimis source category, technical feasibility (including when the measure could be implemented), and cost of implementation. For any RACM rejected for reasons of technology, cost, size of source category or timing of implementation, the Agency provided a reasoned justification. In all, eleven measures addressing fugitive dust from unpaved roads, unpaved parking lots, disturbed cleared land, and agriculture remained after the application of the RACM criteria.[8]

A complete description of EPA's approach to determining RACM can be found in the proposed rulemaking at 63 FR 15920, 15928. The results of the initial RACM evaluation are presented in Table 3 of the proposed rulemaking. See 63 FR 15920, 15933. The results of the final RACM evaluation and a detailed evaluation of each measure including the reasoned justification if the measure was rejected is in the final RACM TSD.

EPA received several comments on the RACM demonstration and responds to the most significant below. EPA has responded to all comments in the TSD.

Comment: ACLPI comments that the Center disagrees with EPA's proposal for exempting de minimis source categories from the RACM requirement of the CAA. ACLPI asserts that there is no authority in the Act for such an exemption, and that EPA's position that de minimis source categories need only be controlled to the level necessary to produce RFP and timely attainment illegally reads the RACM requirement out of the Act as to such sources.

Response: The CAA does not define "reasonably available control measure." Because the statute is silent, EPA has the discretion to develop a reasonable interpretation. *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). In 1992 preliminary guidance (General Preamble), EPA set forth the criteria for states to apply in determining RACM and reasonably available control technology (RACT) in PM–10 moderate area SIPs. Among other criteria, if a state could show that a measure was unreasonable because the emissions from the affected source would be insignificant, i.e., de minimis, such a measure could be excluded from further consideration. See 57 FR 13498, 13540. Moreover, EPA believes that determining the reasonableness of a measure based on the degree to which the regulated source contributes to the problem is consistent with the RACM/RACT requirements of CAA sections 189(a)(1)(C) and 172(c)(1). Additionally, RACT is generally only required for major point sources; i.e., sources above a certain size threshold. See, for example, section 182(b)(2). See 57 FR 13498, 13541 for discussion of EPA's historical definition of RACT.

In developing its federal plan for the Phoenix area, EPA applied this criterion by defining a reasonably available measure, in part, as one that applies to a source that significantly contributes to PM–10 exceedances. See 63 FR 15920, 15927. In discussing the de minimis criterion in its proposed rulemaking, EPA noted that the regulatory scheme for particulate matter in subpart 4 of the CAA establishes two graduated levels of controls, RACM and BACM, depending on the severity of the area's air quality. See CAA section 189(a) and (b). These statutory requirements, applicable to moderate and serious PM–10 areas, respectively, clearly contemplate that sources that contribute to a lesser degree to the particulate matter problem need not, in the first instance, bear the burden of emission reductions. Thus, in determining the initial level of control, EPA believes that it is appropriate to focus on the reasonable and practicable measures for reducing PM–10 emissions from those sources identified through air quality modeling as contributing to a greater degree, i.e., significantly, to PM–10 exceedances in the Phoenix area.

Alternatively, even absent EPA's discretionary authority to develop reasonable interpretations in the face of statutory silence, as stated in the General Preamble, the inherent authority of administrative agencies to exempt de minimis situations from a statutory requirement has been upheld in contexts where an agency is invoking a de minimis exemption as "a tool to be used in implementing the legislative design when "the burdens of regulation yield a gain of trivial or no value." *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). See 57 FR 13498, 13540. As noted in EPA's response to the comment below, the provision of RACM for the source categories for which measures were rejected because of de minimis emissions would have little impact on the nonattainment problem in the Phoenix area.

Because the Act can reasonably be interpreted to allow the use of a de minimis criterion for judging whether a measure is RACM, EPA does not believe that its interpretation that de minimis source categories need only be controlled to the level necessary to produce RFP and timely attainment results in reading the RACM requirement out of the Act as to such sources.

Comment: ACLPI further claims that EPA's de minimis exemption is contrary to the Act's emphasis on timely attainment and protection of health, and that control of a source category contributing de minimis amounts could make the difference between attainment and nonattainment. Therefore, ACLPI asserts that it is irrational for EPA to assert that such source categories are invariably de minimis.

Response: For PM–10, EPA has not determined that a given source's or source category's emissions impact is invariably de minimis for determining RACM. What constitutes a de minimis source category is dependent upon specific facts of the nonattainment problem under consideration. In particular, it depends upon whether requiring the application of RACM for such sources or source categories would contribute significantly to the Act's purpose of achieving attainment of the NAAQS as expeditiously as practicable.

For the Phoenix PM–10 nonattainment problem, the subject of this FIP, controls on the source categories that EPA found to be de minimis would not make the difference between attainment and nonattainment. Five Phoenix area monitoring sites with expected PM–10 exceedances were evaluated to determine which source categories were de minimis for the purpose of the RACM demonstration in this FIP: four sites for the 24-hour standard and one site for the annual standard. In order to be considered a de minimis source category in the FIP's RACM analysis, a source category had to be de minimis at all five monitoring

[7] See 57 FR 13498, 13540 (April 16, 1992).

[8] Seven of the additional measures proposed in public comment are controls for diesel or gasoline on-road tailpipe emissions. Because diesel and gasoline tailpipe emissions are de minimis source categories for purposes of PM–10 RACM in Maricopa County, EPA has determined that the seven measures do not constitute RACM for the Phoenix area. One measure, California's non-road engine standards, would control non-road engine emissions. As noted in the RACM Technical Support Document (TSD) for the proposal (p. 8), EPA promulgated non-road engine standards in 1995 and considers these national standards to be RACM. Because RACM has already been adopted for this category, EPA does not need to further evaluate measures, such as the California standards, for this category. See 63 FR 15920, 15929. Because the FIP rule controls the same sources as Rule 310, it effectively operates to expand enforcement of the rule.

sites and de minimis for both the 24-hour and annual standards. As illustrated in Table 1, three of the five evaluated monitoring sites did not have de minimis sources identified as contributing anything to the exceedance. At the two remaining sites—Greenwood and Salt River—de minimis source categories contribute substantially less than 10 percent to the exceedance and in neither case would complete elimination of these sources result in attainment at the site.[9] Hence in Phoenix, the use of a de minimis source category criterion to judge the reasonableness of controls has not excused controls on sources that would make the difference between attainment and nonattainment.

TABLE 1.—CONTRIBUTION OF DE MINIMIS SOURCES TO EXCEEDANCES IN THE PHOENIX METROPOLITAN AREA

Monitor	De Minimis sources without RACM as percent of exceedance	De Minimis sources without RACM as percent of PM–10 standard
24-Hour Exceedances:		
West Chandler	0	0
Gilbert	0	0
Maryvale	0	0
Salt River	3.9	4.3
Annual Exceedances:		
Greenwood	4.7	5.6

Comment: ACLPI claims that EPA's choice of 5 μg/m³ and 1 μg/m³ as the significance thresholds for contributors to 24-hour and annual PM–10 levels respectively has no rational basis whatsoever and that the fact that EPA uses these thresholds in the new source review programs does not make them logical choices as thresholds for an entirely different purpose.

Response: As stated in the proposal, EPA is relying on the new source review permitting program's significance thresholds "as a surrogate for determining which source categories require application of RACM", and "not for determining which source categories need controls for attainment." 63 FR 15920, 15927. The new source review program and nonattainment planning provisions are both elements in the CAA's title I provisions to attain and maintain the health-based air quality standards. The new source review program's significance levels are used to judge when a source will have a significant impact on a PM–10 nonattainment area. See 40 CFR 51.165(b). For the purposes of this FIP only, EPA used the 5 μg/m³ and 1 μg/m³ significance thresholds for essentially the same purpose: to judge whether a source or source category has a significant impact on the Phoenix PM–10 nonattainment area.

A significance threshold should be set at a level that segregates the insignificant source categories from the ones that contribute most to a nonattainment problem. As noted above in Table 1, in Phoenix, de minimis sources, i.e., those that contribute less than 5 μg/m³ to the 24-hour standard exceedances and 1 μg/m³ to the annual standard exceedances, account in total for less than 10 percent of the impact at any monitor that exceeds either PM–10 standard. Thus, because the selected thresholds result in the imposition of controls on the sources that have a greater emissions impact on the air quality problem, their application, in EPA's view, is most likely to result in substantial air quality improvements.

There were 12 source categories that fell beneath these surrogate significance thresholds and which EPA determined, therefore, were de minimis in the proposed FIP's RACM analysis: industrial yards, surface mining, other industrial activities, gasoline-powered engines, on-road motor vehicles, diesel-powered on-road motor vehicles, residential wood combustion, other fuel combustion (e.g., residential space and water heaters and commercial boilers), open burning and other area sources, charbroiling, locomotives, airport ground support equipment, and major point sources. Measures for residential wood combustion, open burning, and major point sources categories were excluded from the RACM analysis because RACM had already been approved for them. The list of potential RACM did not include measures for the other fuel combustion sources or the charbroiling categories, nor were any measures for these categories suggested in the public comments received on the FIP. See Table 1 in the proposed rulemaking, 63 FR 15920, 14929. The industrial yards, surface mining, and other industrial activities source categories were found to have an impact only at the Salt River monitor, a monitor for which EPA has already approved an attainment demonstration that showed controls on these sources would not result in more expeditious attainment. See 62 FR 41856, 41862.

Tailpipe emissions from gasoline-powered engines which account for only 0.3 μg/m³ impact on the annual standard exceedance at the Greenwood monitor are already subject to stringent controls including the emission standards under the Federal Motor Vehicle Control Program, Arizona's premier I/M program, and the State's Clean Burning Gasoline program. Diesel powered on-road vehicles including trucks are also subject to national diesel fuels standards and tailpipe emission standards. See 40 CFR 80.29 (diesel fuel standards) and 40 CFR part 86, subpart H and 62 FR 54694 (October 21, 1997) (diesel tailpipe standards).

Finally, it is important to review how the significance thresholds actually affected the outcome of the RACM analysis. EPA used the de minimis criterion as a justification for excluding measures for tailpipe emissions from on-road motor vehicles, locomotives, airplanes, airport ground equipment, off-road motorcycles, and heavy-duty construction equipment. See Table 3 in the proposed rulemaking, 63 FR 15920, 14933. The two latter categories are very small contributors to the overall non-road engine source category. In total, these categories contributed 1.4 μg/m³ to the annual standard exceedance at the Greenwood monitor and nothing to the 24-hour exceedances.

Comment: The Arizona Department of Environmental Quality (ADEQ) comments that the determination of significant and de minimis sources for the annual PM–10 standard which was based upon preliminary modeling results using Urban Airshed Modeling (UAM) should be re-evaluated because the emissions inventory and dispersion modeling have not been reconciled against receptor modeling, as recommended under EPA's guidance for PM–10 plans (*PM–10 SIP Development Guideline*, EPA–450/2–86–001, June 1986). ADEQ suggests that this should concern EPA because the inventory source apportionment differs greatly from receptor modeling source apportionment from the *1989–90 Phoenix PM–10 Study* (Desert Research Institute, 1991). ADEQ states that, while these data are not relatively recent, large changes in the character of ambient particulate pollution since the time that study was conducted would not be expected and these data have been corroborated by more recent chemical analysis of particulate monitor filters from monitors in the urbanized portion of the Phoenix metropolitan area. ADEQ notes that the emission inventory is dominated by sources of geologic PM, even for the fine (PM–2.5 and smaller) particulate. ADEQ states that it rarely

[9] EPA has already approved the attainment demonstration for the Salt River monitor. See 62 FR 41856, 41862 (August 4, 1997). This attainment demonstration showed that controls on the de minimis source categories would not result in more expeditious attainment.

finds more than 10 percent geologic materials in the measured fine PM fraction, whereas the emissions inventory estimates that over 70 percent of the fine PM is geologic. Based on the filter data, ADEQ concludes that the role of combustion sources relative to geologic sources is underestimated in the inventory, stating that carbon particles, both primary and secondary, rival geologic material in terms of PM–10 mass, but are minor in the PM–10 inventory that EPA is using.

Response: EPA agrees that, ideally, dispersion and receptor modeling should be reconciled, using accepted protocols, such as the one in *Protocol for Reconciling Difference Among Receptor and Dispersion Models* (EPA–450/4–87–008). However, the concentrations to be reconciled should be matched in terms of sampling period; i.e., 1989/90 data should not be used to reconcile modeling for 1995. Moreover, modeling of recent high PM–10 days would not necessarily be expected to match those observed in the Desert Research field study. During that field study, daily concentrations averaged 4 to 97 $\mu g/m^3$, depending on the monitoring site, with no 24-hour NAAQS exceedances observed. Although the data from this field study were all that were available for the State's initial moderate area plan and were acceptable on that basis, it is not reasonable to require analysis of recent, exceedance days to match the earlier work. Unfortunately, no later receptor modeling was available for the FIP for reconciliation. See also the response to ACLPI's comment regarding the differences between the 1989 and 1995 emission inventory in section IV.D.2. below.

B. FIP Measures

1. Commitment for Agricultural Sector

In its April 1, 1998 proposed rulemaking, EPA proposed an enforceable commitment to adopt and implement RACM as required by CAA section 189(a)(1)(C) for the agricultural sector in the Phoenix nonattainment area. Specifically, the proposed commitment contained enforceable milestones for EPA's proposal (by September 1999), final adoption (by April 2000), and implementation (by June 2000) of RACM for agricultural fields and aprons. In the proposal, EPA explained its intention to use a stakeholder approach for the development of best management practices (BMPs) to meet the CAA's RACM requirement and provide PM–10 emission reductions from agricultural sources in the Phoenix area.

EPA is today taking final action to promulgate an enforceable commitment in 40 CFR 52.127 to adopt and implement RACM as required by CAA section 189(a)(1)(C) for the agricultural sector. While EPA received a number of comments on its proposed commitment, to which it responds below and in the TSD, the Agency is, in this final rule, retaining the text of the commitment as proposed.

Comment: ACLPI and the American Lung Association of Arizona (ALAA) claim that a mere commitment to develop unspecified controls for agricultural fields and aprons is inadequate and does not meet the CAA requirements or EPA guidance for enforceable measures as expeditiously as practicable. The commenters contend that such a commitment offers no assurance that adequate controls will ever be adopted.

Response: Because the commenters provide no citations or analysis, in favor of a broad claim of inadequacy, EPA is left to divine the precise nature of their legal challenge to the provisions for agriculture in the proposed FIP. To the extent that the commenters are suggesting that "a mere commitment" is not cognizable under the CAA, EPA notes that the Agency has a long history of approving enforceable commitments in SIPs under the statute. Moreover, the milestones in such commitments have routinely been deemed to be enforceable in CAA section 304 citizen suits. For an extensive discussion of the legal basis for such approvals under the CAA as amended in 1990, see 62 FR 1150, 1155–1157 (January 8, 1997).

In its April 1, 1998 **Federal Register** notice, EPA proposed a commitment to adopt and implement RACM for agricultural fields and aprons by specified dates that, as finalized today, will be enforceable in a citizen suit. In that proposal, EPA explained its rationale for addressing agricultural sources of PM–10 emissions. In short, the Agency believes that, given the current state of its knowledge of the local agricultural community and conditions, the BMP process the Agency intends to pursue is the approach most likely to lead to effective controls on these sources in the shortest possible time frame. See 63 FR 15920, 15935–15936.

EPA has issued detailed preliminary guidance on the appropriate methodology for determining RACM under CAA sections 172(c)(1) and 189(a)(1)(C), as well as a list of available fugitive dust control measures. See 57 FR 13540–13541; 13560-13561 and 57 FR 18071, 18072. EPA followed this guidance in determining federal RACM in the proposed FIP. In carrying out its FIP commitment to propose RACM for agricultural fields and aprons by no later than September 1999, EPA will adhere to the RACM guidance in effect for these sources at that time. As with all proposed EPA rulemakings, the public will have the opportunity to state its views on the legal adequacy of the proposed controls. Should EPA fail to propose RACM for these sources by September 1999, ACLPI and ALAA may pursue their remedies under CAA section 304. Once EPA takes final adoption action, they can of course petition for review of that action under CAA section 307.

Comment: ACLPI argues that since agricultural control measures have been adopted in other states, *e.g.,* in California's Coachella Valley, or identified by the Governor's 1996 Task Force, there is no excuse for delay. ACLPI also comments that even if further delay in development of agricultural controls were warranted, EPA cannot justify taking more than a year to develop proposed rules and that there is no reason the Agency cannot adopt enforceable rules within 6 months. ACLPI asserts that 6 months would allow time for obtaining stakeholder input without turning rule development into a protracted exercise.

Response: Prior to the FIP proposal, EPA evaluated available measures for agriculture adopted by the South Coast Air Quality Management District (SCAQMD): 403—Fugitive Dust; 403.1—Wind Entrainment of Fugitive Dust; and 1186—PM–10 Emissions from Paved and Unpaved Roads, and Livestock Operations. As discussed in the FIP proposal, EPA determined that there was insufficient information available to conclude that implementing the controls in these rules in Maricopa County would, taking all relevant factors into account, be appropriate, i.e., reasonable, and thus constitute RACM for this area. See 63 FR 15920, 15935. EPA intends to consider whether these or other measures would be appropriate for the Phoenix area during the BMP development process.

ACLPI dismisses EPA's statements regarding the Agency's inability to ascertain the suitability of the SCAQMD measures for the Phoenix area by asserting that the "techniques for controlling agricultural emissions are well known." This assertion ignores the fact, noted by EPA in its proposed rulemaking, that PM–10 strategies in an agricultural context are uniquely based on local circumstances, and could vary greatly due to factors such as regional climate, soil type, growing season, crop types, water availability, and relation to

urban centers. 62 FR 15920, 15935. A resolution of these uncertainties, in the context of an assessment of the potential mix of control measures, is critical to a determination of whether controls such as those contained in the SCAQMD rules are reasonably available for the Maricopa County nonattainment area and will contribute to attaining the PM–10 standards in the area. Such an assessment is fully consistent with EPA's guidance regarding the process for determining RACM.

As a result, EPA determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. EPA believes that this process, despite the additional time needed to work through it, will ultimately result in a best and most cost-effective controls on agricultural sources in the County. EPA has thus committed in the final FIP to propose RACM for the agricultural sector by September 1999, with final adoption in April 2000. Given the number of potential BMPs, the variety of crops types, the need for stakeholder input, and the time necessary to develop the BMPs into effective control measures, EPA believes that the adoption schedule is expeditious.[10]

Comment: The American Farm Bureau Federation (AFBF) contends that because little data exist for agriculture's contribution to PM–10, there is a need for sound science before regulation and the California Regional Particulate Matter Air Quality Study (CRPMAQS) will provide additional data. AFBF claims that any agricultural emission controls are premature and should be postponed until the CRPMAQS data is available. The Maricopa County Farm Bureau (MCFB) also comments that agricultural controls are premature, citing University of California and University of Arizona research suggesting current PM–10 emission estimates from agricultural sources are overstated.

Response: On August 4, 1997, EPA disapproved portions of the State's microscale plan, in part because it demonstrated, through a scientific study, that agricultural sources contribute significantly to exceedances of the PM–10 air quality standards in Maricopa County, but did not provide for the implementation of RACM for agricultural fields and aprons. 62 FR 41856, 41862. As a result, EPA is providing for RACM implementation for these sources.

Moreover, other than vague statements about lack of data and sound science, AFBF failed to describe any specific deficiencies in the scientific study that resulted in the conclusions in the microscale plan. Likewise, MCFB failed to cite any specific research data that would refute those conclusions. EPA believes that the microscale plan's conclusions were based on sound science, as demonstrated by an intensive study throughout 1995 which included field surveys, aerial photography, examination of activity logs, and interviews with source operators. See Microscale plan, Appendix A, Chapter 4. The study resulted in substantially better emissions inventory data than were usually available. The study included extensive monitoring and a thorough analysis of the area's PM–10 problem. The State used locally-developed emission factors in its modeling. Overall, the episodes modeled in the microscale plan are representative of the conditions under which the exceedances of the 24-hour PM–10 NAAQS occur. Model performance was generally good and well within what can be expected from the type of model used. See 62 FR 31025, 31031.

EPA will use the CRPMAQS and any other information appropriate for the Maricopa area as the data become available. However, it is important to note that the PM–10 exceedances in Maricopa County are typically caused by wind-blown, primary particulates (i.e., geologic sources). The PM–10 exceedances in the San Joaquin Valley (where the CRPMAQS is underway) are caused by primary and secondary particulates and typically are not associated with high wind events. While the CRPMAQS will yield a tremendous amount of new information, much of the information may not be applicable to Maricopa. For the foregoing reasons, EPA does not believe that postponing development of the BMPs pending the completion of the CRPMAQS would be appropriate.

Comment: AFBF comments that this past March, the U.S. Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) Agricultural Air Quality Task Force agreed to develop a PM–10 implementation policy that will help guide states and EPA when dealing with agriculture and PM–10. Thus, AFBF believes that any agricultural emission controls are premature and should be postponed until a USDA Task Force policy is available. MCFB and AFBF believe that if USDA develops a national policy which outlines voluntary controls for agricultural PM–10, enforceable provisions should be removed from the FIP and SIP. They state that the final FIP should include language that will allow for the FIP to be revised as data and policy become available.

Response: Regarding the issue of whether the FIP agricultural provisions are premature, see EPA's response to AFBF's previous comment. In addition, EPA does not believe that postponing development of the BMPs pending the development of a USDA Task Force policy would be appropriate. EPA has worked extensively with MCFB, the Arizona Farm Bureau Federation and other stakeholders to craft a workable strategy for Maricopa County. The Arizona Federation supported legislation recently signed by Arizona Governor Hull for a State-led process for developing BMPs.[11] EPA supports the position of the farming interests in Maricopa County to implement the recently adopted legislation and thereby maintain local control over the solution.

If EPA adopts a national policy for PM–10 emissions from agricultural sources that the State and the Maricopa County farming community would like to use, EPA will assess its implications for the area and work with the agricultural leaders and the local air agencies on any appropriate changes to the current strategy.

Comment: MCFB comments that the 24-hour exceedances attributed to agricultural sources occurred during a dust storm and unless BACM are in place, EPA will not consider natural occurrences, such as a dust storm, as a source of PM–10. Because dust storms will happen whether or not BACM are in place, MCFB would like this policy to be changed before any industry is burdened with control measures.

Response: Contrary to MCFB's contention, the exceedances which implicate agricultural sources did not occur during dust storms. Rather they

[10] It is important to note that the measures identified by the Governor's 1996 Task Force were initially intended to be voluntary and would require a process virtually identical to that envisioned by EPA in its FIP in order to be developed into effective controls. The Task Force measures, along with any other measures potentially available for Maricopa County, will be evaluated as part of the BMP development process.

[11] Governor Hull recently signed SB 1427 "Air Quality Measures" which authorizes a state-led BMP process. Section 16. Title 49, chapter 3, article 2, of the Arizona Revised Statutes was amended by adding section 49–457, Agricultural best management practices committee; members; powers; permits; definitions. The State has indicated to EPA that section 49–457 will be submitted to EPA in the coming months as a replacement for the portion of the FIP which addresses agricultural sources.

resulted from normal wind conditions which routinely occur. A review of the exceedances and monitoring data used in support of the State's microscale plan indicates that the exceedances were localized and did not occur at many of the monitoring sites. If the exceedances had been caused by a dust storm, exceedances would be expected throughout the County.

EPA does have a policy [12] that permits dust raised by high winds from anthropogenic sources controlled with BACM to be treated as due to a natural event. Key aspects of the policy include that EPA will not designate an area as nonattainment when NAAQS violations are caused by natural events and EPA would consider redesignating an area to attainment if it had BACM in place and the only violations were due to high wind events. However, and more importantly, the policy is explicit that all exceedances, no matter what the cause, are of concern to public health and steps need to be taken to reduce public exposure to unhealthful particulate levels. Therefore, there is a need to reduce the level of exceedances during natural events even if the exceedances cannot be eliminated; hence, the requirement for BACM.

Comment: MCFB states that Maricopa County is the fastest growing county in the nation and that rapid growth is forcing land out of agriculture at a rate of 6,000 acres per year. MCFB urges that because the growth is pushing agriculture out of business, agriculture should be released from further controls or it will only speed the disappearance of agriculture from the Phoenix area. MCFB believes that the only way to eliminate PM–10 is to regulate farmers out of existence in Maricopa County.

Response: In the FIP proposal, EPA acknowledged that agricultural land is being converted into other uses. However, even with rapid conversion, agricultural lands will remain a significant source of PM–10 for the foreseeable future. EPA's purpose here is to effectively control PM–10, not to put farmers out of business. Through the stakeholder process, EPA will work with the farming community to meet that goal while ensuring that the BMPs developed to meet the CAA's RACM requirement are economically feasible. In addition, some cities in Maricopa County have begun to express interest in preserving agricultural lands for open space. This interest may reduce the amount of land being converted from agricultural use.

[12] *Memorandum* from Mary D. Nichols, EPA, to EPA Regional Offices, entitled "Areas Affected by PM–10 Natural Events," dated May 30, 1996.

2. Rule for Unpaved Parking Lots, Unpaved Roads and Vacant Lots

a. Background. In its April 1, 1998 notice, EPA proposed a FIP rule for Phoenix that required RACM for unpaved parking lots, unpaved roads and vacant lots. The reader should consult that notice for a detailed discussion of the requirements EPA proposed for these sources. See 63 FR 15920, 15937.

In the FIP proposal, EPA explained that MCESD has adopted, and EPA has approved, MCESD Rule 310 that requires RACM for fugitive dust sources, including those regulated in the FIP. However, because EPA had previously determined that the County was not enforcing the rule for these three PM–10 sources, the Agency disapproved the State's RACM demonstration for them. 62 FR 41856, 41862.[13] As a result, EPA is promulgating a federal RACM rule covering these sources. Because the deficiency in the State's RACM demonstration did not relate to the substance of MCESD's fugitive dust rule, EPA modeled its proposed rule on Rule 310.

The primary difference between the County rule and EPA's proposed rule was that, because EPA's San Francisco office would be responsible for its enforcement, the FIP rule provided greater specificity and detail regarding which control measures are appropriate for which sources. See 63 FR 15920, 15937; 15942-115943. Since, by its terms, the requirements of Rule 310 are so broad, the general effect of this greater specificity and detail was that EPA's proposed FIP rule, in its entirety, while achieving what the Agency believed to be a RACM level of control, was somewhat narrower in scope than the County's rule as it relates to unpaved roads, unpaved parking lots and vacant lots.[14]

EPA is today promulgating a final FIP fugitive dust rule at 40 CFR 52.128 that incorporates a number of changes in response to public comments. Those changes, summarized and discussed below and in the TSD, reflect the same fundamental philosophy described above. The net result of the substantive changes is to provide sources with greater flexibility than provided in the FIP proposal.[15] For example, the final FIP rule includes an increase from 0.10 acre to 0.50 acre in the de minimis disturbed surface area level for vacant lots; an increase from 150 average daily trips (ADT) to 250 ADT in the ADT exemption level for unpaved roads; a new de minimis use level for unpaved parking lots; and the elimination of the dust control plan (DCP) requirement for weed abatement.

In a separate rulemaking, EPA plans to propose and take comment on amendments to some of the alternative control measure (ACM) and test method provisions of today's final rule. While EPA believes that these changes are warranted,[16] EPA cannot include them in today's final action because they are beyond the scope of the proposed FIP rule. Because EPA has a court-ordered deadline of July 18, 1998 to promulgate the FIP rule, the Agency is taking final action on its rule without the ACM and test method changes, but will publish the proposed amendments shortly.

b. Summary of Changes to the Proposed FIP Rule. In addition to the substantive changes to the proposed FIP rule referenced above that provide additional flexibility, the final FIP rule also includes changes that clarify or revise the RACM implementation schedules. Other final FIP rule changes provide minor clarifications of the FIP rule provisions such as adding language to clarify test methods, exemptions and definitions. The substantive changes to the final FIP rule are summarized below by source category.

Unpaved Parking Lots and Unpaved Roads. The final rule:

[13] Section 221 of Rule 310 is entitled "Reasonable Available Control Measure (RACM)" and the term "RACM" is used throughout the rule. EPA has approved Rule 310 into the SIP as meeting the enforceability requirements of CAA sections 110(a)(2)(A) and 172(c)(6). See 62 FR 31025, 31032 (June 6, 1997) and 62 FR 41856, 41864. Regardless of the terminology in Rule 310, as just noted, EPA has determined that the County's implementation of the rule does not meet the RACM implementation requirement of CAA section 189(a)(1)(B) for unpaved roads, unpaved parking lots and vacant lots.

[14] For example, section 312 of Rule 310 regulates users of unpaved roads, while EPA's rule proposed regulation of only owners and operators; and Rule 310 does not exempt any unpaved roads, while EPA's rule included a low ADT exemption.

[15] For the reasons discussed in this section, EPA believes that the final FIP rule, with the modifications made in response to comments, meets the RACM requirements of the CAA.

[16] EPA intends to propose new test methods to replace the opacity (and corresponding opacity standard) and the visible crust method as proposed in the FIP and include an additional test method for standing vegetation. In response to public comments, EPA conducted technical field work in Phoenix on the proposed test methods. While they were the best available methods known to EPA at the time of proposal, additional analysis has indicated that other test methods may be more accurate and comprehensive. EPA also intends to propose the elimination of the requirement to submit ACMs to EPA for approval unless the ACM's effectiveness cannot be measured by the test methods or specific language included in the rule. EPA is also considering whether to propose an amendment to the FIP rule that would require RACM for unpaved roads that are neither owned nor maintained by a public entity.

• Increases the ADT exemption level for unpaved roads from 150 ADT to 250 ADT.

• Includes a de minimis use exemption for unpaved parking lots and requires RACM only on surfaces where vehicles park.

• Eliminates the 2-inch requirement for gravel and relies on the applicable test methods for compliance.

• Includes organic stabilizers in addition to chemical stabilizers.

• Eliminates the provision requiring RACM only where 70 percent of the unpaved road is located within the Phoenix nonattainment area and focuses on the unpaved roads or portion of an unpaved road located within the nonattainment area.

• Clarifies that operators of privately-owned public access unpaved roads are the parties responsible for compliance with the RACM requirements.

Vacant Lots. The final rule:

• Eliminates the requirement for dust control plans in favor of a provision requiring compliance with three RACM options.

• Increases the de minimis disturbed area level from 0.10 acre (proposed rule) to 0.50 acre.

• Includes a de minimis exemption (5,000 square feet) for lots disturbed by motor vehicle trespassing.

• Modifies the time frame for RACM to be implemented on disturbed surfaces from eight months to 60 days, except for the initial eight months following the effective date of the rule.

• Expands RACM for motor vehicle disturbances on vacant lots.

• Eliminates the 2-inch requirement for gravel and relies on the applicable test methods for compliance.

• Includes an initial eight-month time frame following the final rule's effective date for implementation of RACM for motor vehicle disturbances and weed abatement.

• Clarifies the rule's test methods and contains language for some test methods that were previously only referenced in the proposed rule.

General Changes. The final rule:

• Clarifies the requirements to which exemptions apply.

• Clarifies that the tribal lands within the Phoenix PM–10 nonattainment area are not covered by the provisions of the FIP rule.

• Clarifies that Apache Junction is not covered by the provisions of the FIP rule.[17]

c. Public Comments and EPA Responses. Implementation Costs.

Comment: The Maricopa Department of Transportation (MCDOT) and the Arizona Chamber of Commerce (ACOC) assert that EPA's interpretation of Maricopa County Rule 310 as currently requiring suppression of dust on all unpaved public access roads is incorrect. MCDOT claims that in the development of the rule, MCDOT, MCESD and other stakeholders agreed to commit to a dust reduction program. MCDOT states that the rule called for use of RACM on unpaved roads in Section 312 with reference to the list of measures in Section 221. MCDOT further states that, while not explicitly stated in the rule, EPA and MCESD have always interpreted RACM to include a financial and cost effectiveness test and that MCESD has in practice accepted the SIP commitments for dust suppression and the five-year work plan for capital projects as what was reasonably available. MCDOT says that its commitment was to stabilize 25 miles of roadway per year. MCESD also makes similar comments regarding its acceptance of the five-year work plans for capital projects as satisfying the RACM requirement.

Response: EPA notes that MCDOT concedes, by its references to sections 312 and 221 of Rule 310, that the regulatory scope of these sections of Rule 310 encompasses the same universe of sources and measures as the proposed FIP rule. Thus, the issue is whether any acceptance by MCESD of MCDOT's SIP commitment to stabilize 25 miles of roadway per year constitutes compliance with the rule. In EPA's final action on the State's microscale plan, EPA determined that the MCESD's implementation of Rule 310 (*i.e.*, enforcement on a complaint basis for vacant lots, unpaved parking lots and unpaved roads[18]) is inadequate and consequently disapproved the RACM demonstration in that plan for these sources. 62 FR 41856, 41865. EPA received no public comments which disagreed with this finding. Moreover, MCESD has never incorporated a 25 mile stabilization limit into Rule 310. Nor has EPA made a determination or approved into the Phoenix PM–10 SIP MCDOT's 25 mile stabilization commitment as representing a RACM level of control. Therefore, as a legal matter, such an understanding between MCESD and MCDOT does not establish MCDOT's commitment as meeting the RACM requirements of the CAA.[19]

As stated above, EPA modeled its FIP rule on Rule 310, but provided greater detail and specificity which had the effect of narrowing the scope of Rule 310. As explained in more detail below, EPA believes, based on the information currently available to the Agency, that the requirements of the final FIP rule meet the economic feasibility criterion in the Agency's guidance and represent RACM for unpaved roads.

Comment: MCDOT and the City of Mesa claim that EPA did not provide any analysis as to what methods or criteria were used to identify RACM and that there is no cost-benefit analysis provided to demonstrate the reasonable availability and effectiveness of the proposed measures. The City of Mesa asserts that, as EPA stated in the proposed rulemaking, any measures that are determined to be de minimis, technologically infeasible or unreasonably costly should be removed from the list of RACM. This commenter concludes that EPA did not conduct this analysis as part of the proposed FIP.

Response: In section IV.B. of its proposed rulemaking, EPA set forth the criteria that the Agency must apply in determining what measures constitute RACM. In general, EPA excludes measures it determines to be unreasonably costly, technologically infeasible or that apply to sources of PM–10 that are de minimis. 63 FR 15920, 15926. In section V of the FIP proposal, EPA provided a detailed description of its approach for determining which RACM to include in the proposed FIP. 63 FR 15920, 15927–34. For the purposes of the RACM analysis, public sector sources, like EPA, should evaluate the criterion relating to the cost of control measure implementation by considering the reasonableness of potential RACM based on the financial and resource capabilities of the governmental entity responsible for implementing such measures. The FIP RACM analysis involved a list of 99 potential RACM which were evaluated against 2 sets of criteria: (1) to determine if a measure was appropriate for federal implementation; and (2) to determine if a measure was RACM. The latter set of criteria include economic feasibility.

[17] The Maricopa PM–10 nonattainment area is comprised of the greater Phoenix metropolitan area in Maricopa County and the Apache Junction area in Pinal County. The State submitted separate moderate area PM–10 plans for the Maricopa County portion and the Pinal County portion of the nonattainment area. The incompleteness finding that triggered EPA's obligation to promulgate this FIP was made only on the submitted plan for Maricopa County and thus EPA's FIP authority only extends to this part of the nonattainment area. The Pinal County plan became complete by operation of law on May 14, 1992. As a result, EPA is clarifying that this FIP does not cover the Apache Junction area.

[18] The fact that MCESD enforces Rule 310 for these sources on a complaint basis is clear evidence that they are included within the regulatory scope of the rule.

[19] See footnote 13.

EPA did not provide a cost-benefit analysis for the proposed FIP measures because, as discussed in the proposed FIP's Regulatory Flexibility Analysis, all of the requirements of the FIP's fugitive dust rule are already required under the County's Rule 310. See 63 FR 15920, 15942. In fact, EPA believes, as stated previously, that the scope of the FIP rule as proposed (and as modified in this final action) is narrower than that of Rule 310. Hence the costs of compliance with the FIP rule should, to the extent that there is any cost differential, be less than those for Rule 310.[20] See 63 FR 15920, 15943–15944 and section VII.B.2. below for detailed discussions of this issue.

Nevertheless, EPA did include estimates of control effectiveness and unit costs in the TSD for the FIP rule.[21] As discussed in the TSD, the control effectiveness estimates were based on available data, which was limited. Thus only relatively crude estimates were developed for the emissions reductions associated with the FIP rule (or implementation of Rule 310). The unit costs are based on information found in documents prepared by or referenced by the Maricopa Association of Governments. The costs associated with the FIP rule and their relationship to the RACM determination are discussed further in response to the following comment.

Comment: MCDOT comments that if Maricopa County were required to pave all public access unpaved roads within its jurisdiction, as described by the proposed rule, it would require an expenditure greater than $100 million, to as much as $300 million, or approximately 5–10 years of the County's total capital improvements budget for transportation projects. Furthermore, MCDOT asserts that additional paving of parking lots and compliance by cities and towns within the County could, in aggregate, be nearly one billion dollars. MCDOT also claims that there is a substantial maintenance expense in the future for all roads paved or stabilized, which will create an additional tax burden.[22]

Response: The final FIP rule does not require the County to pave all of its unpaved roads. The FIP rule requires RACM for unpaved roads with greater than 250 ADT (increased from 150 ADT in the proposed FIP rule). Compliance options include methods of stabilization that are less costly than paving.

As discussed above and in the proposed FIP's Regulatory Flexibility Analysis, the FIP rule does not impose any additional compliance burden beyond that required by Rule 310. Thus, even without the FIP rule, EPA believes that EPA, a citizen, the State and the County could enforce under Rule 310 control measures that are more stringent than those required under the FIP rule.

Because EPA had to develop the FIP rule within the court-ordered schedule, EPA was limited in the cost data available to the Agency for the economic feasibility analysis prong of the RACM criteria. See EPA's response to the previous comment. Unfortunately, while commenters on the proposed FIP rule provided conclusions as to what they deemed to be unreasonable compliance costs, they supplied no supporting data. Therefore, EPA was unable to use this information to refine its determination of the RACM level of control.

Comment: The City of Mesa and MCDOT maintain that local governments should have the autonomy to target unpaved roads that are determined through local study and evaluation to significantly contribute to local or regional PM–10 levels and develop schedules for paving or stabilizing those roads with the greatest potential to decrease PM–10 emissions.

Response: In meeting the RACM requirements of the CAA, states are free to select the mechanisms they deem to be the most appropriate. Such decisions routinely involve evaluations of the concerns of local governments. While EPA has not approved Rule 310 as meeting the Act's RACM requirements for the unpaved road, unpaved parking lot and vacant lot source categories, clearly that rule was intended to provide a County-wide RACM regulatory scheme. If MCESD and the State believe that the rule can be modified to address the concerns raised by the City of Mesa, Maricopa County or other local jurisdictions, it is free to do so and EPA will determine whether the rule as modified represents RACM and can replace the FIP rule. In making this determination, EPA would evaluate information submitted by MCESD in the staff report accompanying the rule justifying why the rule as modified represents RACM.

In developing the FIP rule, EPA was constrained by a number of factors that necessitated a single approach to implementing RACM for the entire Phoenix nonattainment area. For example, EPA's San Francisco office must be able to enforce the rule throughout the nonattainment area and inform regulated parties of the rule's requirements. Resources for public outreach would be inadequate should EPA need to administer RACM differently from one jurisdiction to another. Moreover, even if EPA could administer a rule that specifies a different RACM level of control for the numerous jurisdictions within the Phoenix nonattainment area, EPA lacks the detailed information it would need to do so. Furthermore, as noted above, such information has not been forthcoming in responses to the FIP proposal.

Comment: MCDOT, ADEQ and the Arizona Chamber of Commerce all comment on the issue of legal responsibility for compliance with the proposed FIP rule's requirements for unpaved roads. The Chamber claims that the definition in § 52.128(b)(17) of "unpaved road" as "those * * * owned by any federal, state, county, municipal or other governmental or quasi-governmental agencies' will cause prohibitively expensive disputes over ownership between private and public entities and, due to its vagueness, could include more than 100,000 roads in the County. The Chamber also comments that local governments do not have the financial resources to decide ownership and to implement RACM. MCDOT notes that there is no definition of "ownership" and that in some contexts the proposed rule refers to "owner/operator" and in others, strict legal ownership. In this connection, MCDOT states that ninety percent of the unpaved, public access roads it maintains in the nonattainment area are not in public ownership. ADEQ makes a similar point and believes that the FIP's requirements should apply only to publicly-owned roads.

Response: EPA's intent in proposing the requirements for unpaved roads was to ensure that responsible entities apply RACM to control these fugitive dust sources. As stated in the proposed rulemaking, EPA intended to accomplish this goal by making the requirements of the FIP rule essentially mirror those of MCESD's Rule 310. Because Section 312 of Rule 310 is very broadly drafted, EPA attempted in its

[20] For this reason, EPA disagrees with MCDOT's claim that compliance with the FIP rule implicates the cost-benefit analysis requirements of the Unfunded Mandates Reform Act. Nor does the FIP rule constitute a major federal action under the National Environmental Policy Act (NEPA) as the commenter suggests. EPA actions under the CAA are expressly exempt from that statute. 15 U.S.C. § 793(c)(1).

[21] See sections 5.0, "Emissions Reductions," and 6.0, "Cost Estimates" of the TSD for the Phoenix FIP Rule for Unpaved Parking Lots, Unpaved Roads and Vacant Lots.

[22] MCDOT elaborates on this point by claiming that long term maintenance data indicate that by paving these roads, life cycle maintenance costs will increase by a factor of five. MCDOT estimates that chemical stabilization will triple the maintenance cost of these roadways.

proposal to narrow those responsible for compliance to owners or operators of the pollution sources. In order to rectify the confusion perceived by the commenters, EPA has amended the final rule to add the word "maintains" in the definition of "owner/operator" in § 52.128(b)(10) and to add the words "or operated" in the definition of "unpaved road" in § 52.128(b)(17).

EPA does not believe that the purpose of the FIP's unpaved road requirements is served by limiting them to those sources that are publicly owned, particularly in view of the statistics provided by MCDOT and ADEQ. Therefore, EPA has also removed the word "public" from the definition of "unpaved road" in § 52.128(b)(17) and, consequently, from the RACM requirements for unpaved roads in § 52.128(d)(2). Thus the final rule applies to unpaved roads that are open to public access, but are privately or publicly owned. These changes are intended to clarify that both owners, and operators, including those who conduct roadway maintenance, are legally responsible for complying with the RACM requirements of § 52.128(d)(2).[23]

In response to comments regarding the vast number of roads implicated by the proposed RACM requirements, and the concomitant compliance costs, EPA has changed the ADT threshold in § 52.128(d)(2) from 150 to 250 and limited the sources to which that section's requirements apply to those portions of an unpaved road located within the Phoenix PM–10 nonattainment area.

Comment: MCESD comments that a 0.10 acre threshold is appropriate at which to expect the application of controls. However, MCESD believes that enforcement on vacant lots should be reactive (i.e. complaint driven) for sites less than a threshold of 10 to 50 acres and proactive on larger sites. However, weed abatement operations that are permitted will be inspected under Rule 310. The inability to know when a vacant lot has been disturbed significantly reduces the cost-effectiveness of a proactive enforcement program for vacant lots. The amount of time spent checking undisturbed vacant lots adds little value to efforts to reduce particulate pollution. In addition, MCESD recommends that EPA refine what level of enforcement and/or implementation represents RACM and which represents BACM. MCESD cites as an example that their contacts with Coachella Valley area cities referenced in EPA's proposal and the TSD established that their vacant lot provisions are enforced on a complaint-only basis.

Response: In its proposed action on the microscale plan, EPA proposed to find that the plan did not assure implementation of either RACM or BACM as required by CAA sections 189(a)(1)(C) and 189(b)(1)(B) and to disapprove the RACM/BACM demonstrations for the unpaved parking lots, unpaved roads, and vacant land source categories. This proposed disapproval was based on the County's enforcement of Rule 310 for these source categories on a complaint-basis only. See 62 FR 31025, 31034–31035. MCESD did not make the comments it now advances in connection with EPA's proposed action on the microscale plan. On August 4, 1997, EPA took final action to disapprove the microscale plan provisions for implementing RACM and BACM for these sources. 62 FR 41856, 41862.

While EPA considered dust control rules for other areas, RACM and BACM determinations are made on a case by case basis. See e.g., 57 FR 13498, 13540, 13561; and 59 FR 41998, 42010 (August 16, 1994). Therefore, the South Coast Air Quality Management District's approach to dust control in Coachella Valley is not determinative of what constitutes the implementation of RACM or BACM for the Phoenix nonattainment area. As demonstrated in EPA's action on the microscale plan, implementation of Rule 310's vacant lot provisions on a complaint basis is not sufficient to prevent these sources from contributing substantially to exceedances of the PM–10 NAAQS in the Phoenix area. See 62 FR 31025, 31031. Furthermore, RACM and BACM are levels of emission reduction control. See 59 FR 41998, 42010. In contrast, the resources allocated for, and the method and frequency of, enforcement are the means of ensuring that such emission reductions occur, but are not themselves control levels.

The provisions of Rule 310 require that RACM, as specified in the rule, be implemented for the unpaved parking lots, unpaved roads and vacant land source categories. Having adopted such a rule, the County has notified the affected parties that they must comply with the rule's requirements and must ensure that it has the resources and a program for ensuring that compliance occurs. See CAA section 110(a)(2). Moreover, since the County has purported to define what constitutes RACM by the terms of its rule, it cannot then fail to ensure that those measures are comprehensively enforced and still meet the requirement to implement RACM in CAA section 189(a)(1)(C). If MCESD believes that Rule 310 as adopted represents a level of control for certain sources that is beyond RACM or BACM, it is free to modify the rule and submit it to EPA with the appropriate justification. EPA will then evaluate the submittal for compliance with the CAA's RACM/BACM requirements.

Comment: ACOC comments that the vacant lot "Disturbed Surfaces" provision of the proposed FIP rule would impose a huge economic burden on homebuilders and private landowners due to the fact that any amount of disturbed surface area left vacant for more than fifteen days is subject to the rule. Also, the average private citizen would likely be unaware of this requirement.

Response: Since there is a de minimis vacant lot size, it is not true that any amount of disturbed area is subject to the rule. In the final rule, EPA has increased the de minimis threshold from 0.10 to 0.50 acre of disturbed surface for stabilization of disturbed surfaces. In any case, the rule does not pose a huge economic burden on homebuilders; homebuilders need to receive a permit under Maricopa County Rules 200 and 310 for earth-moving operations over 0.1 acres, and are therefore not regulated under the FIP rule. However, should homeowners prepare vacant property for construction by scraping and leave the surface disturbed for over 15 days prior to construction and permit applicability, they are subject to the FIP rule. EPA based the fifteen-day time period on language in MCESD's Rule 310 and believes it is appropriate as the disturbed vacant lot will be a continual dust source until re-stabilized. EPA plans to provide outreach assistance to vacant lot owners within the first eight months following the effective date of the final rule prior to the required RACM implementation deadline in order to increase awareness of the FIP rule and its requirements.

FIP Rule Requirements. De Minimis Levels.

Comment: Several commenters state that the requirement in the proposed FIP rule to pave all public roads with 150 ADT is unreasonable. Commenters believe that the 150 ADT threshold is arbitrary, includes too many roads and is economically burdensome.

Response: EPA believes that a higher ADT threshold is warranted and represents a RACM level of control. Therefore, in the final FIP rule, EPA has increased the ADT threshold from 150

[23] EPA routinely requires that those responsible for operation and maintenance of a source comply with emission or performance standards established under the CAA. See CAA section 302(k) and (l).

to 250. This higher ADT threshold will relieve some of the cost burden on public entities, while targeting the roads that cause the most PM–10 emissions. The final rule, with the 250 ADT threshold, will control dust on roads which receive two vehicles every five minutes, on average, throughout primary driving hours in a given day rather than one vehicle every five minutes. EPA, through a contractor, will by the end of 1998 acquire more data on the sources subject to the FIP rule, including unpaved roads and their ADT. Should EPA determine in the future, based on additional information, that the final FIP rule requirements do not represent a RACM level of control for the Phoenix area, the Agency will propose appropriate revisions to the FIP.

Comment: The Grand Canyon Council of the Boy Scouts of America comments that the FIP rule should provide a de minimis use level below which requirements are not triggered. The Council claims that the proposed FIP's unpaved parking lot provision does not allow reduced compliance for lots that receive relatively little heavy use during the year (but are used more than 35 days a year). The Council suggests a de minimis level of ingress by fewer than 10 or 25 vehicles per day.

Response: In the final rule, EPA addresses the Council's concern by establishing an exempted use level for unpaved parking lots of 10 vehicles a day or less. Furthermore, since there are a number of unpaved parking lots significantly larger than 5,000 square feet where parking occurs only in a few localized areas, in the final rule, the owner/operator is only required to implement RACM on the portion of a lot (as opposed to the entire lot) on which vehicles park. Notwithstanding regular use of an unpaved parking lot by 10 or fewer vehicles, the rule offers flexibility for lots used no more than 35 days a year to require RACM controls only if over 100 vehicles park on the lot and only for the duration that the vehicles are parked.

Comment: MCESD comments that the 0.10 acre threshold for vacant lots is an appropriate threshold at which to expect application of controls, but that it is not reasonable to enforce all vacant lots at this level, except for weed abatement operations. Several other commenters suggest that a de minimis level of 0.10 acre for vacant lots is too small. Commenters also state that the regulatory burden on small residential property owners would be too high and that disturbed static lots do not contribute significantly to PM–10 compared to disturbed sites with active earth-moving operations. Commenters suggest that the de minimis level be increased to one or five acres.

Response: In the final rule, EPA has increased the RACM implementation de minimis threshold for vacant lot requirements concerning weed abatement and disturbed surface from 0.10 acre to 0.50 acre. The final rule's de minimis threshold of 0.50 acre is responsive to commenter's concerns to focus the FIP rule on larger disturbed areas; however, EPA does not believe a de minimis level greater than 0.50 acres is warranted given MCESD's belief that weed abatement disturbing 0.1 acres merits control. Since the majority of vacant lot disturbances are caused by weed abatement and an uncontrolled weed abated lot would be covered by the requirements for disturbed surfaces, EPA believes there is a need for consistency between the weed abatement requirement and the disturbed surfaces requirement. Thus, EPA believes that a 0.50 acre de minimis level is appropriate.

EPA does not believe that the regulatory burden of the FIP rule will be high on small residential property owners as the majority of residential property owners have homes on their property. The FIP rule does not apply unless the property is vacant and disturbed. Moreover, the FIP rule only applies where a vacant property's disturbed surface area is greater than the exemption levels. Where the FIP rule does apply, property owners have a number of RACM from which to choose, including lower cost alternatives such as re-vegetation and watering. In some cases, vacant lots naturally re-stabilize with rainfall to form a crust or they contain sufficient amounts of aggregate materials or vegetation such that the standards set forth in the FIP rule are met. For these reasons, EPA believes the commenters have over-estimated the regulatory impact of the FIP rule on vacant lot owners. Finally, as discussed in EPA's responses to comments regarding the cost impacts of the FIP rule, because all of the RACM discussed above and found in the FIP rule are already required by Maricopa County's Rule 310, the final FIP rule does not impose any additional regulatory burden beyond Rule 310.

Compliance Deadlines. *Comment:* The City of Phoenix comments that the final rule should move the compliance deadline for disturbed surfaces on vacant lots from eight months after the effective date of the rule to June 10, 2000. The City claims this is needed in order to ensure that property owners become aware of the rule and to implement dust control measures.

Response: EPA believes an eight-month period of time is sufficient to conduct public outreach to vacant lot owners regarding FIP rule requirements to stabilize property or erect barriers. EPA plans to provide outreach assistance to vacant lot owners within the first eight months following the effective date of the final rule prior to the required RACM implementation deadline in order to increase awareness of the rule and its requirements. The only reason the RACM deadline for public unpaved roads is June 10, 2000 is due to EPA's recognition that public entities require additional time to budget funds to implement RACM. EPA believes that the majority of vacant lots with disturbed surfaces can be stabilized (unless further disturbed) by applying water or re-vegetating, thus, a long time-frame for implementing RACM is unwarranted. Notwithstanding the initial eight-month time frame for RACM implementation, the final rule requires that RACM be implemented within two months following a disturbance.

Comment: MCDOT and MCESD comment that the June 10, 2000 deadline for RACM to be implemented on roads with 150 ADT or more is not feasible due to the large amounts of material and/or chemicals needed and the time needed to complete roadway design, right-of-way acquisition and construction. They state that no other attainment area has been required to establish a deadline for completion of stabilization of unpaved surfaces. MCESD and ADEQ suggest that a more appropriate and realistic compliance target should be an established schedule that extends beyond June 2000 for treating public unpaved roads using ADT to establish priorities.

Response: Since EPA has increased the ADT threshold to 250 in the final rule, there will be fewer roads which require controls under the FIP rule by June 2000. The June 10, 2000 deadline has not been established by EPA arbitrarily. As discussed in the proposed rulemaking, the deadline for RACM implementation after the statutory deadline of December 10, 1993 is as soon as practicable. 63 FR 15920, 15926. EPA does not believe it achieves the purposes of the CAA to allow long-delayed RACM implementation to extend beyond June 10, 2000 the statutory deadline for the implementation of BACM.

Comment: MCESD, ADEQ and the City of Mesa comment that the proposed FIP rule's requirement that a dust control plan (DCP) for weed abatement be submitted 60 days in advance is impractical, given that there is a fire

endangerment concern between the time weed abatement public notices are issued and a 60-day lead time to submit a DCP to EPA.

Response: In the final rule, EPA has eliminated the requirement that DCPs for weed abatement be submitted to EPA for approval. Instead, the final rule establishes RACM requirements for conducting weed abatement on vacant lots. The RACM are those dust control measures that EPA would have expected to see in a DCP. The RACM are written broadly enough to allow responsible parties flexibility in what measures they use to control dust, provided that the surface is stabilized immediately following weed abatement to the standards set forth in the rule.

Alternative Control Measures (ACMs)

Comment: The City of Mesa comments that the provisions in the proposed FIP rule for ACMs are unduly burdensome (in that they must be submitted to EPA for approval). Rather, the City believes that if an ACM renders the disturbed surface area stabilized without any ancillary adverse impact, it should be encouraged.

Response: EPA agrees with this comment and, in a proposed amendment to the final FIP rule, the Agency intends to propose that ACMs be listed among other RACM in each provision to which they apply. EPA intends to propose that as long as the ACM meets the test method's criteria for stabilization and does not involve use of a prohibited material, prior EPA approval would not be required. Thus, the only ACM that would be submitted to EPA would be one that does not involve stabilizing an unpaved surface.

Vacant Lot RACM. Comment: The City of Phoenix comments that EPA should allow alternatives for controlling dust from vacant lots where vehicles have caused the disturbed surface in addition to posting signs or barriers. The City claims that these controls are required regardless of the severity of the disturbance or implementation of other dust control measures, such as gravel.

Response: In the final FIP rule, EPA adds gravel and chemical/organic stabilizers to the list of RACM in the "Motor Vehicle Disturbances" provision. Therefore, a vacant lot owner may comply with both the "Disturbed Surfaces" and "Motor Vehicle Disturbances" requirements by applying one control measure. Applying gravel or stabilizers are the only RACM specified in the rule modification since other control measures listed under the "Disturbed Surfaces" requirement do not ensure dust control should further vehicle trespass occur.

Comment: Several commenters question the technical justification for a 2-inch gravel requirement, suggesting that two inches of gravel may not be necessary in all cases to control particulate matter sufficiently.

Response: EPA has eliminated reference in the FIP rule to 2 inches of gravel. Since the final rule requires that gravel be applied and maintained to a sufficient extent necessary to result in a stabilized surface, the test method will be the sole indicator of whether a source is sufficiently graveled.

Test Methods. Comment: MCESD and the City of Mesa comment that the proposed visible crust test method for vacant lots would not be appropriate since local native soil crusts may crumble easily and measure less than 0.6 centimeters in thickness, yet still form a protective surface. ACOC and the Salt River Project (SRP) also question the scientific substantiality of the proposed visible crust test method.

Response: In response to comments on the FIP proposal, EPA recently conducted the proposed test methods on sources in the Phoenix non-attainment area. As a result of the findings, in a forthcoming proposed amendment to the final FIP rule, EPA will propose a new test method for visible crusts that involves dropping a small steel ball from a height of one foot and checking for pulverization of the surface. EPA believes that this new method allows a higher degree of replicability than the existing visible crust test method and is a better indicator of whether the crust is sufficiently protective given variations in soils.

Comment: Several commenters mention that the requirement in the proposed FIP rule that the visible opacity of vehicles be tested at a specific speed on unpaved roads and unpaved parking lots is impractical and may be unsafe/illegal.

Response: EPA has eliminated the speed limit requirement in the final rule. In a forthcoming proposed amendment to the final FIP rule, EPA will propose a new test method for unpaved roads and unpaved parking lots that involves collecting a surface sample as opposed to conducting a visible opacity test at a certain vehicle speed.

Comment: Several commenters suggest that the proposed test methods are too complex to be understood and utilized by property owners who must comply with the rule.

Response: EPA has eliminated the speed limit requirements from the test method in the final rule. In its forthcoming proposed amendment to the final FIP rule, EPA will propose to eliminate the opacity test method for visible emissions from unpaved roads and unpaved parking lots. The opacity test method requires opacity readings to be taken by persons certified in visible emissions training. EPA agrees that this test method is too complex for most property owners to attempt. Regarding the remaining test methods in the final rule, EPA believes much of the perceived complexity is a result of technical language which is necessary to ensure the test methods are enforceable. A certain minimum amount of complexity is necessary to ensure that the test methods can be repeated by more than one individual consistently and accurately, as well as to ensure that they do not result in over-controlling sources. EPA plans to provide outreach assistance to property owners which will explain the test methods in layman's terms and provide information on the commercially available resources needed to conduct them.

Enforcement of FIP Rule. Comment: ACLPI states that while it supports EPA's proposal to provide more enforcement resources for Rule 310, the staff provided will still be grossly inadequate. ACLPI notes that EPA does not explain why just two additional inspectors will be adequate. ACLPI states that the Governor's Air Quality Strategies Task Force in 1998 preliminarily recommended that the County add 9 new positions for Rule 310 enforcement and that, to comply with the RACM mandate, Maricopa County must have the same or better enforcement resources than other air districts which have enforcement staffs of such size (or larger). ACLPI also claims that EPA's proposal also fails to provide the legal resources necessary to enforce against violators detected by the inspectors and believes that the FIP should require the County (or EPA) to have a full time attorney to conduct enforcement cases under Rule 310.

While welcoming EPA's proposal to provide additional enforcement resources, ACLPI urges that the Agency take steps to ensure that such action does not encourage continuing and repeated avoidance by the County of its obligation to provide these enforcement resources. ACLPI asserts that one appropriate step would be for EPA to impose mandatory or discretionary sanctions on the County for its failure to adequately fund Rule 310 enforcement and suggests that if this or other steps are not taken, local and state governments will underfund the programs and wait for EPA to impose a FIP that includes federal enforcement dollars.

Response: EPA would like to clarify at the outset that the discussion in the proposed rulemaking to which ACLPI refers addressed the Agency's compliance approach for the proposed FIP rule, and not Rule 310. Thus, to the extent that ACLPI's comments are directed to the inadequacy of Maricopa County's program for Rule 310 enforcement, they are not germane to this rulemaking.[24] In particular, ACLPI's remarks regarding inspection and enforcement resource levels for Rule 310 are entirely inapplicable. The statistics ACLPI cites from the Governor's Task Force Report relate to resources for the entire universe of sources, both permitted and unpermitted, regulated under Rule 310. The scope of the FIP rule, however, is considerably narrower than that of Rule 310 in that it only addresses vacant lots, unpaved parking lots, and unpaved roads, all fugitive dust sources not permitted under Rule 310.[25]

To the extent that ACLPI's judgments may call into question the adequacy of EPA's enforcement of its own rule, EPA would like to clarify its FIP compliance program in two respects.[26] First, in implementing the FIP rule, EPA is constrained by the remote location of its Regional Office in San Francisco. Because of that constraint, EPA believes that its compliance program for the FIP rule will benefit substantially by some kind of local presence. Therefore, EPA will be funding two inspectors to be provided to MCESD for fiscal year 1999 (October 1, 1998 through September 30, 1999). The primary responsibility of these inspectors will be to ensure compliance with the FIP rule.[27] If the FIP rule remains in place after September 1999, continuation of these inspector positions will depend on whether additional funding can be secured by EPA.

Second, as discussed in the proposed rulemaking, in addition to the two inspectors assigned to MCESD, the Agency will have at its disposal legal and technical personnel from its San Francisco office to ensure compliance with the FIP rule by conducting periodic joint inspections with MCESD and undertaking enforcement actions.

Finally, EPA is somewhat perplexed by ACLPI's suggestion that, in the absence of federal CAA sanctions, local and state governments will underfund their Rule 310 enforcement program and wait for EPA to impose a FIP with federal enforcement dollars. As just explained, EPA is not in the FIP providing either funding or positions for the benefit of MCESD. Moreover, it has been the Agency's experience that the specter of an active federal presence in local affairs acts as a powerful motivator, a view that ACLPI itself has historically advanced. Indeed, the recent adoption of State legislation regulating PM–10 emissions from agricultural activities is evidence of such an effect.

C. Impracticability Demonstration

The CAA requires moderate PM–10 nonattainment areas to demonstrate attainment of the PM–10 annual and 24-hour standards, or to show that attainment by the statutory deadline is impracticable. See section 189(a)(1)(B). For this FIP, EPA has demonstrated that existing State controls, together with the RACM being promulgated by EPA, are not sufficient for attainment of either the 24-hour or the annual PM–10 standard by December 31, 2001.[28]

1. Annual Standard

EPA based its annual standard attainment analysis on air quality modeling for the 1995 year performed by the Maricopa Association of Governments for Phoenix serious area PM–10 plan that is currently under development. See 63 FR 15920, 15939.

As can be seen in Table 2, even assuming 100 percent control for sources subject to the FIP rule and the commitment for the agricultural sector (an unrealistic level of control; actual control levels will be less), simulated concentrations are still over the annual standard of 50 "μg/m^3. Thus, pursuant to CAA section 189(a)(1)(B), EPA is finding that attainment of the annual PM–10 standard by December 31, 2001 is impracticable with the implementation of RACM.

TABLE 2.—ANNUAL STANDARD IMPRACTICABILITY DEMONSTRATION

Source category	Concentration after SIP controls μg/m^3	Maximum possible control (percent)	Concentration after FIP controls μg/m^3
Paved road dust	20.	.....	20.0
Unpaved road dust	2.9	100	0.0
Gasoline and Diesel vehicle exhaust	1.2	.....	1.2
Agricultural dust	0.2	100	0.0
Other area sources	1.4	.....	1.4
Residential wood combustion	0.4	.....	0.4
Construction/earth moving	5.4	.....	5.4
Construction equipment, locomotives, other non-road engines	1.4	.....	1.4
Major point sources	0.2	.....	0.2
Windblown dust	0.4	100	0.0
Anthropogenic Total	33.5	.....	30.0
Background	22	.....	22
Total	55.5	.....	52.0

[24] That said, EPA agrees that the resources devoted by the County to compliance with Rule 310 are inadequate with respect to unpermitted sources and made such a finding in its action on the State's microscale plan. 62 FR 41856, 41860. In a March 10, 1998 letter to Al Brown, Director, MCESD, EPA stated that to replace the FIP rule, MCESD must submit, as a SIP revision, a credible Rule 310 enforcement strategy that demonstrates that the County has adequate resources of its own to ensure that Rule 310 is fully implemented for all fugitive dust sources. In this regard, EPA supports the additional resource levels recommended by the Governor's Task Force and understands that MCESD is in the process of trying to obtain them for the purpose of fully implementing Rule 310.

[25] The statistics ACLPI cites on the enforcement resources of other air districts represent the total number of inspectors for each of these districts to conduct all air quality inspections for all pollutant sources. Therefore, these staffing levels cannot be used as evidence that MCESD underfunds its fugitive dust program.

[26] The program is discussed further in the FIP proposal at 63 FR 15920, 15938–15939.

[27] Nevertheless, these two inspectors will also have the opportunity to identify and report Rule 310 violations. Thus they will be able to provide some incidental assistance to MCESD's Rule 310 compliance efforts.

[28] Under CAA section 189(c)(1), the moderate area attainment deadline was December 31, 1994. The Phoenix nonattainment area is now classified as serious. As a result, for the purposes of this moderate area FIP and the State's serious area SIP, the attainment deadline is December 31, 2001. CAA section 189(c)(2).

2. 24-hour Standard

EPA based its 24-hour standard attainment analysis on air quality modeling of exceedances at four monitoring sites that was performed by ADEQ for the microscale plan. The four monitoring sites are: (1) Salt River, in an industrial area; (2) Gilbert, affected by agricultural and unpaved parking lot fugitive dust emissions; (3) Maryvale, with disturbed cleared areas nearby due to construction of a park; and (4) West Chandler, near a highway construction project. These sites were selected to represent a variety of conditions within the Maricopa nonattainment area. See 63 FR 15920, 15939.

The microscale plan demonstrated attainment at the Salt River and Maryvale sites, and EPA approved the attainment demonstrations at these sites at the time it took final action on the microscale plan. 62 FR 41856, 41862. The microscale plan did not demonstrate attainment at the West Chandler and Gilbert sites. These sites are addressed here.

The FIP rule requires RACM for unpaved roads, vacant lots, and unpaved parking lots. These sources in total contribute 25 percent of the emissions to the exceedance at the Gilbert site and just 1 percent of the emissions to the exceedance at the West Chandler site. The FIP rule has a substantial impact for the Gilbert site, reducing ambient concentrations from 213 to 176 "μg/m³ but much less effect at West Chandler, reducing concentrations from 332 to just 316 "μg/m³. See Table 3. Because the FIP rule does not result in attainment at either site, EPA is finding that attainment of the 24-hour standard is impracticable with the implementation of RACM.

As can be seen from Table 3, attainment at both sites will require substantial reductions from agricultural sources in addition to reductions from unpaved roads, unpaved parking lots, and vacant lots. While reductions from agricultural sources are expected through the implementation of BMPs by 2001, EPA is unable to quantify the impact of these BMPs at this time because they have not yet been developed. Therefore it is not possible to determine an expected level of control. Once the BMPs have been defined, EPA will be better able to estimate reductions from agricultural sources and will revisit this impracticability demonstration for the 24-hour standard and modify the demonstrations as necessary.

TABLE 3—IMPRACTICABILITY DEMONSTRATION FOR THE 24-HOUR PM–10 STANDARD

Source category	Concentration after SIP controls μg/m³		FIP control (percent)	Concentration after FIP controls μg/m³	
	Chandler	Gilbert		Chandler	Gilbert
Agricultural fields	194.7	.....	.....	194.7	
Agricultural aprons	21.7	55.6	.....	21.7	55.6
Road construction	6.9	.....	.....	6.9	
Unpaved roads	0.5	0.5	64	0.2	0.2
Paved Roads	0.2	1.6	.....	0.2	1.6
Unpaved parking lots	.....	51.3	56	.....	22.6
Vacant lots	28.1	14.5	56	12.4	6.4
Anthropogenic Total	252.1	123.4	.....	236.1	86.3
Background	80	90	.....	80	90
Total	332.1	213.4	.....	316.1	176.3

See section IV.D. below for a discussion of the estimated emission reductions from the FIP control measures.

EPA received a number of comments on the proposed impracticability demonstrations. The most significant comments have been addressed below and all comments have been fully addressed in the Response to Comments TSD.

Comment: ACLPI comments that EPA's impracticability demonstration is flawed because it does not include all RACM and uses an unapproved state model. ACLPI asserts that EPA's failure to include so called "de minimis" measures in the FIP, as well as the other measures the Agency has excluded from the FIP, could very well make the difference between the showing of impracticability and a showing of attainment. ACLPI notes that under the analysis in Table 5 of the proposed rulemaking, the FIP measures could reduce annual PM–10 levels to 52 μg/m³—only 2 μg/m³ over the standard and yet EPA's "de minimis" policy allows the Agency to avoid adopting any measures that produce less than 1 μg/m³ in improvement and thus, an additional package of "de minimis" measures could well make the difference between attainment and nonattainment. Based on the data in Table 2 of the proposed rulemaking, ACLPI asserts that, combined, the "de minimis" sources in that table would reduce PM–10 by 4.0 μg/m³ on an annual basis—more than enough to produce attainment based on the data in Table 5 of the Proposed rulemaking. The Center concludes that far from showing impracticability, EPA's analysis shows that timely attainment is practicable with the adoption of additional measures that are already identified and for which there is no reasoned justification to reject.

Response: EPA believes that ACLPI's comment addresses only the impracticability demonstration for the annual standard and is responding to it on that basis. As noted above, EPA used the State's modeling as the technical basis for this FIP. As such, the modeling was subject to public comment as part of the FIP proposal and did not require a prior CAA section 110(k) approval for EPA to use it. EPA also demonstrated that it has included all RACM available to it in the impracticability demonstration. See section IV.A.

The projected 52 μg/m³ concentration in Table 5 of the proposed rulemaking assumes complete elimination of emissions from unpaved roads, agricultural dust, and windblown dust—an unrealistic level of control. See 63 FR 15920, 15939. There is currently insufficient information to accurately calculate regional reductions from the FIP measure for unpaved parking lots, vacant lots, and the commitment for agricultural controls. By showing that attainment would still not result even with 100 percent control on these sources, EPA was able to find that attainment of the annual standard is impracticable with the implementation of RACM. However, because it was derived from an assumption of 100

percent control, the projected 52 μg/m^3 annual level is too optimistic and the actual concentration after implementation of the FIP RACM will be higher.

The total impact of all de minimis source categories combined is 3.4 μg/m^3, or less than 10 percent of the exceedance of the annual PM–10 standard at the Greenwood monitor.[29] Attainment at the Greenwood monitor would require elimination of more than half the emissions from these sources in addition to eliminating all emissions from the sources subject to the FIP measures. These de minimis sources include on-road motor vehicles (already subject to tailpipe standards, I/M, and clean fuel requirements), residential wood combustion (already controlled at RACM levels), all other combustion sources, and major point sources (already subject to RACT). No measures exist that could reduce emissions from these sources by more than half by the end of 2001, short of banning or substantially curtailing their operations; neither option would constitute a reasonable level of control. A more practicable approach to attaining the standard at Greenwood is to a obtain the needed emission reductions from the source categories that contribute significantly to the nonattainment problem at the Greenwood monitor, source categories such as unpaved road dust and paved road dust. EPA is promulgating a rule in this FIP to reduce emissions substantially from unpaved roads and EPA evaluated a large number of measures to reduce emissions from paved roads (including many transportation control measures) and found none that were RACM for the Agency.

D. Reasonable Further Progress Demonstrations

As discussed in the proposal, EPA interprets the RFP requirement for areas demonstrating impracticability as being met by showing that the implementation of all RACM has resulted in incremental emission reductions below pre-implementation levels. See 63 FR 15920, 15927.

RFP is demonstrated separately for the annual and 24-hour standards because in the Phoenix area the mix of sources contributing to the annual standard exceedances differs from that contributing to the 24-hour exceedances. In addition, since PM-10 exceedances in the Phoenix area are related almost entirely to primarily-emitted PM–10, only emissions of primarily-emitted PM–10 are evaluated for RFP.

EPA has revised the annual standard RFP demonstration from the proposal to reflect the changes to the FIP fugitive dust rule. Although EPA does not believe that annual incremental reductions are required to be shown for moderate PM–10 nonattainment areas demonstrating impracticability, EPA has also revised the RFP tables (Tables 7, 8, and 9) from the proposal to show that the FIP does, in fact, result in annual incremental reductions. See section IV.D.1. below.

EPA received a number of comments on its interpretation of the RFP requirement for areas demonstrating impracticability as well as on the specifics of the RFP demonstration. EPA responds to the most significant comments in section IV.D.2. below and to all comments received in the response to comments TSD found in the docket for this rulemaking.

1. Revised RFP Demonstrations

a. Annual Standard. EPA has revised the annual standard RFP demonstration to account for the increased ADT threshold for controls on unpaved roads in the FIP fugitive dust rule. Revisions to the FIP rule's provisions for vacant lots or unpaved parking lots did not affect the annual standard RFP demonstration because no reductions were assumed from these sources in the proposed demonstration. The final annual standard RFP demonstration showing incremental reductions between 1998 and 2001 is presented in Table 4.

Emission levels for 1998, 1999, 2000, and 2001 were calculated by growing emissions from the emission inventory base year of 1994 and the modeling year of 1995 based on growth factors provided by MAG and by incorporating reductions from approved State RACM and BACM controls. Emissions levels for 2000 and 2001 also reflect the estimated emission reductions from the FIP rule for unpaved roads. The estimated effectiveness of controls on unpaved roads, 80 percent, was based on the research done for the microscale plan on the effectiveness of controls for unpaved parking (see Table 4–1 in the final microscale plan) and assumes a rule effectiveness of 80 percent per EPA's guidance (57 FR 13503). EPA has not changed these estimated control and rule effectiveness percentages in this final demonstration; however, the Agency estimates that the increase in the ADT applicability threshold in the FIP rule will reduce the total unpaved road VMT impacted by the rule from 90 percent to 50 percent.

The annual standard RFP demonstration did not include emission reductions from the implementation of the FIP rule for unpaved parking lots and vacant lots. Although emission reductions are expected from these sources starting in 1999, there currently is insufficient information on the number of unpaved parking lots and vacant lots that will be subject to the FIP to estimate an emission reduction. Information from the surveys EPA will perform after promulgation of the rule will help in quantifying emission reductions from these sources. In addition, while reductions from agricultural sources are also expected starting in 2000, no emission reductions were assumed in the RFP demonstration for agricultural sources because the ultimate RACM have not been defined and therefore the expected level of control cannot be determined. Because the reductions expected from vacant lots, unpaved parking lots, and agricultural sources cannot at this time be quantified, the showing that the FIP will result annual incremental reductions is necessarily qualitative.

As can be seen in Table 4, in order to show annual reductions from 1998 to 1999, emission reductions of more than 87 mtpy would need to result from the implementation of the FIP fugitive dust on vacant lots and unpaved parking lots. The total regional inventory for unpaved parking lots is currently unknown. The regional inventory for vacant lots, however, is estimated to be 2020 mtpy in 1999. See RFP TSD. The FIP rule will need to reduce emissions in this category by a little more than 4 percent in order to demonstrate annual incremental reductions. Because application of dust control measures to a disturbed surface is expected to reduce fugitive dust from that surface by 56 percent (see 63 FR 15920, 15941), EPA is confident that the rule will achieve at least a 4 percent overall reduction in regional fugitive dust emissions from vacant lots sufficient to show reductions in total regional PM–10 emissions from 1998 to 1999.[30]

As can be also be seen in Table 4, in order to show annual reductions from 2000 to 2001, emission reductions of more than 239 mtpy would need to

[29] The total sum of the impact of the de minimis source categories listed on Table 2 of the Proposed rulemaking is 4.0 μg/m^3; however, in this FIP both agricultural dust and windblown dust are considered significant sources because they are significant sources for the 24-hour standard. As result the total impact of de minimis sources at the Greenwood monitor is only 3.4 μg/m^3.

[30] This conclusion is supported by noting that the estimated reductions from applying the FIP rule to *one* vacant lot for *one* day at the Chandler monitoring site is 3.5 metric tons per windy day, 4 percent of the total annual reductions needed to show an incremental reduction from 1998 to 1999.

result from the implementation of the BMPs on agricultural sources. The projected regional inventory for agricultural sources is 6,972 mtpy in 2001. See RFP TSD. The FIP rule will need to reduce emissions in this category by slightly more than 3 percent in order to demonstrate annual incremental reductions between 2000 and 2001. Again, EPA has every confidence that such minimal reductions can be achieved.

TABLE 4.—RFP DEMONSTRATION FOR THE ANNUAL STANDARD

Year	Total PM–10 emissions metric tons/year
1998	61,017.
1999	61,104—reductions from vacant lots and unpaved parking lots.
2000	57,607—reductions from vacant lots and unpaved parking lots.
2001	57,846—reductions from vacant lots, unpaved parking lots, agricultural sources.

b. 24-hour Standard. For the 24-hour standard, EPA evaluated RFP only for the Gilbert and West Chandler sites, having already approved the RFP demonstrations at the Maryvale and Salt River sites as part of its action on the microscale plan. 62 FR 41856, 41862.

Changes to the FIP fugitive dust rule do not affect the emission reductions assumed in the proposed RFP demonstrations for the 24-hour standard because the rule will continue to apply in the same manner and to the same extent as was assumed in the proposal. In other words, the changes to the FIP rule do not affect its application to the sources surrounding the Gilbert and West Chandler sites.

As with the annual standard demonstration, 1998 emission levels were adjusted to reflect implementation of the improved controls on construction sources and 2001 emissions levels to reflect the estimated emission reductions from the proposed FIP rule for unpaved roads, unpaved parking lots, and vacant lots. Emission reductions estimates are again based on the research done for the microscale plan and assume a rule effectiveness of 80 percent per EPA's guidance. For unpaved roads, a control effectiveness of 80 percent is assumed. For vacant lots and unpaved parking lots, a control effectiveness of 70 percent is assumed. As with the annual standard, no emission reductions were assumed for agricultural sources. A more detailed analysis of the RFP demonstrations for the Gilbert and West Chandler monitors can be found in the RFP TSD.

i. Gilbert Monitoring Site. The 24-hour exceedances at the Gilbert monitor are impacted by emissions from agricultural aprons, disturbed cleared lands (i.e., vacant lots), unpaved parking lots, and paved roads. 62 FR 31025, 31031. As can be seen from Table 5, the emission reductions from the FIP rule and commitment for unpaved parking lots and vacant lots and agricultural sources are sufficient to assure incremental emission reductions between 1998 and 2001 and annual incremental reductions [31] in the interim years. EPA, therefore, finds that the FIP assures RFP for the 24-hour standard at the Gilbert monitor.

TABLE 5.—RFP DEMONSTRATION FOR THE 24-HOUR STANDARD—GILBERT MONITORING SITE

Source categories	FIP control (%) year	Emissions(kg/day)			
		1998	1999	2000	2001
Agriculture aprons	0 (2001)	165	165	165	165 (-reductions from BMPs).
Vacant lots	0.56 (1999)	76	33	33	33.
Unpaved parking lots	0.56 (1999)	190	84	84	84.
Paved roads	0	5	5	5	5.
Total	.....	436	287	287	287 (-reductions from BMPs).

ii. West Chandler Monitoring Site. The 24-hour exceedances at the West Chandler monitor are impacted by emissions from agricultural fields, agricultural aprons, road construction, disturbed cleared lands (i.e., vacant lots), unpaved roads, and paved roads. 62 FR 31025, 31032. As can be seen from Table 6, the emission reductions from the FIP rule for unpaved roads and vacant lots and and the commitment for controls on agricultural sources are sufficient to assure incremental emission reductions between 1998 and 2001 and annual incremental reductions in the interim years; therefore, EPA finds that the FIP assures RFP for the 24-hour standard at the West Chandler monitor.

TABLE 6.—RFP DEMONSTRATION FOR THE 24-HOUR STANDARD—WEST CHANDLER MONITORING SITE

Source category	FIP control (%) Year	Emissions (kg/day)			
		1998	1999	2000	2001
Agriculture	0 (2001)	19378	19378	19378	19378 (-reductions from BMPs).
Vacant lots	0.56 (1999)	6188	2723	2723	2723.
Road Construction	0	440	440	440	440.
Agricultural apron	0 (2001)	1954	1954	1954	1954 (-reductions from BMPs).
Unpaved road	0.64 (2000)	49	49	18	18.
Paved roads	0	37	37	37	37.
Total	.....	28046	24581	24550	24550 (-reductions from BMPs).

[31] While there is no change in total emissions from 1999 to 2000, EPA believes that annual incremental reductions are still shown because of the large reduction occurring in the early years between 1998 and 1999.

2. Response to Comments on the RFP Demonstration

EPA has responded to the most significant comments on the proposed RFP demonstration below. The TSD contains EPA's response to all comments received.

Comment: ACLPI asserts that section 172(c)(2) of the Act specifically requires all nonattainment area SIPs to show RFP, and that both the Act and longstanding EPA guidance require that, to satisfy the RFP requirement, plans must provide for annual reductions in total emissions sufficient to produce steady progress toward attainment on a straight line basis or faster, citing CAA section 171(1) and 59 FR 41988, 42016 (August 16, 1994); 52 FR 45044, 45066 (November 24, 1987); 46 FR 7182, 7185 (January 22, 1981); EPA, Guidance Document for Correction of Part D SIP's for Nonattainment Areas (January 27, 1984). ACLPI disagrees with EPA's claim that for moderate areas demonstrating impracticability, the Act's RFP requirement is met by a showing that implementation of all RACM will result in "incremental emission reductions below pre-implementation levels." ACLPI asserts that the Act does not in any way waive the RFP requirement for moderate PM–10 areas claiming impracticability and explicitly sets out RFP as a requirement separate, distinct and in addition to RACM, comparing section 172(c)(1)(RACM) with section 172(c)(2)(RFP). ACLPI claims that EPA's reading of the RFP requirement for areas demonstrating impracticability would render the RFP mandate a mere redundancy, a result that is contrary to well-settled rules of statutory construction, citing N.J. Singer, 2A Statutes & Statutory Constr. § 46.06 at 119–20 (1992 Rev.).

Response: EPA agrees with ACLPI that the RFP requirement in section 172(c)(2) is a separate and distinct requirement for nonattainment plans that is in addition to the requirement for RACM in section 172(c)(1). It also agrees that all nonattainment plans must address the RFP requirement, including moderate area PM–10 plans demonstrating impracticability. EPA has not waived the RFP requirement and has fully addressed it in this FIP. See section IV.D.1. Section 171(1) of the CAA defines RFP as:

> [S]uch annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D of title I of the Clean Air Act] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

As seen from this definition, the adequacy of the emission reductions required to demonstrate RFP is inextricably linked to the reductions necessary to ensure attainment and thus to the control strategy necessary for attainment. Because of this interconnection, EPA has historically required RFP to be demonstrated by showing that nonattainment plans provide for annual incremental emission reductions sufficient generally to maintain at least linear progress toward attainment by the applicable attainment deadline. See, e.g., 43 FR 21673, 21675 (May 19, 1978), Criteria for Proposing approval of Revisions to [1979] Plans for Nonattainment Areas; 46 FR 7185 (January 22, 1981), Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension [under CAA section 172(a)(2)]; 59 FR 41988, 42016 (August 16, 1994), State Implementation Plans for Serious PM–10 Nonattainment Areas. As described, for example, in the 1978 guidance document, the required linear reductions were represented graphically as a straight line drawn from the base year (i.e., the submittal year for the plan) emission inventory to the allowable emissions in the attainment year. RFP was shown if the annual emission reductions were sufficient to produce this "straight-line rate."[32] See 43 FR 21675.

Since this straight-line rate demonstration requires a determination of the emission reductions needed for attainment, the guidance documents requiring linear progress for RFP in nonattainment plans has always been predicated on the existence of a concurrent statutory requirement that the nonattainment plan also demonstrate attainment. These guidance documents, however, provide little help in determining how RFP is to be demonstrated when a nonattainment plan is statutorily allowed *not* to demonstrate attainment, as is the case with certain moderate area PM–10 plans.

Moderate area PM–10 plans demonstrating impracticability do not include a projection of the allowable emissions in the attainment year. Attainment projections for such areas are not required until submittal of the subsequent serious area plan. Thus, for moderate plans demonstrating impracticability, it is not possible to determine the linear rate of reductions required under the RFP guidance for plans demonstrating attainment because the line's end point, the allowable attainment level, is missing. Put simply, EPA's previous interpretation of and guidance for the RFP requirement in the Act do not work in areas demonstrating impracticability. In such a situation, it is necessary and appropriate to amend the previous guidance.[33]

EPA issued preliminary guidance on interpreting the RFP requirement for moderate PM–10 areas demonstrating impracticability in its final approval of the Phoenix moderate area PM–10 plan, noting that the guidance was intended to clarify the confusion created by omissions in the Act and in prior EPA guidance. See 60 FR 18010, 18013 (April 10, 1995). In that notice, EPA stated that RFP was demonstrated by showing that the implementation of all RACM has resulted in "incremental reductions" in emissions of PM–10. EPA clarified and further explained this guidance in its proposal to restore the Agency's approval of the Phoenix moderate area plan. See 61 FR 54972, 54973. As quoted above, RFP is defined in section 171(1) as either annual incremental reductions as are required under part D, or such reductions as the Administrator may *reasonably* require "for the purpose of ensuring attainment of the [NAAQS] by the applicable date." In moderate PM–10 area plans demonstrating impracticability, there is no demonstration of attainment, simply a demonstration that, even after the implementation of all RACM, it is impracticable for the area to attain the PM–10 standard by the applicable attainment deadline. Once EPA has determined that all reasonable control measures that are available have been implemented and timely attainment still will not occur, there are no further reductions that it would be reasonable to require "for the purpose of ensuring attainment" by the applicable attainment deadline. Thus, the emissions reductions achieved through

[32] This requirement for reductions on a "straight-line rate" has never been absolute. EPA has stated that it would accept less than a straight-line rate if the State could show that a lag was necessary to accommodate the time required for compliance. See 43 FR 21675 and 44 FR 20372, 20377 (April 4, 1979). EPA has also noted that in certain situations, such as where there are a limited number of sources contributing to the nonattainment problem, where requiring linear progress reductions in PM–10 emissions to maintain RFP is less appropriate and in such situations an expeditious compliance schedule can be used to demonstrate RFP. See 59 FR 41998, 42015.

[33] Under CAA section 193, guidance issued by EPA prior to the 1990 CAA Amendments remain in effect except to the extent that it is inconsistent with any provision of the revised Act or is revised by the Administrator. As will be seen, EPA has both found that its previous RFP guidance requiring linear emission reductions is inconsistent with the statutory provisions allowing demonstration of impracticability for moderate PM–10 areas and revised that guidance for such areas.

implementation of all RACM, by definition, would satisfy the requirement to demonstrate reasonable further progress in the period before the Act requires a new plan that includes the additional measures needed to produce the net emissions reductions required for attainment.

Moreover, EPA's interpretation is reasonable given the Act's scheme for PM–10 attainment. Among all the Act's numerous nonattainment requirements, the moderate area PM–10 provisions are unique in tolerating a planned failure to demonstrate attainment and deferring the obligation to demonstrate attainment to a later plan. EPA's interpretation of the general RFP requirement in section 172(c)(2), as it applies to moderate PM–10 areas demonstrating impracticability, must not only meet the Act's definition of RFP but must also be consistent with the statutory scheme for PM–10 attainment. For the reasons stated above, EPA believes that its interpretation of the RFP requirement for areas demonstrating impracticability is consistent with this scheme. Requiring RFP demonstrations to show emission reductions in excess of those resulting from the implementation of all RACM would conflict with the CAA section 189(a)(1)(B)(ii) provision for demonstrating impracticability.[34]

Finally, this entire discussion is somewhat academic in the case of this FIP where the expeditious application of RACM not only results in incremental emission reductions below pre-implementation levels, but also in annual incremental reductions for both the 24-hour and annual PM–10 standards. See section IV.D.1.

Comment: In its 1996 comments (which the Center requested be incorporated into its comments on the April 1, 1998 PM–10 FIP proposal), ACLPI argues that EPA wrongly suggests that the Act's RFP mandate disappears after the applicable attainment date has passed and does not reappear until the state submits a new SIP to meet a new attainment deadline. The Center asserts that under this view, a state that is delinquent in meeting an attainment deadline can actually do less to move toward attainment than an area that has yet to miss a deadline. Given that the whole purpose of the RFP mandate is to assure steady progress toward clean air, ACLPI argues that the purpose becomes even more urgent when an area is continuing to violate standards and that EPA's position is comparable to that rejected by the Court in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). In addition, ACLPI argues that the approach proposed by EPA could not be more antithetical to the language and purpose of the CAA and that under such an approach, EPA could approve a SIP that will actually allow air quality to worsen since the SIP need only slow the rate of emissions growth until the attainment deadline but after the attainment deadline, the SIP need not even slow the rate of emissions growth and emissions can grow at any rate. ACLPI asserts that it is inconceivable that Congress intended a result so contrary to the public health goals of the Act, or to the plain meaning of the phrase, "reasonable further progress."

Response: As stated above, the RFP mandate in the Act is intended to ensure that nonattainment plans provide for reasonable progress toward attainment by the applicable attainment date, as is clear from the plain language of the RFP definition in section 171(1) of the Act. As is apparent from that language, RFP, as the term is used in the CAA, applies only in the period prior to the applicable attainment date and does not continue in the period after that date.

ACLPI purports to invest in the RFP mandate the solution to all potential problems with implementation plans, from delinquent plans and failure to actually attain the standards, to increasing emissions after attainment dates have passed. This all-encompassing view of the RFP mandate ignores the provisions of the Act that Congress added to specifically address each of these situations: the section 179(a) sanctions and section 110(c) federal plan requirements for addressing delinquent or inadequate plans; the reclassification requirements of sections 181(b)(2), 186(b)(2), and 188(b) (with their accompanying requirements for new plans in sections 182, 187, and 189) and the mandatory rate of progress requirements in sections 187(g) and 189(d) for addressing continuing violations after the serious area attainment date has passed; the requirement for contingency measures in section 172(c)(9) to assure additional emission reductions after an area fails to attain but before a new plan is submitted to prevent emissions growth; and the maintenance plan requirements in section 175(A) to assure limits on emissions growth to prevent violations of the standard in areas redesignated to attainment.[35]

Given that there are other specific CAA provisions that address the hypothetical scenarios ACLPI envisions, there is no basis for invoking the general RFP provision as a gap-filling, all-purpose remedy for them. EPA's interpretation of the section 172(c)(2) RFP requirement as set forth in the FIP is consistent with the statutory purpose of achieving regular emission reductions as needed to assure attainment by the applicable attainment date.

Comment: ACLPI comments that the Act's reclassification scheme does not support EPA's RFP approach because the purpose of reclassification is to prompt adoption of more stringent controls and not an excuse to bring progress to a stop.

Response: EPA does not claim that the reclassification scheme supports its RFP approach. Equally, the reclassification scheme does not support ACLPI's proposition that the RFP requirement should apply after an applicable attainment date. As noted previously, the plain language of the RFP definition clearly indicates that RFP is only required in the period before the applicable attainment date and not after it has passed. As also noted previously, the CAA provision intended to address progress between a lapsed attainment date and the submittal of a revised nonattainment plan with its new RFP demonstration is the contingency measures provision in section 172(c)(9).

Comment: ACLPI claims that EPA's RFP analysis for the proposed FIP is flawed in several other key respects. First, ACLPI asserts that it is based on an emissions inventory that is not complete, current, and accurate, as required by the Act. ACLPI states that the inventory submitted by the state in connection with its 1991/1993 PM SIP revision showed vehicular exhaust as constituting 36 percent of total PM–10 emissions (ADEQ, Final State Implementation Plan Revision, Revised Chapter 9 (Feb. 1994) p. 9–34) and in contrast, the inventory relied on in EPA's current RFP demonstration shows the same sources as amounting to only 8 percent of the inventory and that EPA offers no rational explanation for this glaring disparity. ACLPI notes that the State's prior inventory was based on

[34] EPA's approach is consistent with the rule, long articulated by the Ninth Circuit, that "language in one section of the statute [is to be interpreted] consistently with the purposes of the entire statute considered as a whole." *Adams* v. *Howerton*, 673 F.2d 1036, 1040 (9th Cir.), *cert. denied*, 458 U.S. 1111 (1982). See also *In re Arizona Appetito's Stores, Inc.*, 893 F.2d 216, 219 (9th Cir. 1990) (courts to adopt interpretation that is harmonious with the statute's scheme and general purposes).

[35] In light of the new statutory provisions in the 1990 Clean Air Act Amendments, ACLPI's comment that EPA's position is comparable to that rejected by the Ninth Circuit in *Delaney* is inapposite. In that case, the Court was addressing the consequences of a lapsed attainment deadline in the absence of any related statutory provisions. In the 1990 Amendments, Congress provided specific actions to be undertaken should such a lapse occur.

actual speciated monitoring data from the Phoenix area and that EPA's inventory appears to based on theoretical emission factors and speculation.

Response: EPA based its RFP analysis for the proposed FIP on the 1994 regional emission inventory prepared by MAG (see *1994 Regional PM–10 Emission Inventory for the Maricopa County Nonattainment Area,* Draft Final Report, MAG, May 1997) and additional inventory work prepared for the regional PM–10 modeling (see *Technical Support Document for the Regional PM–10 Modeling in Support of the 1997 Serious Area PM–10 Plan for Maricopa County Nonattainment Area,* Draft, MAG, October 1997). These inventories were prepared following the procedures in EPA guidance, using either EPA emission factors or other appropriate emission factors and Phoenix-specific activity data.

It is not valid to conclude from the mere fact that this inventory differs in its apportionment of sources from the inventory in the 1991/93 PM SIP that the regional 1994 inventory is inherently flawed. Inventories prepared at different times will naturally vary because improved methodologies are developed, new information about sources is collected, control measures are implemented, and emission growth rates vary across categories. All these factors tend to affect the percentage presence of a source category from inventory to inventory. Because it is the nature of inventories to change over time, EPA does not normally require new inventories to be reconciled against previous ones and any differences between them explained.

The inventory in the 1991/93 PM–10 Plan referred to by ACLPI is the regional inventory modified ("normalized") to reflect a 1989–1990 source apportionment at three urban Phoenix monitors: Central Phoenix, West Phoenix, and South Scottsdale.[36] This source apportionment was performed using Chemical Mass Balance (CMB) modeling and monitored speciated data. As work has been done to evaluate the nature of the PM–10 problem in Phoenix, it has become increasing clear that PM–10 exceedances in the Phoenix area often have highly localized causes. In other words, the sources that contribute substantially to an exceedance are often located close to the exceeding monitor. As a result, any inventory that is developed based on the source apportionment from a given monitor or small set of similar monitors is only truly informative about the relative significance of sources around those monitors rather than about the relative significance of sources in a regional inventory.

Phoenix has a large number of fugitive dust sources such as construction sites, vacant lots, unpaved roads, and agricultural fields. Emissions from these sources need to be included in any regional inventory. However, as noted in EPA's proposed action on the microscale plan, fugitive dust PM–10 has more localized effects than other criteria pollutants because it is emitted near ground level and has relatively sharp spatial concentration gradients as dust settles out with distance from the emitting source. See 62 FR 31025, 31030. Consequently, it would be surprising to see a substantial contribution from fugitive dust sources at urban monitors where there were relatively few of these fugitive dust sources close by. The source apportionment at such monitors is much more likely to be influenced by local sources such as paved road dust and by fine particulate sources, such as vehicle exhaust, which tend to remain suspended in ambient air longer. This is exactly the source apportionment seen at the three urban monitors used to generate the 1991/93 Plan's normalized inventory. As a result, it is not surprising to see that the 1991/93 Plan's normalized inventory skewed toward paved road dust and vehicle exhaust and away from fugitive dust. Basing the regional inventory on the source apportionment at urban monitors, however, will underestimate regional fugitive dust emissions. This underestimation is illustrated in the 1991/93 Plan's normalized inventory in which fugitive dust sources account for only 3 percent of the total regional PM–10 emissions.

Source apportionment at a monitor is a necessary part of preparing a PM–10 attainment demonstration because without a clear understanding of the relative contributions of sources causing an exceedance, it is impossible to know how controls will affect air quality.[37] But in preparing a regional inventory for an area as large and as diverse as Phoenix, with its many fugitive dust sources, source apportionment based on just a few urban monitors is unlikely to result in a regional inventory that correctly accounts for fugitive dust emissions.

Comment: ACLPI also asserts that EPA failed to accurately address growth in PM–10 emissions from vehicular exhaust. ACLPI notes that the Agency's inventory shows on-road exhaust emissions of PM–10 steadily decreasing from 1610 tpy in 1995 to 1037 tpy in 2001, but cites a MAG conformity analysis that shows vehicle exhaust emissions of PM–10 *increasing* to 8,807 tpy (based on 24.13 tpd) by 2001. ACLPI argues that increased emissions are consistent with projected increases in VMT and with the lack of additional controls to limit motor vehicle emissions of PM–10 and that EPA cannot justify reliance on an inventory that shows decreasing motor vehicle emissions when this conflicts with reality.

Response: The MAG conformity analysis is performed using an out-of-date mobile source emissions model, the 1985 Particulate Model. See *Conformity Analysis, MAG Long Range Transportation Plan Summary and 1997 Update [and] MAG 1998–2002 Transportation Improvement Program,* MAG, November 1997, p. 1–21. MAG uses this model in its conformity determinations in order to be consistent with the model used in the State's 1991/93 moderate area plan. In 1994, EPA released the PART5 mobile source model for use in SIPs. As recommended by EPA guidance, the base and projected exhaust emission inventories in the FIP were developed using the PART5 model. See *PM–10 Emission Inventory Requirements,* OAQPS, EPA (EPA–454/R–94–033), September 1994, p. 14. The PART5 model changed the estimates of emissions from on-road motor vehicles. The difference between the conformity and FIP inventories is partly related to this change in emission models.

The difference between the two inventories is also the result of the use of the normalized inventory from the 1991/93 PM–10 Plan in the conformity analysis. Again, MAG uses the normalized inventory to be consistent with the submitted PM–10 SIP. See *Conformity Analysis,* p. 1–20. As discussed in the previous response, this normalized inventory substantially increased the vehicle exhaust portion of the inventory based on the source apportionment at three urban monitors. This normalized inventory does not accurately reflect the contribution of fugitive dust sources to the regional inventory and probably overstates vehicle exhaust emissions.

Because the motor vehicle exhaust inventory in the MAG conformity analysis and the inventory in the FIP

[36] Strictly speaking, this normalized inventory is not an emission inventory at all, but merely the percent source contributions at a monitor multiplied by the total regional inventory as calculated by emission factors and source activity levels.

[37] In the 1991/93 Plan, the primary purpose of the normalized inventory was to evaluate the effects of controls for the impracticability demonstration. See 1991/93 Plan, p. 9–39.

were developed using substantially different methodologies and assumptions, the inventories are not comparable. As a result, it cannot be said that motor vehicle emissions are increasing from 1610 mtpy to 8,807 mtpy as ACLPI claims.[38] The motor vehicle exhaust inventory used in the FIP was based on the EPA's latest emission model and regional estimates of emissions and, as a result, EPA believes that it is the best inventory currently available.

Contrary to ACLPI's assertions, it is not surprising to see decreases in tailpipe PM–10 emissions despite the increases in VMT and the apparent lack of additional new control measures. This decline in emissions despite the substantial increase in VMT is due primarily to fleet turnover that brings cleaner cars into the fleet to replace older, dirtier ones and implementation of control programs such as I/M and clean fuel requirements. Decreasing motor vehicle emissions, in fact, reflects the reality of almost three decades of successful technological controls on motor vehicles.

Comment: ACLPI states that the RFP demonstration does not show annual emission reductions—it only purports to show reductions in the year 2001.

Response: As discussed above, EPA does not believe that annual emission reductions are necessary to demonstrate RFP in areas demonstrating the impracticability of attaining the PM–10 standard. However, EPA has qualitatively shown that this FIP should result in annual emission reductions from the 1998 promulgation until the December 31, 2001 attainment date.

E. Indian Reservations

As discussed in EPA's proposed FIP, there are two Indian reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third reservation (the Gila River Indian Community) in the Phoenix PM–10 nonattainment area. The FIP measures do not cover sources on these reservations. See 63 FR 15920, 15941. EPA received comments from the Salt River Pima-Maricopa Indian Community supporting EPA's proposal and reiterating their willingness to work with EPA under the EPA's Tribal Authority Rule which became effective on March 16, 1998.

[38] When projected 2001 emissions are estimated using the same methodology as used in the 1991/93 plan, motor vehicle exhaust PM–10 emissions are projected to decline from 13,410 mtpy in 1989 (1991/93 Plan, p. 9–41, figure converted to mtpy from english tpy) to 8,807 mtpy in 2001 (*Conformity Analysis*, p. 6–3).

V. Administrative Requirements

A. Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604 and 605(b). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the two proposed federal measures, the fugitive dust rule and the commitment for the development and implementation of RACM for the agricultural sector, EPA is assuming that the affected or potentially affected sources constitute "small entities" as defined by the RFA.

The final federal measures are intended to fill gaps in the Arizona PM–10 SIP for the Phoenix nonattainment area. For non-agricultural fugitive dust sources, while the County has adopted and EPA has approved Rule 310 into the SIP, the County has not made a commitment to provide adequate resources to ensure enforcement of the rule as it applies to the unpaved road, unpaved parking lot and vacant lot source categories.[39] Further, application of Rule 310 to agricultural sources including fields and aprons is affected by the provision in section 102 (incorporating A.R.S. 49–504.4) that states that the rule "shall not be construed so as to prevent normal farm cultural practices." Therefore, applicability of the rule to such sources depends on what dust-generating operation is occurring at the source. In other words, Rule 310 applies to some operations on agricultural fields and aprons and not to others.

2. RFA Analysis

a. Federal Rule for Unpaved Roads, Unpaved Parking Lots, and Vacant Lots. The starting point for EPA's analysis is Maricopa County's Rule 310. Regardless of the County's resources for enforcing the rule with respect to nonagricultural fugitive dust sources, those sources are legally responsible for complying with it. Failure to do so subjects such sources to potential enforcement action by EPA, the State, County and/or citizens. Thus, for the purpose of analyzing whether the proposed FIP rule will have "a significant economic impact," EPA assumes that sources subject to the rule are complying with it. The appropriate inquiry then is whether the terms of EPA's proposed rule would impose a significant economic impact beyond that imposed by the terms of Rule 310.

Section 101 of Rule 310 states that the purpose of the rule is "[t]o limit the emission of particulate matter into the ambient air from any property, operation or activity that may serve as an open fugitive dust source." Further, the provisions of the rule "apply to any activity, equipment, operation and/or man-made or man-caused condition or practice * * * capable of generating fugitive dust. * * *" Sections 305, 306, 309 and 312 of the rule contain the regulatory requirements applicable to the following source categories: vehicle use in open areas and vacant parcels, unpaved parking areas, vacant areas, and roadways. These requirements differ to some extent depending on the source category, but generally they mandate the implementation of RACM before certain dust-producing activities can be undertaken. RACM is defined in section 221 as "[a] technique, practice, or procedure used to prevent or

[39] The County typically only ensures compliance with Rule 310 for these sources on a complaint basis.

minimize the generation, emission, entrainment, suspension and/or airborne transport of fugitive dust." As further defined in subsection 221.1, and as pertinent to this analysis, RACM include, but are not limited to: curbing, paving, applying dust suppressants, and/or physically stabilizing with vegetation and gravel.

While subsection 211.1 does not specify which of the listed measures are appropriate for what types of source categories, the general definition of RACM in section 221 together with the list of RACM measures in subsection 211.1 provide a basis for selecting measures which are appropriate for a particular source to prevent or minimize dust emissions, to the extent other provisions of Rule 310 do not specify a particular RACM measure.

EPA's final fugitive dust rule is intended to establish a RACM requirement for unpaved parking lots, unpaved roads and vacant lots that is substantively equivalent to that established for the same sources by the Maricopa County rule. As noted above, the requirements of the County rule differ to some extent depending on the source category; EPA's proposed rule mirrors those differences. The primary difference between the County rule and EPA's final rule is that the EPA rule provides greater specificity and detail regarding which RACM are appropriate for a particular source category for the purpose of preventing or minimizing fugitive dust emissions.[40]

In providing further specificity and detail, EPA's rule does not change the nature of the RACM requirement already applicable to sources covered by County Rule 310. The RACM required to be applied in the final FIP rule are the very measures listed in subsection 211.1 of Rule 310. Beyond that, the RACM specified in the final rule for any particular source category are the appropriate RACM for that source category. What constitutes RACM for the source categories covered by the final FIP rule is relatively straightforward in light of the differences among the source categories, the low technology nature of the potential RACM and other available information. EPA therefore believes that its further specification of the RACM requirements does not change the nature of the RACM requirements already applicable under Maricopa County Rule 310 which is federally enforceable as an approved element of the Arizona SIP.

The only other notable difference between the County rule and the final FIP rule that is relevant to this analysis is paragraph (f) of the proposed FIP rule. Rule 310 contains a recordkeeping requirement for permitted dust-generating activities, but does not contain such a requirement for unpermitted activities, including unpaved parking lots, unpaved roads and vacant lots. Therefore, paragraph (f) of the proposed FIP rule includes a requirement that owners/operators subject to the rule maintain records demonstrating appropriate application of RACM. EPA has determined that the recordkeeping requirements for the source categories covered in the FIP rule will not have a significant economic impact. In many cases, the owner/operator need only retain a purchase receipt or contractor work order for the control(s) implemented. When chemical stabilization is applied as a control measure, more specific information regarding the product being used is required. However, this information (e.g., type of product, label instructions) is readily available from vendors or easily determined at the time of application. EPA expects that the information the final FIP rule requires sources to keep will be retained by source owners or operators in any event in the normal course of business (e.g., for tax and accounting purposes).

EPA's final fugitive dust rule incorporates a number of changes made in response to the public comments that EPA received on the FIP proposal. Those changes are summarized and discussed in section IV.B.2. above and in the TSD. The net result of the substantive changes is to provide sources with greater flexibility than provided in the FIP proposal and Rule 310. For example, the final FIP rule includes an increase from 0.10 acre to 0.50 acre in the de minimis disturbed surface area level for vacant lots; an increase from 150 to 250 ADT in the exemption level for unpaved roads; a new de minimis use level for unpaved parking lots; and the elimination of the DCP requirement for weed abatement. As a result of these and other changes, the requirements of the final FIP rule are effectively less stringent than both the rule as proposed and Rule 310. Thus the costs of compliance with the FIP rule are expected to be less than the proposed FIP rule and Rule 310.

As the above discussion of the RACM requirements of the two rules makes clear, even though the final FIP rule differs from Rule 310 in that it is more specific and detailed, there should be no additional burden on regulated sources because they are already legally required to apply RACM under the County rule, and the RACM required by the final FIP rule are substantively identical to that required under Rule 310.[41]

Moreover, EPA believes that the additional recordkeeping requirement in the FIP rule will not have a significant economic impact on the affected sources. As stated above, and in section V.A.7.b. of the proposed rulemaking, the information required to be retained is minimal and is therefore not expected to entail any appreciable economic impact.

b. Federal Commitment for Agriculture. EPA's final measure to control fugitive dust from agricultural fields and aprons consists of an enforceable commitment to propose and finalize adoption of RACM for those sources in September 1999 and April 2000, respectively. Prior to this formal rulemaking, EPA intends to convene a stakeholder process to develop the specific RACM that will ultimately be proposed for adoption. As discussed in detail in section V.A.7.a. of the proposed rulemaking, EPA intends the RACM to take the form of BMPs. During the BMP development process, EPA will investigate a myriad of factors, including the appropriate coverage of potential BMPs, regional climate, soil and crop types, and growing seasons. Because this aspect of today's action neither imposes specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities, it will not, by itself, have a significant economic impact on a substantial number of small entities. When EPA proposes specific RACM in the September 1999

[40] EPA believes that it is reasonable and appropriate for its rule to be more specific and detailed than the County rule. As a result of the State's failure to commit sufficient enforcement resources for its rule, EPA is having to fulfill the role of primary enforcer of the RACM requirement for the sources described above. EPA Region 9 will be responsible for fulfilling that role, and it is located in San Francisco. Given the greater difficulties that Region 9 will inevitably face in enforcing the RACM requirement in Arizona, it is reasonable for EPA to design a RACM rule that ensures EPA enforcement of the rule will be practicable. As described above, the County rule provides a general basis for determining which RACM should be applied to which source categories. But its lack of specificity makes it more likely that the agency enforcing the rule will routinely be called upon to address which RACM should be applied to which source categories. By addressing this issue in the FIP rule itself, EPA hopes to reduce the extent to which sources and others may have to consult with the Agency to determine which RACM are appropriate for a particular source or source category.

[41] Since, by its terms, the requirements of Rule 310 are so broad, the general effect of the greater specificity and detail is that EPA's FIP rule, in its entirety, is somewhat narrower in scope than the County's rule as it relates to unpaved roads, unpaved parking lots and vacant lots. For example, section 312 of Rule 310 regulates users of unpaved roads, while EPA's rule regulates only owners and operators; and Rule 310 does not exempt any unpaved roads, while EPA's rule includes a low ADT exemption.

rulemaking, it will either undertake a RFA analysis or certify the proposed rule, as appropriate.

c. *Certification.* EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or tribal governments", with certain exceptions not here relevant.

Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments'.

Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates.

Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA section] 202", EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

As explained above, while the final federal fugitive dust rule may impose an enforceable duty on State or local governments, the resulting expenditures by those entities are expected to be minimal. Tribal governments are excluded from the coverage of this rule. In addition, there will be no current enforceable duties imposed on, or expenditures by, State, local or tribal governments or the private sector as a result of the federal commitment regarding the agricultural sector. Therefore, expenditures by State, local and tribal governments, in the aggregate, or by the private sector, will be well under $100 million per year as a result of today's federal measures. Consequently, sections 202, 204 and 205 of UMRA do not apply to today's final action. Therefore, EPA is not required and has not taken any actions to meet the requirements of these sections of UMRA.

With respect to section 203 of UMRA, EPA has concluded that its final actions include no regulatory requirements that will significantly or uniquely affect small governments. As discussed in detail in IV.B.2. above, EPA believes that the RACM requirements of the final FIP rule for vacant lots, unpaved parking lots and unpaved roads are already legally required under Maricopa County Rule 310 which is federally enforceable as an approved element of the Arizona SIP. Moreover, the requirements of EPA's final FIP rule, while more specific and detailed, are substantively identical to those required under Rule 310. Therefore, there should be no additional burden on regulated sources, including small governments. With respect to EPA's enforceable commitment for the agricultural sector, such a commitment neither imposes specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities. Thus, neither EPA's fugitive dust rule nor its commitment for the agricultural sector will significantly or uniquely affect small governments. Consequently, EPA has not developed a small government plan. Nevertheless, prior to EPA's proposed action, the Agency held numerous meetings with potentially affected representatives of the State and local governments to discuss the requirements of, and receive input regarding, the proposed federal fugitive dust rule and commitment for the agricultural sector.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1855.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

EPA's final FIP rule for unpaved parking lots, unpaved roads and vacant lots includes recordkeeping and reporting requirements which will help ensure source compliance with the rule's control requirements. In general, EPA believes the recordkeeping and reporting requirements are the minimal requirements necessary to demonstrate compliance. The requirements include:

—Owners/operators of unpaved roads must keep a record which indicates the date and type of control (i.e., paving, stabilizing, or applying gravel) applied to the road.

—Owners/operators of unpaved parking lots must keep a record which indicates the date and type of control (i.e., paving, stabilizing, applying gravel, or temporary stabilization for lots used less than 35 days per year) applied to the unpaved parking lot.

—Owners/operators of vacant lots with disturbed surfaces must keep a record which indicates the date and type of control (i.e., applying ground cover vegetation, stabilizing, restoring to natural undisturbed state, or applying gravel) applied to the vacant lot.

—Owners/operators of vacant lots with motor vehicle disturbances must keep a record which indicates the date and type of control applied to the vacant lot.

—Agency surveys will be conducted by the EPA or other appropriate agency to determine the effectiveness of the rule in the Phoenix area.

The estimated recordkeeping and reporting burden for the proposed FIP rule was about 9716 hours and the estimated labor cost was about $173,632. However, since the final FIP rule no longer requires the submittal of dust control plans for weed abatement activity, the estimated recordkeeping and reporting burden for the final FIP rule is about 5297 hours and the estimated labor cost is about $93,455. No capital/start-up costs or operational and maintenance costs are anticipated. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations is listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W. Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by September 2, 1998. Include the ICR number in any correspondence.

E. E.O. 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885 (April 23, 1997)), applies to any rule that EPA determines (1) "economically significant" as defined under E.O. 12866 and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final action promulgating a moderate area PM–10 federal implementation plan for the Phoenix area is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register.** This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. 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 October 2, 1998. 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 17, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

2. Section 52.123 is amended by adding paragraph (h) to read as follows:

§ 52.123 Approval Status.

* * * * *

(h) Pursuant to the federal planning authority in section 110(c) of the Clean Air Act, the Administrator finds that the applicable implementation plan for the Maricopa County PM–10 nonattainment area provides for the implementation of reasonably available control measures as required by section 189(a)(1)(C) and demonstrates attainment by the applicable attainment date as required and allowed by sections 172(c)(2) and 189(a)(1)(B).

3. Section 52.124 is amended by adding paragraph (c) to read as follows:

§ 52.124 Part D disapproval.

* * * * *

(c) The Administrator disapproves the attainment demonstration for the annual PM–10 national ambient air quality standard and the provisions for implementation of reasonably available control measures for the annual PM–10 national ambient air quality standard in the *MAG 1991 Particulate Plan for PM–10 for the Maricopa County Area and 1993 Revisions* (July 1993) submitted by the Arizona Department of Environmental Quality on August 11, 1993 as revised by the submittal of a Revised Chapter 9 on March 3, 1994 because they do not meet the requirements of sections 189(a)(1)(B) and 189(a)(1)(C) of Part D of title I of the Clean Air Act.

4. Subpart D is amended by adding §§ 52.127 and 52.128 to read as follows:

§ 52.127 Commitment to promulgate and implement reasonably available control measures for the agricultural fields and aprons.

The Administrator shall promulgate and implement reasonably available control measures (RACM) pursuant to section 189(a)(1)(C) of the Clean Air Act for agricultural fields and aprons in the Maricopa County (Phoenix) PM–10 nonattainment area according to the following schedule: by no later than September, 1999, the Administrator shall sign a Notice of Proposed Rulemaking; by no later than April, 2000, the Administrator shall sign a Notice of Final Rulemaking; and by no later than June, 2000, EPA shall begin implementing the final RACM.

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

(a) *General.* (1) *Purpose.* The purpose of this section is to limit the emissions of particulate matter into the ambient air from human activity on unpaved parking lots, unpaved roads and vacant lots.

(2) *Applicability.* The provisions of this section shall apply to owners/operators of unpaved roads, unpaved parking lots and vacant lots and responsible parties for weed abatement on vacant lots in the Phoenix PM–10 nonattainment area. This section does not apply to unpaved roads, unpaved parking lots or vacant lots located on an industrial facility, construction, or earth-moving site that has an approved

permit issued by Maricopa County Environmental Services Division under Rule 200, Section 305, Rule 210 or Rule 220 containing a Dust Control Plan approved under Rule 310 covering all unpaved parking lots, unpaved roads and vacant lots. This section does not apply to the two Indian Reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third reservation (the Gila River Indian Community) in the Phoenix PM–10 nonattainment area. Nothing in this definition shall preclude applicability of this section to vacant lots with disturbed surface areas due to construction, earth-moving, weed abatement or other dust generating operations which have been terminated for over eight months.

(3) The test methods described in Appendix A of this section shall be used when testing is necessary to determine whether a surface has been stabilized as defined in paragraph (b)(16) of this section.

(b) *Definitions.* (1) *Average daily trips (ADT)*—the average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the Institute of Transportation Engineers Trip Generation Report (6th edition, 1997) or tube counts.

(2) *Chemical/organic stabilizer*—Any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by any applicable law, rule or regulation.

(3) *Disturbed surface area*—Any portion of the earth's surface, or materials placed thereon, which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.

(4) *Dust suppressants*—Water, hygroscopic materials, solution of water and chemical surfactant, foam, or non-toxic chemical/ organic stabilizers not prohibited for use by any applicable law, rule or regulation, as a treatment material to reduce fugitive dust emissions.

(5) *EPA*—United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

(6) *Fugitive dust*—the particulate matter entrained in the ambient air which is caused from man-made and natural activities such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers.

(7) *Lot*—A parcel of land identified on a final or parcel map recorded in the office of the Maricopa County recorder with a separate and distinct number or letter.

(8) *Low use unpaved parking lot*—A lot on which vehicles are parked no more than thirty-five (35) days a year, excluding days where the exemption in paragraph (c)(2) of this section applies.

(9) *Motor vehicle*—A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as, but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

(10) *Off-road motor vehicle*—any wheeled vehicle which is used off paved roadways and includes but is not limited to the following:

(i) Any motor cycle or motor-driven cycle;

(ii) Any motor vehicle commonly referred to as a sand buggy, dune buggy, or all terrain vehicle.

(11) *Owner/operator*—any person who owns, leases, operates, controls, maintains or supervises a fugitive dust source subject to the requirements of this section.

(12) *Paving*—Applying asphalt, recycled asphalt, concrete, or asphaltic concrete to a roadway surface.

(13) *Phoenix PM–10 nonattainment area*—such area as defined in 40 CFR 81.303, excluding Apache Junction.

(14) *PM–10*—Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by reference or equivalent methods that meet the requirements specified for PM–10 in 40 CFR Part 50, Appendix J.

(15) *Reasonably available control measures (RACM)*—Techniques used to prevent the emission and/or airborne transport of fugitive dust and dirt.

(16) *Stabilized surface*—(i) Any unpaved road or unpaved parking lot surface in which any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I. of Appendix A of this section.

(ii) Any vacant lot surface with:

(A) A visible crust which is greater than 0.6 centimeters (cm) thick and is not easily crumbled between the fingers as determined in section II.1. of Appendix A of this section;

(B) A threshold friction velocity (TFV), corrected for non-erodible elements, of 100 cm/second or higher as determined in section II.2 of Appendix A of this section;

(C) Flat vegetation cover equal to at least 50 percent as determined in section II. 3. of Appendix A of this section;

(D) Standing vegetation cover equal to or greater than 30 percent as determined in section II. 4. of Appendix A of this section; or

(E) Standing vegetation cover equal to or greater than 10 percent as determined in section II.4. of Appendix A of this section where threshold friction velocity, corrected for non-erodible elements, as determined in section II. 2 of Appendix A of this section is equal to or greater than 43 cm/second.

(17) *Unpaved Parking Lot*—A privately or publicly owned or operated area utilized for parking vehicles that is not paved and is not a Low Use Unpaved Parking Lot.

(18) *Unpaved Road*—Any road, equipment path, or driveway that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies.

(19) *Urban or Suburban Open Area*—An unsubdivided or undeveloped tract of land adjoining a residential, industrial or commercial area, located on public or private property.

(20) *Vacant Lot*—A subdivided residential, industrial, institutional, governmental or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature.

(c) *Exemptions.* The following requirements in paragraph (d) of this section do not apply:

(1) In paragraphs (d)(1) and (d)(3)(iii) of this section: Any unpaved parking lot or vacant lot 5,000 square feet or less.

(2) In paragraph (d)(1) of this section: Any unpaved parking lot on any day in which ten (10) or fewer vehicles enter.

(3) In paragraphs (d)(3)(i) and (d)(3)(ii) of this section: Any vacant lot with less than 0.50 acre (21,780 square feet) of disturbed surface area(s).

(4) In paragraph (d) of this section: Non-routine or emergency maintenance of flood control channels and water retention basins.

(5) In paragraph (d) of this section: Vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality and/or commercial acceptance. Such facilities and

operations shall be exempted from the provisions of this section only if such testing is not feasible within enclosed facilities.

(6) In paragraph (d)(3)(i) of this section: Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or another similar process is used to maintain weed stubble at least three (3) inches above the soil surface. This includes the application of herbicides provided that the clean-up of any debris does not disturb the soil surface.

(7) In paragraph (d)(3)(i) of this section: Weed abatement operations that receive an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93).

(d) *Requirements.* (1) *Unpaved parking lots.*

(i) Any owners/operators of an unpaved parking lot shall implement one of the following RACM on any surface area(s) of the lot on which vehicles enter and park.

(A) Pave; or

(B) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(C) Apply and maintain surface gravel uniformly such that the surface is stabilized.

(ii) Any owners/operators of a Low Use Unpaved Parking Lot as defined in paragraph (b)(8) of this section shall implement one of the RACM under paragraph (d)(1)(i) of this section on any day(s) in which over 100 vehicles enter the lot, such that the surface area(s) on which vehicles enter and park is/are stabilized throughout the duration of time that vehicles are parked.

(2) *Unpaved roads.* Any owners/operators of existing unpaved roads with ADT volumes of 250 vehicles or greater shall implement one of the following RACM along the entire surface of the road or road segment that is located within the Phoenix non-attainment area by June 10, 2000:

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized.

(3) *Vacant lots.* The following provisions shall be implemented as applicable.

(i) *Weed abatement.* No person shall remove vegetation from any vacant lot by blading, disking, plowing under or any other means without implementing all of the following RACM to prevent or minimize fugitive dust.

(A) Apply a dust suppressant(s) to the total surface area subject to disturbance immediately prior to or during the weed abatement.

(B) Prevent or eliminate material track-out onto paved surfaces and access points adjoining paved surfaces.

(C) Apply a dust suppressant(s), gravel, compaction or alternative control measure immediately following weed abatement to the entire disturbed surface area such that the surface is stabilized.

(ii) *Disturbed surfaces.* Any owners/operators of an urban or suburban open area vacant lot of which any portion has a disturbed surface area(s) that remain(s) unoccupied, unused, vacant or undeveloped for more than fifteen (15) calendar days shall implement one of the following RACM within sixty (60) calendar days following the disturbance.

(A) Establish ground cover vegetation on all disturbed surface areas in sufficient quantity to maintain a stabilized surface; or

(B) Apply a dust suppressant(s) to all disturbed surface areas in sufficient quantity and frequency to maintain a stabilized surface; or

(C) Restore to a natural state, i.e. as existing in or produced by nature without cultivation or artificial influence, such that all disturbed surface areas are stabilized; or

(D) Apply and maintain surface gravel uniformly such that all disturbed surface areas are stabilized.

(iii) *Motor vehicle disturbances.* Any owners/operators of an urban or suburban open area vacant lot of which any portion has a disturbed surface area due to motor vehicle or off-road motor vehicle use or parking, notwithstanding weed abatement operations or use or parking by the owner(s), shall implement one of the following RACM within 60 calendar days following the initial determination of disturbance.

(A) Prevent motor vehicle and off-road motor vehicle trespass/parking by applying fencing, shrubs, trees, barriers or other effective measures; or

(B) Apply and maintain surface gravel or chemical/organic stabilizer uniformly such that all disturbed surface areas are stabilized.

(4) *Alternative control measures.* For sources subject to requirements in paragraphs (d)(1), (d)(2), (d)(3)(ii) and (d)(3)(iii) of this section: As an alternative to compliance, owners/operators may use any other alternative control measures approved by EPA pursuant to paragraphs (e)(1) and (e)(2) of this section as equivalent to the methods specified in paragraph (d) of this section.

(5) *Implementation date of RACM.* All of the requirements in paragraph (d) of this section shall be effective eight (8) months from September 2, 1998. For requirements in paragraph (d)(3)(ii) and (d)(3)(iii) of this section, RACM shall be implemented within eight (8) months from September 2, 1998, or within 60 calendar days following the disturbance, whichever is later.

(e) *Administrative requirements.* (1) Proposed alternative control measures for sources subject to paragraph (d)(2) of this section must be submitted to EPA for approval within one year from September 2, 1998. Proposed alternative control measures for sources subject to paragraph (d)(1) of this section must be submitted to EPA for approval within 90 calendar days prior to the required RACM implementation date as specified in this section. Proposed alternative control measures for sources subject to paragraphs (d)(3)(ii) and (d)(3)(iii) of this section must be submitted to EPA for approval within 90 calendar days prior to the required RACM implementation date as specified in this section or within 60 calendar days following the initial determination of disturbance, whichever is later.

(2) Upon receipt of an alternative control measure, EPA shall provide written notice within 30 calendar days to the owner/operator approving or disapproving the alternative control measure. Should EPA not provide written notice of approval or disapproval within the above deadline, the owner/operator shall assume that the alternative control measure is approved. Upon receiving notice of EPA approval, the owner/operator shall implement the alternative control measure according to the timeframe established in this section unless otherwise specified by EPA. Upon receiving notice of EPA disapproval of the alternative control measure, the owner/operator shall implement RACM according to the specifications and timeframe established in this section. For sources submitting an alternative control measure under paragraphs (d)(3)(ii) or (d)(3)(iii) of this section, owners/operators shall implement the alternative control measure if approved by EPA within 60 calendar days upon receiving written notice, or, upon disapproval of the alternative control measure, implement RACM as specified in this section within 60 calendar days upon receiving written notice.

(f) *Monitoring and records.* (1) Any owners/operators that are subject to the provisions of this section shall compile and retain records that provide evidence

of control measure application, indicating the type of treatment or measure, extent of coverage and date applied. For control measures involving chemical/organic stabilization, records shall also indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency, concentration and quantity of application.

(2) Copies of control measure records and dust control plans along with supporting documentation shall be retained for at least three years.

(3) Agency surveys. (i) EPA or other appropriate entity shall conduct a survey of the number and size (or length) of unpaved roads, unpaved parking lots, and vacant lots subject to the provisions of this rule located within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998.

(ii) EPA or other appropriate entity shall conduct a survey at least every three years within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998, which includes:

(A) An estimate of the percentage of unpaved roads, unpaved parking lots, and vacant lots subject to this rule to which RACM as required in this section have been applied; and

(B) A description of the most frequently applied RACM and estimates of their control effectiveness.

Appendix A to § 52.128 Test Methods To Determine Whether a Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

Conduct opacity observations in accordance with Reference Method 9 (40 CFR Part 60, appendix A) and Methods 203A and 203C of this appendix, with opacity readings taken at five second observation intervals and two consecutive readings per plume beginning with the first reading at zero seconds, in accordance with Method 203C, sections 2.3.2. and 2.4.2 of this appendix. Conduct visible opacity tests only on dry unpaved surfaces (i.e. when the surface is not damp to the touch) and on days when average wind speeds do not exceed 15 miles per hour (mph).

Method 203A—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Arranged Regulations

Method 203A is virtually identical to EPA's Method 9 of 40 CFR part 60, appendix A except for the data-reduction procedures, which provide for averaging times other than 6 minutes. That is, using Method 203A with a 6-minute averaging time would be the same as following EPA Method 9. Additionally, Method 203A provides procedures for fugitive dust applications. The certification procedures provided in section 3 are virtually identical to Method 9 and are provided here, in full, for clarity and convenience.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for time-averaged regulations. A time-averaged regulation is any regulation that requires averaging visible emission data to determine the opacity of visible emissions over a specific time period.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by an observer qualified according to the procedures of section 3.

2. Procedures

An observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions from Stationary Sources. These procedures are not applicable to this section.

2.2 Procedures for Fugitive Process Dust Emissions. These procedures are applicable for the determination of the opacity of fugitive emissions by a qualified observer. The qualified field observer should do the following:

2.2.1 Position. Stand at a position at least 5 meters from the fugitive dust source in order to provide a clear view of the emissions with the sun oriented in the 140-degree sector to the back. Consistent as much as possible with maintaining the above requirements, make opacity observations from a position such that the line of vision is approximately perpendicular to the plume and wind direction. As much as possible, if multiple plumes are involved, do not include more than one plume in the line of sight at one time.

2.2.2 Field Records. Record the name of the plant or site, fugitive source location, source type [pile, stack industrial process unit, incinerator, open burning operation activity, material handling (transfer, loading, sorting, etc.)], method of control used, if any, observer's name, certification data and affiliation, and a sketch of the observer's position relative to the fugitive source. Also, record the time, estimated distance to the fugitive source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position relative to the fugitive source, and color of the plume and type of background on the visible emission observation form when opacity readings are initiated and completed.

2.2.3 Observations. Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. For roads, storage piles, and parking lots, make opacity observations approximately 1 meter above the surface from which the plume is generated. For other fugitive sources, make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. For intermittent sources, the initial observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume momentarily at 15-second intervals.

2.3 Recording Observations. Record the opacity observations to the nearest 5 percent every 15 seconds on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 15-second period.

2.4 Data Reduction for Time-Averaged Regulations. A set of observations is composed of an appropriate number of consecutive observations determined by the averaging time specified. Divide the recorded observations into sets of appropriate time lengths for the specified averaging time. Sets must consist of consecutive observations; however, observations immediately preceding and following interrupted observations shall be deemed consecutive. Sets need not be consecutive in time and in no case shall two sets overlap, resulting in multiple violations. For each set of observations, calculate the appropriate average opacity.

3. Qualification and Testing

3.1 Certification Requirements. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in paragraph 3.2. Any smoke generator used pursuant to paragraph 3.2 shall be equipped with a smoke meter which meets the requirements of paragraph 3.3. Certification tests that do not meet the requirements of paragraphs 3.2 and 3.3 are not valid.

The certification shall be valid for a period of 6 months, and after each 6-month period, the qualification procedures must be repeated by an observer in order to retain certification.

3.2 Certification Procedure. The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator during which candidates are shown black and white plumes of known opacity.

3.3 Smoke Generator Specifications. Any smoke generator used for the purpose of paragraph 3.2 shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0 to 100 percent chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table A of method 203C. The smoke meter shall be calibrated as prescribed in paragraph 3.3.1 prior to conducting each smoke reading test.

At the completion of each test, the zero and span drift shall be checked, and if the drift exceeds ±1 percent opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated at the time of installation to meet the specifications listed in Table A of method 203C. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry including the chart recorder or output meter, or every 6 months, whichever occurs first.

3.3.1 Calibration. The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0 percent and 100 percent. When stable response at 0 percent or 100 percent is noted, the smoke meter is adjusted to produce an output of 0 percent or 100 percent, as appropriate. This calibration shall be repeated until stable 0 percent and 100 percent readings are produced without adjustment. Simulated 0 percent and 100 percent opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

3.3.2 Smoke Meter Evaluation. The smoke meter design and performance are to be evaluated as follows:

3.3.2.1 Light Source. Verify from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within ±5 percent of the nominal rated voltage.

3.3.2.2 Spectral Response of Photocell. Verify from manufacturer's data that the photocell has a photopic response; i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table A of method 203C.

3.3.2.3 Angle of View. Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15 degrees. Calculate the total angle of view as follows:

$\Phi_v = 2 \tan^{-1} d/2L$,

Where:

Φ_v = total angle of view;
d = the photocell diameter + the diameter of the limiting aperture; and
L = distance from the photocell to the limiting aperture.

The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

3.3.2.4 Angle of Projection. Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15 degrees. Calculate the total angle of projection as follows:

$\Phi_p = 2 \tan^{-1} d/2L$

Where:

Φ_p = total angle of projection;
d = the sum of the length of the lamp filament + the diameter of the limiting aperture; and
L = the distance from the lamp to the limiting aperture.

3.3.2.5 Calibration Error. Using neutral-density filters of known opacity, check the error between the actual response and the theoretical linear response of the smoke meter. This check is accomplished by first calibrating the smoke meter according to 3.3.1 and then inserting a series of three neutral-density filters of nominal opacity of 20, 50, and 75 percent in the smoke meter path length. Use filters calibrated within ±2 percent. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be ±3 percent.

3.3.2.6 Zero and Span Drift. Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

3.3.2.7 Response Time. Determine the response time by producing the series of five simulated 0 percent and 100 percent opacity values and observing the time required to reach stable response. Opacity values of 0 percent and 100 percent may be simulated by alternately switching the power to the light source off and on while the smoke generator is not operating.

4. References

1. U. S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; appendix A; Method 9 for Visual Determination of the Opacity of Emissions from Stationary Sources. Final Rule. 39 FR 219. Washington, DC. U. S. Government Printing Office. November 12, 1974.
2. Office of Air and Radiation. "Quality Assurance Guideline for Visible Emission Training Programs." EPA–600/S4–83–011. Quality Assurance Division. Research Triangle Park, N.C. May 1982.
3. "Method 9—Visible Determination of the Opacity of Emissions from Stationary Sources." February 1984. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III, section 3.1.2. Stationary Source Specific Methods. EPA–600–4–77–027b. August 1977. Office of Research and Development Publications, 26 West Clair Street, Cincinnati, OH.
4. Office of Air Quality Planning and Standards. "Opacity Error for Averaging and Nonaveraging Data Reduction and Reporting Techniques." Final Report-SR–1–6–85. Emission Measurement Branch, Research Triangle Park, N.C. June 1985.
5. The U. S. Environmental Protection Agency. Preparation, Adoption, and Submittal of State Implementation Plans. Methods for Measurement of PM_{10} Emissions from Stationary Sources. Final Rule. **Federal Register**. Washington, DC. U. S. Government Printing Office. Volumes 55. No. 74. pps. 14246–14279. April 17, 1990.

Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

Method 203C is virtually identical to EPA's Method 9 of appendix A to 40 CFR part 60, except for the data-reduction procedures which have been modified for application to instantaneous limitation regulations. Additionally, Method 203C provides procedures for fugitive dust applications which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to Method 9. These certification procedures are provided in Method 203A as well, and, therefore, have not been repeated in this method.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for instantaneous limitations. An instantaneous limitation regulation is an opacity limit which is never to be exceeded.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as 2.1, Method 203A.

2.1.1 Position. Same as 2.1.1, Method 203A.

2.1.2 Field Records. Same as 2.1.2, Method 203A.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume. Instead, observe the plume momentarily at the interval specified in the subject regulation. Unless otherwise specified, a 15-second observation interval is assumed.

2.1.3.1 Attached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.1.3.2 Detached Steam Plumes. Same as 2.1.3.2, Method 203A.

2.2 Procedures for Fugitive Process Dust Emissions.

2.2.1 Position. Same as section 2.2.1, Method 203A.

2.2.2 Field Records. Same as section 2.2.2, Method 203A.

2.2.3 Observations.

2.2.3.1 Observations for a 15-second Observation Interval Regulations. Same as section 2.2.3, Method 203A.

2.2.3.2 Observations for a 5-second Observation Interval Regulations. Same as section 2.2.3, Method 203A, except, observe the plume momentarily at 5-second intervals.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at the prescribed interval on an observational record sheet. Each momentary observation recorded represents the average of emissions for the prescribed period. If a 5-second observation period is not specified in the applicable regulation, a 15-second interval is assumed. The overall time for which recordings are made shall be of a length appropriate to the regulation for which opacity is being measured.

2.3.1 Recording Observations for 15-second Observation Interval Regulations.

Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 15-second period.

2.3.2 Recording Observations for 5-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 5-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for 5-second period.

2.4 Data Reduction for Instantaneous Limitation Regulations. For an instantaneous limitation regulation, a 1-minute averaging time will be used. Divide the observations recorded on the record sheet into sets of consecutive observations. A set is composed of the consecutive observations made in 1 minute. Sets need not be consecutive in time, and in no case shall two sets overlap. Reduce opacity observations by dividing the sum of all observations recorded in a set by the number of observations recorded in each set.

2.4.1 Data Reduction for 15-second Observation Intervals. Reduce opacity observations by averaging four consecutive observations recorded at 15-second intervals. Divide the observations recorded on the record sheet into sets of four consecutive observations. For each set of four observations, calculate the average by summing the opacity of the four observations and dividing this sum by four.

2.4.2 Data Reduction for 5-second Observation Intervals. Reduce opacity observations by averaging 12 consecutive observations recorded at 5-second intervals. Divide the observations recorded on the record sheet into sets of 12 consecutive observations. For each set of 12 observations, calculate the average by summing the opacity of the 12 observations and dividing this sum by 12.

3. Qualification and Test

Same as section 3, Method 203A.

TABLE A.—SMOKE METER DESIGN AND PERFORMANCE SPECIFICATIONS

Parameter	Specification
a. Light Source	Incandescent lamp operated at nominal rated voltage.
b. Spectral response of photocell.	Photopic (daylight spectral response of the human eye—Reference 4.1 of section 4.).
c. Angle of view	15 degrees maximum total angle.
d. Angle of projection	15 degrees maximum total angle.
e. Calibration error	±+3-percent opacity, maximum.
f. Zero and span drift	±1-percent opacity, 30 minutes.
g. Response time	≤ 5 seconds.

II. Vacant Lots

The following test methods shall be used for determining whether a vacant lot, or portion thereof, has a stabilized surface. Should a disturbed vacant lot contain more than one type of disturbance, soil, vegetation or other characteristics which are visibly distinguishable, test each representative surface for stability separately in random areas according to the test methods in section II. of this appendix and include or eliminate it from the total size assessment of disturbed surface area(s) depending upon test method results. A vacant lot surface shall be considered stabilized if any of the test methods in section II. of this appendix indicate that the surface is stabilized such that the conditions defined in paragraph (b)(16)(ii) of this section are met:

1. Determination of visible crust thickness

Where a visible crust exists, break off a small piece of crust. Check whether it crumbles easily between the fingers. Using a ruler, measure the thickness of the crust. Determination of thickness shall be based on at least three (3) crustal measurements representative of the disturbed surface area. If thin deposits of loose uncombined grains cover more than 50 percent of a crusted surface, apply the test method in section II.2. of this appendix to the loose material to determine whether the surface is stabilized.

2. Determination of Threshold Friction Velocity (TFV)

For disturbed surface areas that are not crusted or vegetated, determine threshold friction velocity (TFV) according to the following sieving field procedure (based on a 1952 laboratory procedure published by W. S. Chepil).

(i) Obtain and stack a set of sieves with the following openings: 4 millimeters (mm), 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Collect a sample of loose surface material from an area at least 30 cm by 30 cm in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Only collect soil samples from dry surfaces (i.e. when the surface is not damp to the touch). Remove any rocks larger than 1 cm in diameter from the sample. Pour the sample into the top sieve (4 mm opening) and cover the sieve/collector pan unit with a lid. Minimize escape of particles into the air when transferring surface soil into the sieve/collector pan unit. Move the covered sieve/collector pan unit by hand using a broad, circular arm motion in the horizontal plane. Complete twenty circular arm movements, ten clockwise and ten counterclockwise, at a speed just necessary to achieve some relative horizontal motion between the sieves and the particles. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for loose particles. If loose particles have not been sifted to the finest sieve through which they can pass, reassemble and cover the sieve/collector pan unit and gently rotate it an additional ten times. After disassembling the sieve/collector pan unit, slightly tilt and gently tap each sieve and the collector pan so that material aligns along one side. In doing so, minimize escape of particles into the air. Line up the sieves and collector pan in a row and visibly inspect the relative quantities of catch in order to determine which sieve (or whether the collector pan) contains the greatest volume of material. If a visual determination of relative volumes of catch among sieves is difficult, use a graduated cylinder to measure the volume. Estimate TFV for the sieve catch with the greatest volume using Table 1, which provides a correlation between sieve opening size and TFV.

TABLE 1.—(METRIC UNITS). DETERMINATION OF THRESHOLD FRICTION VELOCITY (TFV)

Tyler Sieve No.	Opening (mm)	TFV (cm/s)
5	4	≤100
9	2	100
16	1	76
32	0.5	58
60	0.25	43
Collector Pan		30

Collect at least three (3) soil samples which are representative of the disturbed surface area, repeat the above TFV test method for each sample and average the resulting TFVs together to determine the TFV uncorrected for non-erodible elements.

(ii) Non-erodible elements are distinct elements on the disturbed surface area that are larger than one (1) cm in diameter, remain firmly in place during a wind episode and inhibit soil loss by consuming part of the shear stress of the wind. Non-erodible elements include stones and bulk surface material but do not include flat or standing vegetation. For surfaces with non-erodible elements, determine corrections to the TFV by identifying the fraction of the survey area, as viewed from directly overhead, that is occupied by non-erodible elements using the following procedure. Select a survey area of one (1) meter by 1 meter. Where many non-erodible elements lie on the disturbed surface area, separate them into groups according to size. For each group, calculate the overhead area for the non-erodible elements according to the following equations:

(Average length) × (Average width) = Average Dimensions ..... Eq. 1
(Average Dimensions) × (Number of Elements) = Overhead Area ..... Eq. 2
Overhead Area of Group 1 + Overhead Area of Group 2 (etc..) = Total Overhead Area ..... Eq. 3
Total Overhead Area/2 = Total Frontal Area ..... Eq. 4

(Total Frontal Area/Survey Area) × 100 = Percent Cover of Non-erodible Elements ..... Eq. 5

(Ensure consistent units of measurement, e.g. square meters or square inches when calculating percent cover.)

Repeat this procedure on an additional two (2) distinct survey areas representing a disturbed surface and average the results. Use Table 2 to identify the correction factor for the percent cover of non-erodible elements. Multiply the TFV by the corresponding correction factor to calculate the TFV corrected for non-erodible elements.

TABLE 2.—CORRECTION FACTORS FOR THRESHOLD FRICTION VELOCITY

Percent cover of non-erodible elements	Correction factor
≥ 10%	5
≥ 5% and < 10%	3
< 5% and ≥ 1%	2
< 1%	None.

3. Determination of Flat Vegetation Cover

Flat vegetation includes attached (rooted) vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind. Flat vegetation which is dead but firmly attached shall be considered equally protective as live vegetation. Stones or other aggregate larger than one centimeter in diameter shall be considered protective cover in the course of conducting the line transect method. Where flat vegetation exists, conduct the following line transect method.

(i) Stretch a one-hundred (100) foot measuring tape across a disturbed surface area. Firmly anchor both ends of the measuring tape into the surface using a tool such as a screwdriver with the tape stretched taut and close to the soil surface. If vegetation exists in regular rows, place the tape diagonally (at approximately a 45 degree angle) away from a parallel or perpendicular position to the vegetated rows. Pinpoint an area the size of a 3/32 inch diameter brazing rod or wooden dowel centered above each one-foot interval mark along one edge of the tape. Count the number of times that flat vegetation lies directly underneath the pinpointed area at one-foot intervals. Consistently observe the underlying surface from a 90 degree angle directly above each pinpoint on one side of the tape. Do not count the underlying surface as vegetated if any portion of the pinpoint extends beyond the edge of the vegetation underneath in any direction. If clumps of vegetation or vegetative debris lie underneath the pinpointed area, count the surface as vegetated unless bare soil is visible directly below the pinpointed area. When 100 observations have been made, add together the number of times a surface was counted as vegetated. This total represents the percent of flat vegetation cover (e.g. if 35 positive counts were made, then vegetation cover is 35 percent). If the disturbed surface area is too small for 100 observations, make as many observations as possible. Then multiply the count of vegetated surface areas by the appropriate conversion factor to obtain percent cover. For example, if vegetation was counted 20 times within a total of 50 observations, divide 20 by 50 and multiply by 100 to obtain a flat vegetation cover of 40 percent.

(ii) Conduct the above line transect test method an additional two (2) times on areas representative of the disturbed surface and average results.

4. Determination of Standing Vegetation Cover

Standing vegetation includes vegetation that is attached (rooted) with a predominant vertical orientation. Standing vegetation which is dead but firmly rooted shall be considered equally protective as live vegetation. Conduct the following standing vegetation test method to determine if 30 percent cover or more exists. If the resulting percent cover is less than 30 percent but equal to or greater than 10 percent, then conduct the Threshold Friction Velocity test in Section II.2. of this in order to determine whether the disturbed surface area is stabilized according to paragraph (b)(16)(ii)(E) of this section.

(i) For standing vegetation that consists of large, separate vegetative structures (for example, shrubs and sagebrush), select a survey area representing the disturbed surface that is the shape of a square with sides equal to at least ten (10) times the average height of the vegetative structures. For smaller standing vegetation, select a survey area of three (3) feet by 3 feet.

(ii) Count the number of standing vegetative structures within the survey area: Count vegetation which grows in clumps as a single unit. Where vegetation of different height and width exists, count it in groups with similar dimensions within the survey area. For each group, calculate the frontal silhouette area for the vegetative structures according to the following equations:

(Average height) × (Average width) = Average Dimensions *Eq. 6*
(Average Dimensions) × (Number of Vegetation) = Frontal Silhouette Area *Eq. 7*
Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc..) = Total Frontal Silhouette Area *Eq. 8*
(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

(Ensure consistent units of measurement, e.g. square meters or square inches when calculating percent cover.)

(iii) Within a disturbed surface area that contains multiple types of vegetation with each vegetation type uniformly distributed, results of the percent cover associated with the individual vegetation types may be added together.

(iv) Repeat this procedure on an additional two (2) distinct survey areas representing the disturbed surface and average the results.

5. Alternative Test Methods

Alternative test methods may be used upon obtaining the written approval of the EPA.

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federal register

Monday
August 3, 1998

Part III

Environmental Protection Agency

40 CFR Parts 72 and 73
Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6134–2]

RIN 2060–AH60

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Allowances are traded among utilities and recorded in EPA's Allowance Tracking System for use in determining compliance at the end of each year. The Acid Rain Program's permitting, allowance trading, and emissions monitoring requirements are set forth in the "core rules" promulgated on January 11, 1993. This proposal would amend certain provisions in the permitting and Allowance Tracking System rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals.

DATES: *Comments.* Comments on this action must be received on or before September 2, 1998, unless a hearing is requested by August 13, 1998. If a hearing is requested, written comments must be received by September 17, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than August 13, 1998. If a hearing is held it will be held on August 14, 1998, beginning at 8:30 am.

ADDRESSES: *Comments.* Comments should be submitted in duplicate, to: EPA Air Docket, Attention, Docket No. A–98–15, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Public Hearing. If a hearing is held it will take place at the EPA Auditorium at 401 M St., S.W., Washington DC.

Docket. Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–564–9089).

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

I. Affected Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended on November 15, 1990, including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have been applied to three compliance years, 1995, 1996, and 1997 for which affected units were required to meet the annual allowance holding requirements established by the rules. During this time, the Agency has gained experience in implementing these requirements and believes that certain provisions in the rules should be revised to improve the operation of the Allowance Tracking System and the allowance market. This proposal contains changes to the allowance transfer deadline and compliance determinations and clarifies the signature requirements for allowance transfer requests.[1] These revisions and the reasons for their proposal are summarized below.

III. Revisions

A. Allowance Transfer Deadline

The "allowance transfer deadline" is the last day on which allowance transfers may be submitted to EPA for recordation in a compliance subaccount for use in meeting a unit's sulfur dioxide (SO_2) emissions limitation requirements for the year. 40 CFR 72.2 (definition of "allowance transfer deadline"). EPA is proposing to extend the allowance transfer deadline from the current date of January 30 to March 1 (or February 29 in any leap year). As explained below, this proposed change reflects the Agency's experience in operating the Allowance Tracking System, particularly following the 1995, 1996, and 1997 compliance years, and the technological advances that have been made regarding the submission of continuous emissions monitoring system (CEMS) data.

EPA's reasoning for selecting the current date of January 30 for the allowance transfer deadline is laid out in the preamble to the January 11, 1993 core rules. 50 FR 3590, 3617 (1993). As the Agency explained, it was anticipated that this date would provide utilities with ample time to transact and submit allowance transfers at the end of

[1] In addition, § 73.34(c)(4) is revised to eliminate the reference to the direct sales provisions, which were previously removed from part 73. 61 FR 28761, 28762 (1996).

the year, while giving EPA adequate time to complete its administrative duties before the date (60 days after the end of the year) that excess emissions offset plans were due. EPA's administrative duties involve reviewing, recording, and notifying the authorized account representatives of any transfers, and, if the authorized account representatives review the notifications and submit error claims, reviewing and resolving each error claim. The Agency noted that extending the allowance transfer deadline to March 1 would leave no time for these activities and was therefore not a viable option. *Id.*[2]

Now, based on nearly four years of experience with the Allowance Tracking System, EPA believes that changing the allowance transfer deadline to March 1 is a viable option. The allowance transfer processing activities cited in the January 11, 1993 preamble as an obstacle to changing the deadline have turned out to have little or no impact on the designated representative's ability to submit or the Agency's ability to review excess emissions offset plans or compliance certifications, which are also due on March 1 (or February 29 in any leap year).[3] The primary reason EPA sends out transfer notifications to authorized account representatives is so they can check whether EPA made an error in processing transfer requests. EPA notes that although it has processed over 2500 private transfers of allowances since the Allowance Tracking System first opened for business, only one claim of error by EPA has been submitted. Moreover, if EPA makes an error, EPA is obligated to correct the error and make the change effective as of the date the authorized account representative originally submitted the transfer form. This makes it unnecessary for the notification and error claim process to take place prior to the excess emissions offset plan and compliance certification deadline. Once authorized account representatives have sent to EPA their final allowance transfer requests, they have all the information they need to determine whether their units are in compliance and whether an excess emissions offset plan is needed. Of course, a transfer notification from EPA could be used as a check on those determinations; however, that is not the only way authorized account representatives can ensure their determinations are correct. For example, they can set up internal procedures in their companies to ensure accurate allowance accounting and can access the Agency web site via the internet for current allowance account balances in the Allowance Tracking System. Moreover, authorized account representatives that find the transfer notification useful for cross-checking allowance balances can still submit their last transfer requests ahead of March 1 so they can use the notifications to make this check.

EPA considered extending the allowance transfer deadline by two weeks, rather than a month. However, EPA believes that making the deadline coincide with the deadline for other acid rain submissions (i.e., the compliance certification report and any excess emissions offset plan) would reduce potential confusion because persons responsible for complying with the requirements could focus on one deadline for all of their end-of-year allowance-related submissions.

The 1 month extension also provides companies with additional time to make last minute adjustments to allowance holdings in order to reflect the actual level of emissions during the prior calendar year. Under the current rule, the allowance transfer deadline coincides with the fourth-quarter monitoring report deadline, leaving little or no time for such adjustments. This makes it difficult for utilities to cross-check what they believe to be the final emissions results with feedback from EPA on the fourth-quarter report and then make allowance adjustments, as necessary. The additional time will be particularly useful because designated representatives who submit their emissions reports electronically now receive immediate electronic feedback on the substantive portion of their submissions. (In the past, designated representatives did not receive this feedback, on fourth quarter reports submitted around the report deadline, until April because the Agency performed this review manually.) This feedback will identify problems with submitted data, which could affect how the utility should allocate its allowances among its units' accounts. The extension will help to ensure utilities have the time they need to resolve any emissions data problems and transfer allowances among their units' accounts as needed.

The extension also helps utilities that are contemplating changes to their monitoring systems that could temporarily affect their reported emissions rate. For example, while correcting a problem (e.g., with monitor data availability), a utility or its software vendor may take corrective actions that cause a different problem (e.g., actions that fail to account for missing data in the hourly record data base) and result in the unit's emissions being under-reported. Under the current rule, such an oversight could have a significant effect on reported emissions, especially if a company takes corrective actions in the last quarter of the year. The fourth-quarter monitoring report is due January 30 and any feedback from a report submitted on that date would provide the company with little or no time to make the necessary adjustments among its accounts for the reporting year. With the proposed extension of the allowance transfer deadline, companies that take corrective actions at the end of the year would have an opportunity to make any necessary allowance adjustments after receiving EPA feedback on their monitoring reports, and companies that might normally delay making such changes until after the end of the year would no longer need to do so. In addition, the extension would provide some additional time for correcting any inadvertent errors (whether or not associated with corrective monitoring actions) concerning allowance holdings, e.g., in how allowances were distributed by a utility among its units' accounts.

In sum, EPA believes the allowance transfer deadline should be extended to March 1 because this would: reduce potential confusion over end-of-year submission deadlines; allow authorized account representatives to make final transfer decisions after receiving feedback on their fourth-quarter monitoring reports; and give utilities additional time to avoid inadvertent errors. Moreover, EPA believes that it can successfully administer the Allowance Tracking System and carry out its other end-of-year administrative duties without any delay between the allowance transfer deadline and the March 1 deadline for utilities' submissions of compliance certifications. EPA requests comment on the proposed allowance transfer deadline and, specifically, whether the allowance transfer deadline should be extended from January 30 to March 1 (or February 29 in any leap year).

B. Compliance Determination

Today's proposed revisions also change how excess emissions are determined at a unit at the end of a

[2] EPA also expressed concern that designated representatives might need time between the allowance transfer deadline and March 1 to complete and submit excess emission offset plans. 56 63002, 63050 (1991). However, no utility has yet had to submit an offset plan. Further, under part 77, as amended, any offset plan would simply state that allowances are to be immediately deducted, except in an extraordinary case when it could be shown that immediate deduction would interfere with electric reliability. *See* 61 FR 68340, 68363 (1996).

[3] Under § 72.90, the annual compliance certification report is required to be submitted within 60 days after the end of the calendar year.

compliance year. The proposed revisions would effectively reduce the number of tons of excess emissions a unit would otherwise have after deductions for compliance are made under § 73.35(b)(2) by allowing up to a certain number of allowances for that unit to be deducted from the compliance subaccounts of other units at the same source that have unused allowances.

EPA is proposing these revisions because of concern that (even with an extended allowance transfer deadline) inadvertent, minor accounting mistakes by utilities, which under the proposed revision would have no significant environmental impact, could lead to excessively high excess emissions penalty payments. Currently, the excess emissions penalty of $2000, adjusted for inflation since 1990 (i.e., over $2500), per ton is more than 10 times the current market value of an allowance and applies to all excess emissions at a unit even if they result from inadvertent, minor errors. As a result, companies have the potential of making enormous excess emissions penalty payments (i.e., the excess emissions penalty times excess emissions) for what may be unintentional, minor mistakes when performing their end-of-year accounting of emissions and allowances. Under the circumstances in which the proposed revisions would apply, imposition of such penalty payments does not seem necessary or desirable, given the nature of such potential mistakes. For example, a company may have acquired enough allowances to cover all the emissions at a source, but distributed them erroneously among the units at the source because of a mistake in determining how many allowances were needed in each unit's account or in designating the amounts transferred among the units' accounts. In light of the potential for such mistakes, especially in Phase II when the number of units subject to the allowance holding requirement will more than quadruple, the Agency believes that the proposed revisions offer a more reasonable approach than the existing rule for ensuring that allowance holding requirements under the Acid Rain Program are met.

The major revisions for carrying out the proposed new approach are to the compliance provisions of § 73.35. Among other things, the proposed revisions to § 73.35 adjust the application of the "Acid Rain emissions limitation for sulfur dioxide" when used to determine a unit's excess emissions. The term "excess emissions" is defined in § 72.2 as "[a]ny tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the unit". The adjustment in § 73.35 of the application of the Acid Rain emissions limitation for sulfur dioxide has the effect of adjusting the definition of excess emissions.

To make this adjustment, the key provision that has been added is proposed § 73.35(b)(3).[4] This new provision requires that, after completing the annual compliance deductions in § 73.35(b)(2) for all affected units at the same source, the Administrator may deduct, for a unit that would otherwise have excess emissions, up to a certain amount of allowances from the compliance subaccounts of other units at the same source that would otherwise have unused allowances. This second deduction of allowances would reduce the number of excess emissions at the unit by an equivalent amount. The owners and operators of such unit would still be subject to the excess emissions penalty and offset requirements, but for only the excess emissions remaining for the unit after the second deduction.

The Agency considered allowing a unit that would otherwise have excess emissions to use the unused allowances at other units at the same source to completely eliminate all excess emissions without any penalty. It rejected that approach, however, because of the Act's pervasive unit-by-unit orientation, particularly with regard to SO_2 emissions. For example, under sections 402 (e.g., the definitions of "existing unit" and "utility unit"), 403(b), 403(e), 404(a), and 405, the applicability of title IV is determined on a unit-by-unit basis. Further, section 403(a)(1) requires allocation of allowances to, and sections 403(e), 404, 405, 406, 409, and 410 set annual SO_2 emission limitations for, individual units, and not sources. Under section 411(a), excess emissions and penalties are determined for each individual unit. Moreover, section 412(a) requires unit-by-unit monitoring of emissions. Allowing in all cases the use of allowances from other unit compliance subaccounts to completely eliminate a unit's excess emissions would effectively change the unit allowance holding requirement to a source allowance holding requirement. Therefore, balancing, on one hand, the goal of retaining in the regulations the general unit-by-unit orientation to compliance reflected in title IV and, on the other hand, the perceived need for some compliance flexibility to account for inadvertent, minor errors, EPA proposes to allow a large portion (but not all) of the allowances required to be deducted to come from subaccounts of other units at the source. This approach would provide some flexibility but also maintain a strong incentive for owners and operators to hold a sufficient number of allowances in each unit compliance subaccount. EPA is also open to comment on other ways of implementing this objective.

The number of allowances that could be deducted under proposed § 73.35(b)(3) would be related to the average price of an allowance. The average allowance price is defined in § 73.35(b)(3) as the average price paid for a spot allowance at the auction held under § 73.70 during the year for which compliance is being determined. The Agency proposes using the average price paid for a spot allowance at the auction to determine the average price of allowances at the time that compliance is being determined because a spot allowance is usable in the year it is auctioned and the auction is an annual event authorized under the Clean Air Act and results in allowance prices that are generally available to the public. Advance allowances, which are also auctioned, are not usable for 7 years. The Agency will publish the average price paid for a spot allowance (as defined in § 73.35(b)(3)) in the **Federal Register** by October 15 of each compliance year.

The formula for determining the number of allowances that can be deducted from other unit accounts is proposed in § 73.35(b)(3) and incorporates the average price of an allowance as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units − [Excess emissions if no deduction from other units × 3 (Average allowance price)/Excess emissions penalty][5]

[4] In addition, the definitions of "allowance transfer deadline," "compliance subaccount," and "current year subaccount" are revised to be consistent with proposed § 73.35(b)(3).

[5] "Maximum deduction from other units" is the maximum number of allowances that may be deducted for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance. "Excess emissions if no deduction from other units" is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under proposed § 73.35(b)(3). "Excess emissions penalty" is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide under § 77.6(b). "Average allowance price" is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve

The formula applies to any unit that would otherwise have excess emissions under the existing rule, with two exceptions. First, if the amount calculated is less than zero, the maximum allowance deduction from other units equals zero (i.e., a negative number of allowances cannot be deducted). Second, if the amount calculated results in less than 10 tons of excess emissions, the amount that can be deducted from other accounts must be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other unit accounts, whichever is less, remain for the unit. This provision ensures that any unit that would have excess emissions under the existing rule would continue to have some excess emissions under the proposed rule.

For all other cases, the formula in proposed § 73.35(b)(3) would apply if a unit fails to hold enough allowances in its unit subaccount to cover its emissions. Using the formula, the number of allowances that could be deducted from other unit compliance subaccounts at the same source would equal the tons of excess emissions that a unit would otherwise have without applying § 73.35(b)(3) minus a calculated value. The calculated value (i.e., the term after the "−" sign in the formula) represents [6] the number of tons emitted by a unit which cannot be offset by allowances from other unit accounts.[7] This value also represents, assuming the maximum allowances under the formula are deducted from other units' accounts, the tons of excess emissions at the unit. These excess emissions would be subject to the excess emissions penalty ($2000 in 1990 dollars per ton of excess emissions, adjusted for inflation each year).[8] Because there are fewer tons subject to the penalty (i.e., because the tons for which allowances were deducted from other unit accounts are not subject to the penalty), the total penalty payment would be less than the total penalty payment under the existing rule. EPA proposes that the maximum allowance deduction be based on three times the allowance price (with a 10 ton minimum for excess emissions) because the Agency believes the resulting penalty would provide adequate incentive for compliance while reducing the penalty payment for inadvertent, minor errors.

In general, the extent to which the total penalty payment is reduced as a result of the revisions depends on the average market price of an allowance and the excess emissions per ton penalty. For instance, if three times the average market price of an allowance is 14 percent of the per ton excess emissions penalty, then the total penalty payment for the unit would be about [9] 14 percent of the payment that would have resulted without the revisions. An exception is where three times the average market price of an allowance is equal to or greater than the per ton excess emissions penalty, in which case no allowances would be deducted from other unit accounts and the total penalty payment would be the same as under the existing rule. A second exception is where three times the market price of an allowance, when used in the formula, results in less than 10 tons of excess emissions. In that case, the allowable allowance deduction from other unit accounts would be adjusted so that the lesser of 10 tons of excess emissions or the number of tons of excess emissions that would result if no allowances could be deducted from other units would remain for the unit.

This approach would reduce the total excess emissions penalty payment owed for the unit while still ensuring, as intended by Congress, that compliance would be always cheaper than emitting more pollution than lawfully permitted.[10] It would also encourage use of the proposed provisions only in extraordinary or extenuating circumstances and not as a matter of course. EPA is soliciting comment on the formula in proposed § 73.35(b)(3) and on any alternative formulas that could be used to determine the number of allowances that could be deducted from other unit compliance subaccounts at the same source. Comment is specifically requested concerning: whether the limit (in the proposed formula) on the number of allowances used from other units should be based on three times the market price of an allowance (and incorporate a 10 ton minimum); whether the limit should be raised or lowered; and whether, with the limit, there would continue to be appropriate incentives for compliance.

The allowances deducted under proposed § 73.35(b)(3) are limited to those that are in the compliance subaccounts of other units at the same source as the unit with excess emissions. This same-source limitation ensures that only one designated representative is involved in the deduction of allowances from other unit compliance subaccounts and that changes necessary to existing contracts involving allowance agreements among different owners of units are minimized. This approach also limits the extent of deviation from title IV's general unit-by-unit orientation by allowing a unit to use only allowances held for other units that are at the same geographic location, i.e., at the same plant.

In § 73.35(b)(3)(i), EPA proposes two options for implementing the provisions allowing, for a unit with excess emissions, deductions of allowances from the compliance subaccounts of other units at the source. EPA would implement only one of the two options. The options are described below.

1. Option 1

Under Option 1, deductions from other unit compliance subaccounts are automatic unless the authorized account representative requests that no such deductions be made. This would allow the Agency to make these deductions immediately after all other compliance deductions are made and would reduce the risk of delay of final compliance determinations. The proposed provision also specifies the order of unit compliance subaccounts for which allowances would be deducted from other unit compliance subaccounts and the order of the other unit compliance subaccounts from which the allowances would be deducted, allowing authorized account representatives to know in advance the sequence of deduction. The sequence is based on the Allowance Tracking System account numbers of the units involved. Allowances would be deducted first *for* the unit that has the lowest account number of the units at the source and then for each subsequent unit, in order of increasing account number and ending with the unit with the highest account number at the source. Likewise, allowances would be deducted *from* the unit with unused allowances that has the lowest account number at the source and then for each unit that has unused allowances, in

allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

[6] When actually applying the formula, the term (without rounding to the nearest ton) is subtracted from the "tons of excess emissions if no allowance deduction from other units'; rounding takes place afterwards.

[7] When this number is subtracted from the tons of excess emissions the unit would otherwise have if no allowances could be deducted from other units, the result is the maximum number of allowances that can be deducted from other units.

[8] For 1998, the inflation-adjusted penalty is $2,581 per ton of excess emissions.

[9] The relationship is approximate because the formula requires rounding to the nearest allowance.

[10] *See* Senate Rep. No. 101–228 at 336, December 20, 1989, (explaining that "[t]he [excess emissions] fee, adjusted annually to keep pace with inflation, is designed to be high enough that pollution control options [e.g., acquiring allowances] will always be cheaper than continuing to emit more pollution than lawfully permitted."

order of increasing account numbers at that source. Under this ordering scheme, alphabetical characters would have values increasing in alphabetical order and lower values than all numeric characters, and the sort would begin on the left-most character and end on the right-most character of each 12 character account number. This order is consistent with how alphabetical and numeric characters are internally represented and sorted in the Agency's mainframe computer that runs the Allowance Tracking System, making this a cost effective approach for handling the deductions. An example of the order of unit compliance subaccounts from which (or for which) allowances would be deducted is as follows: 00038700PFLG, 00038700PFL4, 000387004GT2. Within a compliance subaccount, allowances would be deducted under § 73.35(b)(3) on a first-in, first-out (FIFO) accounting basis.

EPA considered that, under this approach in Option 1, authorized account representatives would not have the discretion to choose the order of the compliance subaccounts for which and from which allowances are to be deducted. This may be a concern especially where the owners or their ownership shares are different for different units at a source. If, however, an authorized account representative objects to the order described above (which is set forth in proposed § 73.35(b)(3)), a notification may be submitted at any time by the allowance transfer deadline that identifies the units for which § 73.35(b)(3) is not to be applied. If such notification is submitted for a unit and the unit fails to meet the unit allowance holding requirement reflected in § 73.35(b)(1) and (2), none of the allowances from other unit compliance subaccounts would be used to reduce the total amount of excess emissions at the unit. If no notification is submitted, the Agency would automatically make the deductions from the other units at the source, and the tons of excess emissions would be reduced.

2. Option 2

EPA is also proposing a second option for deducting allowances from other units at the sources. Under Option 2, the authorized account representative would be allowed to submit for a unit, within 15 days of receiving notice from the Agency of a unit's failure to hold sufficient allowances in its unit account, the identification of the serial numbers of the allowances (held in compliance subaccounts of other units at the source) that are to be deducted under § 73.35(b)(3) and the compliance subaccounts from which those allowances would be deducted. Like the first alternative, the authorized account representative could choose not to have allowances deducted from other compliance subaccounts. A disadvantage of this alternative is that it would likely delay the Agency's end of year compliance determination and extend the allowance freeze by at least two weeks because of the time it would take to mail notification and wait for a response. The Agency is soliciting comment on both Option 1 and Option 2.

The changes in today's proposal allowing allowances to be deducted for a unit from other unit accounts are consistent with the provisions in title IV governing excess emissions, i.e., sections 403(g), 411(a) and (b), and 414 of the Act. Section 403(g) is a general prohibition barring an affected unit from emitting sulfur dioxide in excess of the number of allowances "held for that unit for that year by the owner or operator of the unit" (42 U.S.C. 7651b(g)), section 411(a) establishes the owner or operator's liability for an excess emissions penalty and offset if sulfur dioxide is emitted at a unit in excess of the allowances "the owner or operator holds for use for the unit for that calendar year" (42 U.S.C. 7651j(a)), and section 414 states that the operation of an affected unit to emit sulfur dioxide in excess of allowances "held for the unit" is deemed a violation of the Act and that each ton emitted in excess of allowances held constitutes a separate violation (42 U.S.C. 7651m). In all three provisions, the Act refers to holding allowances "for" a unit but does not specifically dictate the account in which those allowances must be held. *See also* 42 U.S.C. 7651b(f) and 7651j(b).

Under the January 11, 1993 Acid Rain core rules, these statutory provisions were generally interpreted to mean allowances for a unit could be held only in the compliance subaccount of the unit for which allowances were being deducted. The Agency, however, believes this interpretation should be reconsidered and revised to provide some compliance flexibility while balancing the need for compliance flexibility with the general unit-by-unit orientation of title IV. Because of the multiple references to allowances held "for" a unit, the Agency believes the language is broad enough to support today's proposed interpretation, which allows most (but not all) of the allowances to be deducted from the compliance subaccount of other units at the same source and thus establishes a limited departure from the general unit-by-unit orientation for compliance.

Allowing a unit to use allowances from the compliance subaccounts of other units at the same source is consistent with the limited exception to unit-by-unit compliance currently allowed for units sharing a common stack but not individually monitoring emissions under part 75. Under existing § 73.35(e), the authorized account representative for affected units that share a common stack and lack individual-unit monitoring may arbitrarily assign a percentage of allowances to be deducted from the compliance subaccount for each unit. This assignment, which can be submitted as late as 60 days after the end of the year when the annual compliance report is due, can result in 100 percent of the required allowance deduction coming from the compliance subaccount of only one of the units sharing the common stack. Such a single deduction would not necessarily represent the emissions from each unit, because each unit sharing the common stack may have discharged some portion of the emissions measured. Thus, under the existing regulations, allowances already can be deducted, under limited circumstances, from the compliance subaccounts of other units at the same source. This limited exception to unit-by-unit compliance is allowed in order to avoid requiring monitoring of the ducts of each common stack unit, which may not be physically possible, and to minimize the need for redesigning stack and duct configurations to make individual-unit monitoring possible. *See, e.g.*, Docket # A–90–51, Response to Public Comment on the Core Rules of the Acid Rain Program, Volume III at p. M–393 (October 1992). Although there are a number of affected units under the Acid Rain Program that are subject to the common stack provision (i.e., 23 percent of the affected units operating in 1996 reported SO_2 or NO_X data that included the emissions from two or more units), EPA has seen no adverse effects on the functioning of the Acid Rain Program during the first three years of compliance determinations.

Like the common stack provisions, today's revisions would permit allowances to be deducted for a unit that would otherwise have excess emissions from the compliance subaccounts of other units at the same source even though the emissions involved did not come from those other units. However, unlike the common stack provision, the proposed revisions would limit the number of allowances that could be deducted from the compliance subaccounts of other units. The reason for this difference is that the

common stack provisions address primarily situations where it may not be feasible to monitor the emissions from individual units sharing a common stack. In contrast, today's revisions would address primarily cases where feasibility of monitoring is not at issue, but because of inadvertent, minor errors in accounting for emissions or in handling allowances, a unit fails to hold enough allowances in its compliance subaccount at the end of the year. Because today's revisions apply to units that, absent inadvertent, minor errors, could have complied with the individual unit allowance holding requirement, the Agency believes it is appropriate to strike a balance between, on one hand, compliance flexibility to reduce total excess emission penalty payments for failing to hold enough allowances because of inadvertent, minor errors and, on the other hand, maintenance of the general unit-by-unit orientation of title IV. Today's proposed revision reflects this balancing of objectives by allowing deductions of allowances from other units but limiting the extent of such deductions so that significant excess emissions penalty payments would still result from failing to hold sufficient allowances in the unit's own compliance subaccount. This approach would ensure that utilities would continue to strive to meet the unit allowance holding requirement.

Today's proposed changes, while designed primarily to address the consequences of making inadvertent, minor errors, would apply to all allowance holding violations and would not require a demonstration concerning the nature of the error. The Agency maintains that it would be difficult, and costly in terms of time and resources, to investigate and determine why a unit compliance subaccount failed to hold sufficient allowances and to distinguish between unintentional, minor errors and other errors. Since the proposed allowance deduction flexibility is not limited to inadvertent, minor errors, that is an additional reason for limiting that flexibility, i.e., by limiting the number of allowances that can be deducted from other units at a source. This limitation would provide an incentive to avoid any errors and would minimize any abuse of this flexibility. EPA believes that generally the total amount of excess emissions penalty payment (i.e., which, at the 1997 auction price of an allowance, would be about 14 percent of the penalty payments under the existing rule) that would remain even if unused allowances were available from other units at the source would deter companies from using this provision except in extraordinary situations.

In sum, the adjustment to the allowance holding requirement in today's proposal addresses the potential for inadvertent, minor errors by utilities regulated under the Acid Rain Program and provides a reasonable approach for addressing such errors. EPA requests comment on all aspects of this proposed revision, including the options presented concerning notification by the authorized account representative and the effect, if any, of the revision on the auction or market price of allowances traded during the year or on trading behavior. EPA also requests comment on how Option 1 and Option 2 would apply to a source that has two authorized account representatives under § 74.4(c) (i.e., one for the utility units, and one for the opt-in units, at the same source).

C. Signature Requirement for Transfer Requests

Under the current rule, § 73.50(b)(1) requires authorized account representatives seeking recordation of an allowance transfer to submit a request for the transfer that contains, among other things, signatures of the authorized account representatives for both the transferor and the transferee accounts. The Agency proposes to add § 73.50(b)(2) to clarify that the authorized account representative for a transferee account can meet the signature requirement by submitting, along with or in advance of a transfer request from the authorized account representative for any transferor account, a signed statement identifying the accounts into which any transfer of allowances, on or after the date of EPA's receipt of the statement, is authorized. The signed statement would state that, upon receipt by the Administrator, the authorization is binding on the authorized account representative and on any new authorized account representative [11] for all such allowance transfers into the specified accounts until such time as EPA receives a signed statement from the authorized account representative retracting the authorization. Proposed § 73.50(b)(2) sets forth the specific language that would be included in the statement. Under existing §§ 72.23 (a) and (b), any new authorized account representative would, in fact, be bound by such a statement. Once the statement is received and an allowance transfer request is received and processed, EPA would still send both authorized account representatives transfer confirmation reports of any recorded transfer so that the authorized account representatives of both accounts have the opportunity to review the transfer after it has been recorded.

The Agency believes the existing rules already allow for this approach. Existing § 73.50(b)(1) allows the Administrator to specify a format for submitting a transfer request, which means the Administrator can already allow information from each authorized account representative to come in separately. Further, under existing § 73.50(b)(1), the transferee authorized account representative certifies the transfer by attesting to the language in the allowance transfer form, which is also set forth in § 72.21(b). This is the same language to which he or she would attest when authorizing transfers in advance. Moreover, existing § 73.50(b)(1)(iii) through (v) specifies the information (i.e., the signatures and identification numbers of the authorized account representatives and the date of the signatures) that must be submitted by both authorized account representatives, but does not require the information from both individuals to come in simultaneously. Therefore, the Administrator is not precluded from accepting a signature from an authorized account representative for the transferee account that is submitted prior to the submission of the signature of the authorized account representative for the transferor account. In light of the minimal, if any, protection that simultaneously submitted signatures would provide to the parties,[12] it is unnecessary for both signatures to come in at the same time. Hence, under the existing regulations, EPA can allow a signature of the transferee authorized account representative to be submitted prior to the signature of the transferor authorized account representative. Nevertheless, EPA believes that clarifying, through specific rule language, that this approach can be used would be helpful to authorized account representatives who wish to authorize, in advance, future transfers into an account and reduce their burden by eliminating the need for each party to the transfer to see and sign the allowance transfer form. Proposed

[11] Binding future authorized account representatives to the statement ensures that the reduced burden resulting from submitting a signature in advance is not lost automatically when an authorized account representative changes.

[12] The two-signature requirement, required in section 403(b) of the Act, was apparently intended to protect the transferor and transferee during the transfer process, but it is the parties' private agreement, not the allowance transfer form submitted to EPA, that protects the transferor and transferee.

§ 73.50(b)(2) is added to make this clarification.

Today's clarification is spurred by a desire to put in place a system that allows for submitting transfer requests electronically to the Agency. According to comments received from both industry and environmental organizations, such a system would increase efficiency, reduce personnel requirements, reduce data entry errors and paperwork, make the Allowance Tracking System more attractive to users, and result in a more vibrant and active market. *See, e.g.,* Docket # A–91–43, Response to Public Comment on the Core Rules of the Acid Rain Program, Volume I at p. A–27. In response, the Agency has been working with utility representatives in an effort to put in place Electronic Data Interchange (EDI) technology, a uniform standard set by the American National Standards Institute for electronic interchange of business transactions, to address this issue. Comments by experts familiar with established protocols for EDI have indicated that requiring two signatures on the same submission makes implementation of the EDI technology much more difficult. Proposed § 73.50(b)(2) would make it clear to utilities that they have the option of submitting a signature in advance, which would remove this obstacle and make it easier to use EDI.[13] In the meantime, in light of the Agency's existing authority to do so, the Agency has begun to accept signature statements from authorized account representatives who want to take advantage of this option immediately for transfer requests submitted either in hard copy or electronically.

The streamlining benefit of having the signature of the authorized account representative for the transferee account submitted prior to any specific transfer request is consistent with the general purposes of section 403(d) of the statute. This provision requires that the Administrator specify "all necessary procedures and requirements for an orderly and competitive functioning of the allowance system." 42 U.S.C. 7651b(d). Because an advance signature authorization from the authorized account representative for the transferee account would make subsequent allowance transfers less burdensome (both EDI-initiated and hard copy-initiated transfers), it would enhance the operation of the Allowance Tracking System and the allowance market as a whole.

For the above reasons, the Agency has added § 73.50(b)(2) to clarify that a signature statement from the authorized account representative for the transferee account can be submitted prior to the signature of the authorized account representative for the transferor account.

D. Impacts of Revisions on Acid Rain Permits

Today's proposed revisions are designed so that the contents of existing acid rain permits and the State regulations required to issue acid rain permits would not have to be changed in order for the revisions to become effective. With the exception of changes in the definitions of "allowance transfer deadline," "compliance subaccount," and "current year subaccount," all of today's revisions are made in 40 CFR part 73. Forty CFR part 73 governs EPA's operation of the Allowance Tracking System and does not contain any requirements for permitting or any other activities for which State permitting authorities are responsible. For this reason, 40 CFR part 73 has not been, and is not required to be, adopted by State permitting authorities under § 72.72. Thus, it would be unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's proposed changes to 40 CFR part 73.

Similarly, the proposed changes could go into effect without State permitting authorities revising acid rain permits or regulations to reflect the two revised definitions in 40 CFR part 72. Under existing § 72.50(b), each Acid Rain permit is deemed to incorporate the definitions in § 72.2. Consequently, even if an acid rain permit would be issued before the proposed changes to the § 72.2 definitions would be adopted and become effective, the Agency would propose to apply the final revised definitions to the units covered by the permit in determining end-of-year compliance for all calendar years for which the existing allowance transfer deadline (January 30) is on or after the effective date of the revised definitions. Moreover, the revised definitions would not affect the permitting activities of State permitting authorities under 40 CFR part 72 and would be adopted in the federal rules to implement changes made in EPA's operation of the Allowance Tracking System under 40 CFR part 73.

While the final revised definitions in § 72.2 would be applied for any calendar year ending on or after the effective date of the federal rule revision, State permitting authorities should revise their own regulations to reflect such new definitions after they are finalized. This would avoid any potential confusion on the part of regulated entities and the public as to how end-of-year compliance would be determined.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

[13] EPA considered completely eliminating the signature requirement for the authorized account representative for the transferee account; however, the Agency is constrained from doing so by statutory language in section 403(b) of the Act, which states that "[t]ransfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator." 42 U.S.C. 7651b(b).

analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because the proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The proposed revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by streamlining the allowance transfer process, extending the allowance transfer deadline, and providing more flexible allowance holding requirements. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

C. Paperwork Reduction Act

This action proposing revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). In fact, if anything, the revisions reduce burden by clarifying that the signature of the authorized account representative for a transferee account can be submitted in advance of an allowance transfer form, eliminating the need for that authorized account representative to see and sign future allowance transfer forms. To the extent any new information will be required by proposed revisions concerning the holding of allowances in other units' compliance subaccounts, the Agency projects that less than ten companies per year will be affected by those revisions. Overall, the revisions will result in no material change in the type or amount of information collected under the existing ICR. OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564–2740. Include the ICR and/or OMB number in any correspondence.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small government jurisdictions.

This proposed rule would not have a significant impact on a substantial number of small entities. As discussed above, the revisions would reduce the burden on regulated entities by streamlining and adding flexibility to the regulations. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Applicability of Executive Order 13045: Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885 (1997)), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Electric utilities, Penalties, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 28, 1998.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

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

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.2 [Amended]

2. Section 72.2 is amended by:

i. Removing from the definition of "Allowance transfer deadline" the words "January 30 or, if January 30" and adding, in their place, the words "March 1 (or February 29 in any leap year) or, if such day"; and removing the word "unit's", after the words "meeting the";

ii. Removing from the definition of "Compliance subaccount" the word "unit's", after the words "meeting the"; and

iii. Adding to the definition of "Current year subaccount" the words ", or any other affected unit at the same source to the extent provided under § 73.35(b)(3)," after the words "for use by the unit" and removing from the same definition the word "its" and adding, in its place, the word "the".

3. Section 72.40 is amended by adding to paragraph (a)(1) the words ", or in the compliance subaccount of another affected unit at the same source

to the extent provided in § 73.35(b)(3)," after the words "under § 73.34(c) of this chapter)".

PART 73—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 73.34 [Amended]

5. Section 73.34 is amended by removing from paragraph (c)(4) the words "or direct sale pursuant to subpart E of this part".

6. Section 73.35 is amended by revising paragraph (a)(2) and adding paragraph (b)(3) to read as follows:

§ 73.35 Compliance.

(a) * * *

(2) Such allowance is:

(i) Recorded in the unit's compliance subaccount; or

(ii) Transferred to the unit's compliance subaccount, with the transfer submitted correctly pursuant to subpart D for recordation in the compliance subaccount for the unit by not later than the allowance transfer deadline of the calendar year following the year for which compliance is being established in accordance with subpart D of this part; or

(iii) Held in the compliance subaccount of another affected unit at the same source in accordance with paragraph (b)(3) of this section.

Option 1

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraphs (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will deduct such allowances from the compliance subaccounts of the units otherwise having unused allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units − [Excess emissions if no deduction from other units × 3 (Average allowance price) / Excess emissions penalty]

Where:

"Maximum deduction from other units" is the maximum number of allowances that may be deducted, for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

"Excess emissions if no deduction from other units" is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section. "Excess emissions penalty" is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide for the year under § 77.6(b) of this chapter.

"Average allowance price" is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

(ii) Notwithstanding paragraph (b)(3)(i) of this section,

(A) If the amount calculated is less than or equal to zero, the maximum allowance deduction from other units will equal zero; and

(B) If the amount calculated is greater than zero and results in less than 10 tons of excess emissions, the maximum allowance deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) Beginning with the unit having the lowest Allowance Tracking System account number and ending with the unit having the highest account number (with account numbers sorted beginning on the left-most character and ending on the right-most character of each 12 character account number and with the letter characters assigned values in alphabetical order and less than all numeric characters), the Administrator will deduct allowances in accordance with paragraphs (b)(3)(i) and (ii) of this section:

(A) For each unit, at the source, otherwise having excess emissions; and

(B) From each unit, at the source, otherwise having unused allowances in its compliance subaccount.

(iv) Allowances in a compliance subaccount will be deducted under paragraphs (b)(3)(i) and (ii) of this section on a first-in, first-out (FIFO) accounting basis in accordance with paragraph (c)(2) of this section.

(v) Notwithstanding paragraphs (b)(3)(i) and (ii) of this section, if the Administrator receives a written notification by the authorized account representative for a source, on or before the allowance transfer deadline for the year for which compliance is being established, that the provisions in paragraphs (b)(3)(i) and (ii) of this section are not to be applied to specified units at the source, the Administrator will not make any deductions under paragraphs (b)(3)(i) and (ii) of this section for the specified units at the source.

Option 2

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraph (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will notify in writing the authorized account representative that he or she may specify which of such allowances are to be deducted from the compliance subaccounts of the units otherwise having unused allowances in order to reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated as follows:

Maximum deduction from other units = Excess emissions if no deduction from other units − [Excess emissions if no deduction from other units × 3 (Average allowance price) / Excess emissions penalty]

Where:

"Maximum deduction from other units" is the maximum number of allowances that may be deducted for the year for which compliance is being established, for a unit otherwise having excess emissions from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

"Excess emissions if no deduction from other units" is the tons of excess emissions that a unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section. "Excess emissions penalty" is the applicable dollar amount of the penalty for one ton of excess emissions of sulfur dioxide under § 77.6(b) of this chapter.

"Average allowance price" is a dollar amount (which the Administrator will publish in the **Federal Register** by October 15 of each year) equaling the total proceeds from the spot allowance auction (including EPA Reserve allowances and any privately offered allowances) held under § 73.70 during the year divided by the number of allowances sold at such auction, rounded to the nearest dollar.

(ii) Notwithstanding paragraph (b)(3)(i) of this section,

(A) If the amount calculated is less than or equal to zero, the maximum allowance deduction from other units will equal zero; and

(B) If the amount calculated is greater than zero and results in less than 10 tons of excess emissions, the maximum allowance deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) If the authorized account representative submits within 15 days of receipt of a notification under paragraph (b)(3)(i) of this section a written request specifying allowances to be deducted in accordance with paragraph (b)(3)(i) of this section, the Administrator will deduct such allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated under paragraph (b)(3)(i) of this section.

7. Section 73.50 is amended by redesignating paragraph (b)(2) as (b)(3) and adding new paragraph (b)(2) as follows:

§ 73.50 Scope and submission of transfers.

* * * * *

(b) * * *

(2)(i) The authorized account representative for the transferee account can meet the requirements in paragraphs (b)(1)(ii) and (iii) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement in a format prescribed by the Administrator and signed by the authorized account representative retracting the authorization for the account.

(ii) The statement under paragraph (b)(2)(i) of this section shall include the following: "By this signature, I authorize any transfer of allowances into each Allowance Tracking System account listed herein, except that I do not waive any remedies under 40 CFR part 73, or any other remedies under State or federal law, to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator."

* * * * *

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Federal Register

Monday
August 3, 1998

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Assistance to States for the Education of Individuals With Disabilities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Assistance to States for the Education of Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of written findings and decision and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234f, authorizes the Secretary to enter into Compliance Agreements with recipients that are failing to comply substantially with Federal program requirements. In order to enter into a Compliance Agreement, the Secretary must determine, in Written Findings and Decision, that the recipient cannot comply, until a future date, with the applicable program requirements, and that a Compliance Agreement is a viable means of bringing about such compliance. On March 10, 1998, the Secretary entered into a Compliance Agreement with the District of Columbia Public Schools (DCPS) and issued Written Findings and Decision on that matter. Under section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Written Findings and Decision and Compliance Agreement are to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dr. Gregory R. Corr, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, 600 Independence Avenue S.W., Washington D.C., 20202–2722. Telephone: (202) 205–9027. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202)260–5137.

Individual with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law applicable" to the Federal program funds administered by this agency. Specifically, the Department is authorized to:

(1) Withhold funds,

(2) Obtain compliance through a cease and desist order,

(3) Enter into a compliance agreement with the recipient, or,

(4) Take any other action authorized by law, 20 U.S.C. 1234c(a)(1)–(4).

The Department's Office of Special Education Programs (OSEP) has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). On February 4 and 5, 1997, OSEP—as part of its regular monitoring program—conducted public meetings at which parents, advocates, representatives of professional groups, and concerned members of the community provided testimony indicating that DCPS had failed to meet many of the requirements of Part B. The testimony indicated that several of the violations that had been identified in prior OSEP monitoring reports had not been corrected. On February 10, 1997, OSEP met with General Julius W. Becton, Jr., superintendent and chief executive officer for DCPS, and members of his staff to discuss OSEP's serious concerns with ongoing compliance issues in DCPS' special education programs. General Becton and his staff acknowledged that the District's special education programs did not comply with the requirements of Part B and informed OSEP that DCPS was developing a strategic plan to address these violations.

In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement would be an appropriate course of action which would be in the best interests of the children of the District of Columbia. The purpose of a Compliance Agreement "is to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a Compliance Agreement with a recipient, the Secretary must determine that compliance until a future date is not genuinely feasible and that a Compliance Agreement is a viable means for bringing about such compliance.

On March 10, 1998, the Secretary issued Written Findings and Decision which held that compliance by DCPS with the Part B requirements to ensure that a free appropriate public education is made available to all eligible children and youth with disabilities was genuinely not feasible until a future date because of the "magnitude of the problem" and the "complex and long-term causes" underlying that problem, including an inadequate management system for its special education program. The Secretary also determined that the Compliance Agreement represents a viable means of bringing about compliance because of the steps DCPS has already taken to address its noncompliance, its commitment of resources and the plans it has developed for further action. Moreover, the Agreement sets out a very specific schedule that DCPS must meet in coming into compliance with the Part B requirements. This schedule, coupled with specific data collection and reporting requirements, will allow the Department to monitor closely DCPS' progress in meeting the terms of the Compliance Agreement. The Secretary signed the Compliance Agreement on March 10, 1998. The superintendent and chief executive officer for DCPS, General Julius W. Becton, Jr. signed the Agreement on March 16, 1998.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the full text of the Secretary's Written Findings and Decision in the Matter of the Request of the District of Columbia Public Schools to Enter into a Compliance Agreement and the binding provisions of the Compliance Agreement are set forth in this publication. The Action Plan items mentioned in the introduction are not included in this Notice because they were included in the Compliance Agreement for informational purposes only, to demonstrate DCPS' commitment to coming into full compliance with IDEA, and are not binding on DCPS. OSEP will make copies of the Action Plan available to the public upon request.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Notes: The official version of a document is the document published in the **Federal Register.**

(Authority: 20 U.S.C. 1234c and 1234f and 20 U.S.C. 1401, 1411–1420.)

Dated: July 28, 1998.

Richard W. Riley,

Secretary of Education.

Text of the Secretary's Written Findings and Decision

I. Introduction

The United States Department of Education (the Department) has determined, pursuant to 20 U.S.C. §§ 1234c and 1234f, that the District of Columbia Public Schools (DCPS) failed to comply substantially with the requirements of Part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. §§ 1401, 1411–1419, and that it is not feasible for DCPS to achieve full compliance immediately. The Department's Office of Special Education Programs (OSEP) has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B. On February 4 and 5, 1997, OSEP—as part of its regular monitoring program—conducted public meetings at which parents, advocates, representatives of professional groups, and concerned members of the community provided testimony indicating that DCPS had failed to meet many of the requirements of Part B. The testimony indicated that several of the violations that had been identified in prior OSEP monitoring reports had not been corrected. On February 10, 1997, OSEP met with General Julius W. Becton, Jr., superintendent and chief executive officer for DCPS, and members of his staff to discuss OSEP's serious concerns with ongoing compliance issues in DCPS' special education programs. General Becton and his staff acknowledged that the District's special education programs did not comply with the requirements of Part B and informed OSEP that DCPS was developing a strategic plan to address these violations. In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement pursuant to 20 U.S.C. 1234f would be an appropriate course of action which would be in the best interests of the children of the District of Columbia.

The purpose of a Compliance Agreement is to bring a "recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In accordance with the requirements of 20 U.S.C. 1234f(b)(1), a public hearing was conducted in the District of Columbia by Department officials on June 18, 1997, at the Logan Administration Building. Witnesses representing DCPS, affected students and parents, and other concerned organizations testified at this hearing on the question of whether the Department should grant DCPS's request to enter into a Compliance Agreement. The Department has reviewed this testimony, the proposed Compliance Agreement, and other relevant materials.[1] On the basis of this evidence, the Department concludes, and hereby issues written findings in accordance with 20 U.S.C. § 1234f(b)(2), that DCPS has met its burden of establishing that:

(1) DCPS compliance with the Part B requirements to ensure that a free appropriate public education is made available to all eligible children and youth with disabilities in the District of Columbia is not feasible until a future date; and

(2) DCPS will be able to carry out the terms and conditions of the Compliance Agreement and come into full compliance with the Part B requirements within three years of the date of this decision.

During the effective period of the Compliance Agreement, which ends three years from the date of this decision, DCPS will be eligible to receive Part B funds as long as it complies with all the terms and conditions of the Agreement. Any failure by DCPS to meet these conditions will authorize the Department to consider the Compliance Agreement no longer in effect. Under such circumstances, the Department may take any enforcement action authorized by 20 U.S.C. § 1234c. At the end of the effective period of the Compliance Agreement, DCPS must be in full compliance with Part B in order to maintain its eligibility to receive funds under that program. 20 U.S.C. § 1234c.

II. Relevant Statutory and Regulatory Provisions

A. Part B of the Individuals With Disabilities Education Act

Part B was passed in response to Congress' finding that a majority of children with disabilities in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out." H. Rep. No. 332, 94th Cong., 1st Sess. 2 (1975), quoted in *Board of Education* v. *Rowley*, 458 U.S. 176, 181 (1982).[2] Part B provides Federal financial assistance to those State educational agencies (SEAs) that demonstrate that they meet certain eligibility requirements, including having in effect a policy to ensure that "a free appropriate public education [FAPE] is available to all children with disabilities residing in the State between the ages of three and twenty-one * * *" 20 U.S.C. § 1412(a)(1).[3] FAPE is defined as special education and related services that:

(a) Have been provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency,

(c) Include an appropriate preschool, elementary, or secondary school education in the State involved, and

(d) Are provided in conformity with the individualized education program [IEP] required under section 614(d). [20 U.S.C. § 1401(8)]

A State also must ensure that the Part B requirements regarding evaluations, reevaluations, timeliness and implementation of due process hearing decisions, child find, and the provision of an education in the least restrictive environment are met. Part B requires DCPS to ensure that:

all children with disabilities residing in the [District of Columbia] * * * including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services are identified,

[1] A copy of the Compliance Agreement, which was prepared by DCPS in conjunction with representatives of this Department, is appended to this decision as Attachment A.

[2] Part B was recently amended by the Individuals with Disabilities Education Act Amendments of 1997. (IDEA–97) This decision and the attached agreement include citations to the current statute as amended and the regulations currently in effect. On October 22, 1997, the Department published proposed regulations to implement IDEA–97. When these regulations are published in final, the agreement will be amended to reflect any necessary changes to the regulatory citations.

[3] Part B defines "child with a disability" to mean a child "with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, needs special education and related services." 20 U.S.C. § 1401(3)(A). Under sections 301(a)(1) and (a)(2)(H) of the Department of Education Organization Act (DEOA), 20 U.S.C. § 3441(a)(1) and (a)(2)(H), Congress transferred the administration of Part B from the Commissioner of Education to the Secretary of Education. Section 2078 of the DEOA, 20 U.S.C. § 3417, in turn delegates responsibility for Part B to the Assistant Secretary for Special Education and Rehabilitative Services.

located, and evaluated * * * [20 U.S.C. § 1412(a)(3)(A)]

Moreover, a child with a disability cannot receive an initial special education placement until an evaluation has been performed in accordance with sections 614(a)(1), (b) and (c) of Part B.[4] All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B and 34 CFR §§ 300.550–300.556. After initial evaluation and placement, children with disabilities must be reevaluated at least every three years in accordance with sections 614(a)(2), (b) and (c) of Part B.

As noted above, the provision of FAPE includes special education and related services. "Related services" is defined to mean:

> transportation and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. [20 U.S.C. § 1401(22)]

The IEP for each child with a disability must specify the related services which are to be provided. 34 CFR § 300.346(a)(3). In order to meet its obligation to make FAPE available, DCPS must be able to identify, locate, and evaluate all children with disabilities who are in need of special education and related services, provide timely initial evaluations and reevaluations, place students in the least restrictive environment appropriate to their individual needs and provide the related services specified in each student's IEP.

DCPS must also ensure that its due process system, which is a critical component of Part B designed to protect the rights of children and their parents, meets the requirements of Part B. A final decision must be issued no later than 45 days after receipt of a request for a due process hearing as required by 34 CFR § 300.512. Independent hearing officer determinations must be implemented within the time frame prescribed by the hearing determination as required by sections 615 (f) and (i) of Part B.

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides the Department with a number of options when it determines a recipient of Department funds is "failing to comply substantially with any requirements of law applicable to such funds." 20 U.S.C. § 1234c. In such cases, the Department is authorized to:

(1) Withhold further payments under that program from the recipient,

(2) Issue a complaint to compel compliance through a cease and desist order,

(3) Enter into a compliance agreement with the recipient to bring it into compliance; and

(4) Take any other action authorized by law. 20 U.S.C. § 1234c.

In addition, under section 616(a) of Part B, if a State fails to comply substantially with IDEA, the Department is authorized to withhold, in whole or in part, any further payments to the State under Part B or to refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Under section 457 of GEPA, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. § 1234f. The purpose of a Compliance Agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." Before entering into a Compliance Agreement with a recipient, the Department must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance. 20 U.S.C. § 1234f(b)(1). If, on the basis of all the available evidence, the Secretary determines that compliance until a future date is genuinely not feasible and that a Compliance Agreement is a viable means for bringing about such compliance, he is to make written findings to that effect and publish those findings, together with the substance of any Compliance Agreement, in the **Federal Register**. 20 U.S.C. § 1234f(b)(2).

A Compliance Agreement must set forth an expiration date, not later than 3 years from the date of the Secretary's written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. § 1234f(c)(1). In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that Agreement is in effect. 20 U.S.C. § 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. § 1234f(d).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a Compliance Agreement between the Department and DCPS is appropriate, the Department must first determine whether compliance by DCPS with the Part B requirements concerning evaluations, reevaluations, related services, timeliness and implementation of due process decisions, child find and least restrictive environment is not feasible until a future date. 20 U.S.C. § 1234f(b). The second issue that must be resolved is whether DCPS will be able, within a period of up to three years, to come into compliance with the Part B requirements. Moreover, not only must DCPS come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a Compliance Agreement between the Department and DCPS would not be appropriate.

B. DCPS Has Failed To Comply Substantially With Part B

OSEP has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B. In a monitoring report issued on February 8, 1994, OSEP found that in several areas DCPS was not meeting its responsibility to ensure that its educational programs for children with disabilities were being

[4] The current standard for conducting initial evaluations within a reasonable period of time in DCPS was established by the Federal district court's decree in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866, 878–79 (D.DC 1972), which requires that a student who has been referred for a special education evaluation must be evaluated and placed within 50 days of referral. Under Part B at 20 U.S.C. § 1412(a)(11), States are required to ensure compliance with State standards for the implementation of programs for children with disabilities.

administered in a manner consistent with the requirements of Part B and its implementing regulations. OSEP found, among other things, that DCPS did not provide the related services specified on a student's IEP, place students in the least restrictive environment, conduct an evaluation every three years or issue due process decisions within the required 45 day timeline.

From March 1 through 6, 1995, OSEP conducted a follow-up review to determine the extent to which DCPS was making progress towards implementing selected corrective actions specified in the 1994 monitoring report. In a June 12, 1995 monitoring report, OSEP determined that significant problems remained with regard to least restrictive environment requirements and the provision of related services. OSEP also determined that DCPS continued to have significant problems with ensuring that students with disabilities are evaluated every three years. In response to this report, DCPS submitted a corrective action plan to ensure that these violations would be corrected.

On February 4 and 5, 1997, in preparation for a monitoring visit scheduled for the spring of 1997, OSEP conducted public meetings at which parents, advocates, and representatives of professional groups provided testimony indicating that DCPS has failed to meet many of the requirements of Part B. Many people testified that DCPS was continuing to have compliance problems in the same areas that had been identified in the February 8, 1994 and June 12, 1995 monitoring reports. On February 10, 1997, OSEP met with General Becton and members of his staff to discuss OSEP's serious concerns with DCPS' ongoing noncompliance with IDEA. There was substantial agreement between DCPS and OSEP regarding DCPS' current noncompliance with Part B and the need to develop a comprehensive corrective action plan. The Department agreed to consider the possibility of entering into a compliance agreement. In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement would be an appropriate course of action which is in the best interest of the children of the District of Columbia.

C. The Noncompliance of DCPS With the Part B Requirements Identified in the Compliance Agreement Cannot Be Corrected Immediately.

On June 18, 1997, pursuant to 20 U.S.C. 1234f(b)(1), the Department conducted a public hearing to determine whether a compliance agreement with DCPS is appropriate to address system-wide problems in the provision of special education for students with disabilities residing in the District of Columbia. As at the February hearings, parents, advocates, service providers, and other interested parties testified that DCPS was continuing to have compliance problems in the same areas that had been identified in previous reports. Many commenters supported the Department entering into a compliance agreement with DCPS but urged the Department to make the agreement as specific as possible.

On January 26, 1998, DCPS reported that on January 5, 1998, 2,331 students who had been referred for a special education evaluation awaited completion of an initial assessment and placement for longer than 50 days. As of January 5, 1998, of the 655 hearing requests that had been received, a final decision had not been issued within 45 days of the request in 482 cases as required by 34 CFR § 300.512. As of January 5, 1998, 332 final decisions had not been fully implemented within the time frame prescribed by the hearing determination. These numbers are evidence of the magnitude of the problems faced by DCPS.

Through the monitoring process and the public hearing, the Department has learned that DCPS's difficulties in complying with the requirements of Part B are the outgrowth of a number of complex and long-term causes including an inadequate management system for its special education program. At the public hearing, DCPS itself identified inadequate management and several other reasons why compliance cannot be achieved until a future date. These reasons include poor information management systems, lack of staff training, inappropriate staff allocation and lack of appropriate programs.

All parties who testified at the public hearing, including DCPS, agreed that DCPS must implement an effective system of managing its special education program. The sheer magnitude of the problem faced by DCPS leads the Department to conclude that DCPS will not be able to come into compliance with the Part B requirements until a future date. This conclusion is consistent with the testimony of all of the witnesses at the public hearing.

D. DCPS Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Part B Within Three Years

The Chief Executive Officer, General Julius W. Becton, Jr., pledged to rebuild the special education division of DCPS. Already, specific steps have been taken, or are in the process of being planned, to realize this goal. DCPS has developed a strategic plan designed to reorganize its special education division and address the Part B requirements for which DCPS is currently not in compliance. DCPS has budgeted a total increase in resources dedicated to special education of $20 million for the 1998–99 school year.

DCPS's special education division is currently undergoing a reorganization and is planning to hire a team of three specialists to coordinate special education. In the fall of 1997, DCPS completed new position descriptions with performance expectations and standards for all staff designed to improve accountability and assure quality. In addition, DCPS has reallocated its staff to ensure more effective use of its current personnel. A Child Find Liaison has been assigned and a child find hotline has been established.

DCPS issued a request for proposals (RFP) in June 1997 for special education assessment services. DCPS is in the process of recruiting additional related service providers. DCPS has allocated additional resources to ensure that due process hearings can be conducted within the 45 day timeline. DCPS is planning to hire five additional administrative law judges to conduct due process hearings and four additional lawyers to represent DCPS at hearings. A mediation process to meet the requirement of section 615(e) of Part B is being developed.

DCPS is conducting additional staff development training so that they can serve students more inclusively at local schools. DCPS has expanded its early childhood program to serve an additional 40 preschool children and under the terms of the agreement must continue to expand its preschool programs. New programs have been developed for high school age students with learning disabilities and elementary school aged students who have emotional disturbance and DCPS' strategic plan includes continuing to build up its program capabilities. The steps DCPS has already taken, its commitment of resources, and the plans it has developed for further action, demonstrate that DCPS has the capacity to meet the terms and conditions of the Compliance Agreement.

Finally, the Compliance Agreement sets out a very specific schedule, that DCPS must meet during the next three years, for attaining compliance with the many requirements of Part B. Therefore, DCPS is committed not only to being in

full compliance with Part B within three years, but to meeting a stringent, but reasonable, schedule for reducing the number of children with disabilities in the District who have not received the evaluations, reevaluations, and related services to which they are entitled and for reducing the number of hearing decisions that have not been issued within the 45 day timeline and the number of decisions that have not been implemented. The Compliance Agreement also sets out data collection and reporting procedures that DCPS must follow. These provisions will allow the Department to ascertain promptly whether or not DCPS is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on DCPS, will provide the Department with the information and authority it needs to protect the Part B rights of the District of Columbia's children.

The task of ensuring that all children with disabilities receive the rights and protections to which they are entitled under IDEA is difficult given the long-standing problems in DCPS' special education program. However, the Department has determined that with the commitment of the new leadership to meet the terms and conditions of this agreement, the process of improving special education services for all students with disabilities residing in the District of Columbia can begin immediately. For these reasons, the Department concludes that DCPS can meet all the terms and conditions of the Compliance Agreement and come into full compliance with Part B within three years.

IV. Conclusion

For the foregoing reasons, the Department finds the following: (1) That full compliance by DCPS with the requirements of Part B is not feasible until a future date, and (2) that DCPS can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of Part B within three years of the date of this decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with DCPS. Under the terms of 20 U.S.C. § 1234f, that Compliance Agreement becomes effective on the date of this decision.

Dated: March 10, 1998.

Richard W. Riley,

Secretary of Education.

Text of the Binding Provisions of the Compliance Agreement—Compliance Agreement Under Part B of the Individuals With Disabilities Education Act Between the United States Department of Education and the District of Columbia Public Schools

Introduction

The Office of Special Education Programs of the United States Department of Education (OSEP) conducted public hearings during the week of February 3, 1997 regarding the District of Columbia Public Schools (DCPS') implementation of Part B of the Individuals with Disabilities Education Act (Part B of IDEA).[1] Those hearings, and input from representatives of DCPS, lead OSEP to raise the possibility of the development of a compliance agreement to bring DCPS into full compliance with applicable portions of the law as soon as feasible. In a letter dated March 27, 1997, General Julius Becton, Jr., DCPS' Chief Executive Officer, confirmed DCPS' interest in developing a compliance agreement, believing that the execution of such an agreement would be in the best interests of the children of the District of Columbia.

Pursuant to this Compliance Agreement under 20 U.S.C. § 1234f, DCPS must be in full compliance with the requirements of Part B no later than three years from the date of the Department's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, DCPS must ensure and document that no later than three years after the effective date of this Agreement, the following compliance goals are achieved:

1. An initial evaluation that meets the requirements of sections 614(a)(1), (b), and (c) of Part B of IDEA is completed for all children with disabilities, and an appropriate placement is made within the maximum number of days established by DCPS' policy, and a reevaluation that meets the requirements of sections 614(a)(2), (b), and (c) of Part B of IDEA, is completed for all children with disabilities no later than 36 months after the date on which the most recent previous evaluation or reevaluation was completed;

2. All children with disabilities receive the related services specified in their individualized education program as required by section 602(8) of Part B of IDEA and 34 CFR § 300.350;

3. A final decision is issued not later than 45 calendar days after the receipt of a request for a due process hearing as required by 34 CFR 300.512, except in cases where the requester voluntarily withdraws the request (e.g., in favor of mediation, because the issues motivating the request were addressed, and/or a settlement has been reached);

4. Independent hearing officer determinations are implemented within the time-frame prescribed by the hearing determination as required by sections 615(f) and (i) of Part B of IDEA;

5. A Child-Find system is established which identifies and locates all children with disabilities, including those transitioning from Part H programs, who are in need of special education and related services as required by section 612(a)(3) of Part B of IDEA;

6. All children with disabilities are placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR 300.550–300.556;

7. State complaint procedures which meet the requirements of 34 CFR 300.660–300.662 are implemented;

8. Beginning no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's individualized education plan (IEP) as required by 34 CFR 300.346(b) and if a purpose of the IEP meeting is consideration of transition services, that all required participants have been invited and participate as required by 34 CFR 300.344(c) and that a notice containing all required content is issued as required by 34 CFR 300.345(b)(2);

9. A State Advisory Panel is established which meets the requirements of section 612(a)(21) of Part B of IDEA;

[1] This agreement references the regulations in effect on the date that this agreement took effect. On October 22, 1997, the Department published proposed regulations to implement the Individuals with Disabilities Education Act Amendments of 1997. When these regulations are published in final, the agreement will be amended to reflect any necessary changes to the regulatory citations. These amendments will not, however, alter the effective period of this agreement.

10. Procedures that meet the requirements of section 615(b)(2) of Part B of IDEA are implemented to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State; and

11. Sufficient numbers of personnel are available to meet the needs of students with disabilities who are limited English proficient.

During the period that this Compliance Agreement is in effect, DCPS is eligible to receive Part B funds if it complies with the terms and conditions of this Agreement, including the provisions of Part B of IDEA, as amended by the IDEA Amendments of 1997 (IDEA–97) and other applicable Federal statutory and regulatory requirements.

Specifically, the Compliance Agreement sets forth commitments and timetables for DCPS to meet in coming into compliance with its Part B obligations. In addition, DCPS is required to submit documentation concerning its compliance with these goals and timetables. Any failure by DCPS to comply with the goals, timetables, documentation, or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the agreement no longer in effect. Under such circumstances, the Department may take any action authorized by 20 U.S.C. § 1234c, including the withholding of Part B funds from DCPS. This Agreement will take effect on the day the Department issues its written findings of fact, pursuant to the requirements of 20 U.S.C. § 1234f, and will expire three years from that date.

The following pages of this compliance agreement address topic areas of DCPS' non-compliance, and include goals, verifiable outcomes, schedules for levels of compliance over the three year agreement, and DCPS' "Action Plan" for achieving compliance. Since several of the compliance goal areas are inter-related, some "Action Plan" items are duplicated between topic areas. Please note that "Action Plan" items for each goal are provided by DCPS for informational purposes only, to demonstrate DCPS' commitment to coming into full compliance with IDEA. DCPS and the Department agree that "Action Plan" items (activities, time line/status, responsibility, milestone/verification, and special resources) shall not be construed to bind DCPS legally or otherwise. DCPS, however, is bound to comply with all other aspects of this Agreement.

Topic 1.0: Initial Evaluations and Re-evaluations

Current Status: DCPS' current policy, as set forth in the Mill's decree, is that a student who has been referred for a special education evaluation must be evaluated and placed within 50 days of the referral. On January 5, 1998, 2,331 students who had been referred for a special education evaluation awaited completion of an initial assessment and placement for longer than 50 days. Additionally, on March 31, 1998, 2,529 (data received March 31, 1998) students with disabilities will not have been re-evaluated for more than 36 months following their initial or most recent previous re-evaluation. Goals are:

Goal 1.0

(a) To ensure that an initial evaluation that meets the requirements of sections 614(a)(1), (b) and (c) of Part B of IDEA is completed for all children with disabilities and an appropriate placement is made within 50 days after the child is referred [2]; and,

(b) To ensure that a re-evaluation that meets the requirements of sections 614(a)(2), (b) and (c) of Part B of IDEA is completed for all children with disabilities no later than 36 months after the date on which the most recent previous evaluation or re-evaluation was completed.

DCPS will gather baseline data regarding the number of students (yy) for the re-evaluation goal, and provide that data to the Department by March 31, 1998 (data received March 31, 1998 and included in Table B, below).

Overall Measurable Outcomes and Verification for Goal 1.0 (a): Initial Evaluations

(a) Every week, DCPS will prepare an internal report which includes the name of each child referred for initial evaluation, and the number of calendar days since the referral, the status of that referral (complete or incomplete), and the component assessments remaining if the evaluation is incomplete and/or placement has not been made.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) On a periodic basis, beginning with the period ending June 30, 1998, DCPS will submit to the Department—at the times and in the manner specified in Table A—a summary of the internal reports for the relevant reporting period. The summary will include:

- The number of children referred for initial evaluation, as of the start of the reporting period, whose initial evaluation and placement have not been completed within the required time period;
- The number of children referred for initial evaluations during the reporting period;
- The number of children for whom an initial evaluation and placement was completed during the reporting period;
- The number of referred children who did not receive an initial evaluation and placement within the required time period at the conclusion of the reporting period.

(d) Table A sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of children waiting for initial evaluations and placements for longer than 50 days after referral. For children referred prior to January 5, 1998, this number will be reduced to zero by March 31, 1999. For children referred on or after January 5, 1998, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting these final commitments to reduce the number of children awaiting timely initial evaluations and placements to zero, but also to meeting all of the periodic commitments for reducing that number set out in Table A.

(e) DCPS shall provide OSEP, by April 30, 1998, its policies and procedures for ensuring that evaluations and reevaluations are conducted in conformity with the evaluation procedures required in section 614(b) and (c) of Part B of IDEA.

[2] DCPS and the Department agree that if the time line for initial evaluation and placement is modified by the Court, the Compliance Agreement will be amended to incorporate the revised time line.

TABLE A.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (INITIAL EVALUATIONS AND PLACEMENTS)

Number of children awaiting completion of initial evaluation and placements for more than 50 days			
Date of reporting period	Referrals prior to 1/5/98	Referrals 1/5/98 and after	Date report submitted to department
1/5 to 6/30/98	1,748	85% of referrals	7/15/98
7/1 to 9/30/98	932	75% of referrals	10/15/98
10/1 to 12/31/98	233	60% of referrals	1/15/98
1/1 to 3/31/99	0	45% of referrals	4/15/99
4/1 to 6/30/99	0	30% of referrals	7/15/99
7/1 to 9/30/99	0	15% of referrals	10/15/99
10/1 to 12/31/99	0	5% of referrals	1/15/00
1/1 to 3/31/00	0	0	4/15/00
4/1 to 6/30/00	0	0	7/15/00
7/1 to 9/30/00	0	0	10/15/00
10/1 to 12/31/00	0	0	1/15/01
1/1 to 3/31/01	0	0	4/15/01

Overall Measurable Outcomes and Verification for Goal 1.0 (b) Reevaluations

(a) Within the first week of each month, DCPS will prepare an internal report of the name of each child for whom an initial evaluation, or the most recent re-evaluation, was completed. Children for whom the initial evaluation or re-evaluation was completed more than 36 months prior will be highlighted in the report.

(b) Appended to the above report, DCPS will note which children from the previous month's report have been re-evaluated during that month, as well as those cases which are still pending.

(c) DCPS shall make these internal reports available to OSEP if requested by that office.

(d) Within fifteen (15) calendar days following the end of each reporting period commencing with the reporting period ending June 30, 1998, DCPS will submit to the Department a summary of the monthly reports for the period, including:

- The number of children who have not received re-evaluations within 36 months at the start of the reporting period;
- The number of children who, during the reporting period, have been identified as not receiving re-evaluations within 36 months;
- The number of students for whom a re-evaluation was completed during the reporting period;
- The number of students whose re-evaluation is still pending for more than 36 months at the end of the reporting period.

(e) Table B sets out, on a periodic basis, DCPS" commitment for incremental reduction to zero of the number of children who have not received timely re-evaluations. For children whose re-evaluations was due on or before January 5, 1998, this number will be reduced to zero by March 31, 1999. For children whose re-evaluations will be due after January 5, 1998, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting these final commitments to reduce the number of children awaiting timely re-evaluations to zero, but also to meeting all of the periodic commitments for reducing that number set out in Table B.

TABLE B.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RE-EVALUATIONS)

Students awaiting re-evaluation more than 36 months after initial evaluation or last re-evaluation			
Date of reporting period	Re-evaluation due 1/5/98 or before	Re-evaluation due after 1/5/98	Date report submitted to department
1/5 to 6/30/98	1,897 (data rec'd 3/31/98)	85% of Re-Evaluations due	7/15/98
7/1 to 9/30/98	1,012 (data rec'd 3/31/98)	75% of Re-Evaluations due	10/15/98
10/1 to 12/31/98	253 (data rec'd 3/31/98)	60% of Re-Evaluations due	1/15/99
1/1 to 3/31/99	0	45% of Re-Evaluations due	4/15/99
4/1 to 6/30/99	0	30% of Re-Evaluations due	7/15/99
7/1 to 9/30/99	0	15% of Re-Evaluations due	10/15/99
10/1 to 12/31/99	0	5% of Re-Evaluations due	1/15/00
1/1 to 3/31/00	0	0	4/15/00
4/1 to 6/30/00	0	0	7/15/00
7/1 to 9/30/00	0	0	10/15/00
10/1 to 12/31/00	0	0	1/15/01
1/1 to 3/31/01	0	0	4/15/01

Topic 2.0: Related Services

Current Status: As of January 5, 1998, DCPS has not provided related service in accordance with students' IEP to 1,055 (data received March 31,1998) students.

DCPS currently lacks a special education student information system, and consequently can not provide adequate baseline data regarding the total number of students (zz) who do not receive all of the related services called for within their IEPs. DCPS will capture

this baseline data, and provide it to the Department of Education no later than March 31, 1998, using the following methods.

- DCPS' related service ("Intervention") staff members will, with assistance from school principals, identify the list of all students entitled to receive a related service, and record all of those students' names in a format which the Special Education Division provides (the format is included as Attachment P to this Compliance Agreement).
- Twice each month, intervention staff will record, on the provided format, the names of those students to whom they have provided service/therapy, the names of students who missed service/therapy due to absences, and the names of students (if any) who could not be scheduled to receive related service/therapy due to inadequate schedule/time.
- Each related service ("Intervention") staff member will total the number of such students who do not receive service/therapy due to inadequate schedule/time, and report the result to their Special Education Division supervisor. Each supervisor will summarize the reports for all intervention staff, and the Deputy Director for Service Delivery will summarize the data for DCPS as a whole.
- When a new student is placed in a school's special education program, that student shall be added to the list of students entitled to receive related services at that school, consistent with the services called for in the student's IEP. Similarly, when a student transfers, graduates or withdraws, the student's name shall be deleted from the list. Such additions and deletions shall be summarized in each report by each Intervention staff member.

The number of students who could not be scheduled to receive related service/therapy due to inadequate related service provider schedule/time shall be reported initially to the Department of Education, and shall form the source of data from which will be used for the reports described below. An initial report of all students who are not receiving all related services specified within their IEPs will be made prior to March 31, 1998, and those students will make up the initial count of students shown as "zz" in Table C below.

Goal 2.0

To ensure that all children with disabilities receive the related services specified in their individual education program as required by section 602(8) of Part B of IDEA and 34 CFR 300.350.

Overall Measurable Outcomes and Verification for Goal 2.0 (Related Services)

(a) Within the first week of each month, DCPS will prepare an internal report for each type of related service with the following content:

i. Children, by name, whose IEPs call for a related service, but who are *not yet* assigned to the schedule of a specific DCPS provider of that service (a child whose IEP calls for two different related services, but who is not receiving either service, will appear separately on the reports for each of those related services). These children will be listed in order of the date on which their original or updated IEP calling for the service was signed.

ii. Children, by name, who, for whatever reason, have been removed from the schedule of a DCPS related service provider (for example, because of the resignation of the service provider, or because of the transfer of the student away from the school where that provider works, etc.), and who have not immediately been reassigned to the schedule of another service provider.

iii. Children, by name, who within the previous month have been assigned to the schedule of a specific DCPS service provider (and who consequently have been removed from the above listing of unassigned children).

iv. DCPS related service providers who are scheduled to serve children for fewer hours per week than is provided for by DCPS policy for that service, and who consequently may be available to serve additional children.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) Within fifteen calendar days following the end of each reporting period, DCPS will provide to the Department a report with the following content:

i. The number of children who are not receiving all the related services specified in their IEP as of the start of the reporting period;

ii. The number of children identified during the reporting period as not receiving all the related services specified in their IEPs;

iii. The number of children that, during the reporting period, began receiving all the related services specified in their IEPs; and

iv. The number of children not receiving all related services specified in their IEPs at the end of the reporting period.

(d) Table C sets out, on a periodic basis, DCPS" commitment for incremental reduction to zero of the number of children not receiving all the related services specified in their IEPs. For the number of children who were determined eligible for special education prior to January 5, 1998, but not receiving all of the related services specified within their IEPs, this number will be reduced to zero by December 31, 1999. For the number of students who were determined eligible for special education on or after January 5, 1998, but not receiving all of the related services specified within their IEPs, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting this final commitment to reduce the number of children not receiving required related services to zero, but also to meeting all of the periodic commitments for reducing the number set out in Table C.

(e) By April 30, 1998, DCPS must establish, and submit to OSEP for approval, a method to verify that those children who have been assigned to the schedule of a specific DCPS service provider are in fact receiving the required services.

TABLE C.—DCPS PERIODIC REPORTS TO THE DEPARTMENT REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RELATED SERVICES)

Date of reporting period	Number of children not receiving related services provided for in their IEP (students eligible prior to 1/5/98)	Number of children not receiving related services provided for in their IEP program (students eligible on or after 1/5/98)	Date report submitted to department
1/5 to 6/30/98	950 (data rec'd 3/31/98)	95% of newly eligible students	7/15/98
7/1 to 9/30/98	791 (data rec'd 3/31/98)	85% of newly eligible students	10/15/98
10/1 to 12/31/98	580 (data rec'd 3/31/98)	70% of newly eligible students	1/15/99
1/1 to 3/31/99	369 (data rec'd 3/31/98)	55% of newly eligible students	4/15/99
4/1 to 6/30/99	211 (data rec'd 3/31/98)	40% of newly eligible students	7/15/99

TABLE C.—DCPS PERIODIC REPORTS TO THE DEPARTMENT REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RELATED SERVICES)—Continued

Date of reporting period	Number of children not receiving related services provided for in their IEP (students eligible prior to 1/5/98)	Number of children not receiving related services provided for in their IEP program (students eligible on or after 1/5/98)	Date report submitted to department
7/1 to 9/30/99	106 (data rec'd 3/31/98)	25% of newly eligible students	10/15/99
10/1 to 12/31/99	0	10% of newly eligible students	1/15/00
1/1 to 3/31/00	0	0	4/15/00
4/1 to 6/30/00	0	0	7/15/00
7/1 to 9/30/00	0	0	10/15/00
10/1 to 12/31/00	0	0	1/15/01
1/1 to 3/31/01	0	0	4/15/01

Topic 3.0: Due Process Hearing Timeliness

Current Status: For a significant portion of due process hearing requests received by DCPS on behalf of students with disabilities, a final decision is not issued within 45 days after receipt of the request. As of January 5, 1998, of the 655 hearing requests that had been received, a final decision had not been issued within 45 days of the request in 482 cases.

Goal 3.0

To ensure that a final decision is issued, not later than 45 calendar days after the receipt of a request for a due process hearing as required by 34 CFR 300.512, except in cases where the requester voluntarily withdraws the request (including, but not limited to, instances of withdrawal in favor of mediation, because the issues motivating the request were addressed, and/or where a settlement has been reached) and/or where a hearing officer grants a request for an extension by a party.

Overall Measurable Outcomes and Verifications for Goal 3.0

(a) Within the first week of each month, DCPS will prepare an internal report with the following content:

i. Name of each child for whom a due process hearing has been requested, and the date that the request was received in writing.

ii. Name of each child for whom a due process hearing was held and a final decision was issued, and the date of the final decision.

iii. Name of each child for whom a request for a due process hearing was withdrawn, the date of the withdrawal, and a brief note as to disposition.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) Within fifteen calendar days following the end of each reporting period, DCPS will prepare and submit a report to the Department which includes:

i. The number of pending hearing requests, as of the start of the reporting period, for which a final decision has not been issued within 45 days of the request;

ii. The number of pending hearing requests which, during the course of the reporting period, are added to the list of hearing requests for which a final decision has not been issued within 45 days of the request;

iii. The number of final decisions issued during the reporting period for hearing requests that have been pending for more than 45 days;

iv. The number of pending hearings requests, at the conclusion of the reporting period, for which a final decision has not been issued within 45 days of the request.

(d) Table D sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of due process hearing requests which have been pending for more than 45 days, which have not been withdrawn, and for which a final decision has not been issued. DCPS is committed to reducing this number to zero by December 31, 1998. DCPS is not only committed to meeting this final commitment, but also to meeting all of the periodic commitments for reducing that number set out in Table D.

(e) DCPS must submit to the Department, by March 31, 1998, the mediation procedures that it has developed under Section VII.F of its Strategic Plan to meet the requirements of section 615(e) of Part B of IDEA.

TABLE D.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (DUE PROCESS HEARING TIMELINESS)

Date of reporting period	Number of hearing requests which have been pending for 45 days or more, have not been withdrawn, and for which a final decision has not been issued	Date report submitted to department
1/5 to 6/30/98	361	7/15/98
7/1 to 9/30/98	217	10/15/98
10/1 to 12/31/98	0	1/15/99
1/1 to 3/31/99	0	4/15/99
4/1 to 6/30/99	0	7/15/99
7/1 to 9/30/99	0	10/15/99

TABLE D.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (DUE PROCESS HEARING TIMELINESS)—Continued

Date of reporting period	Number of hearing requests which have been pending for 45 days or more, have not been withdrawn, and for which a final decision has not been issued	Date report submitted to department
10/1 to 12/31/99	0	1/15/00
1/1 to 3/31/00	0	4/15/00
4/1 to 6/30/00	0	7/15/00
7/1 to 9/30/00	0	10/15/00
10/1 to 12/31/00	0	1/15/01
1/1 to 3/31/01	0	4/15/01

Objectives for Goal 3.0: Due Process Hearing Time Line

3.1 Reduce the need for hearings by developing new programs, improving evaluations and improving related service delivery.

3.2 Reduce demand for hearing requests by establishing a new mediation process.

3.3 Increase accountability for hearing time lines by computerizing records and providing ongoing information to DCPS" Legal and Special Education Division.

Topic 4.0: Hearing Determination Implementation

Current Status: As of January 5, 1998, 332 student hearing determinations remained outstanding without having been fully implemented within the time frame set out by the hearing determination.

Goal 4.0

To ensure that independent hearing officer determinations are implemented within the time-frame prescribed by the hearing determination, or the different time-frame agreed to in writing by the parent or guardian and submitted to the hearing officer as required by sections 615 (f) and (i) of Part B of IDEA.

Overall Measurable Outcomes and Verification for Goal 4.0

(a) Within the first week of each month, DCPS will prepare an internal report:

i. Date each due process hearing decision was filed, and the case number.

ii. Type of hearing (e.g., denial, appropriateness, etc.).

iii. Actions required and Time lines set out by the determination.

iv. Date each action was completed, or a notation that the action remains incompleted. Actions which remain uncompleted beyond the date required within the order will be highlighted within the report.

v. Date the hearing order was fully implemented (i.e., all actions completed). Note that all hearing cases will continue to be reported until it has been reported that the hearing order was fully implemented.

vi. The number of cases in which a different time-frame is agreed to in writing by the parent or guardian and submitted to the hearing officer and DCPS" basis for requesting a different time-frame.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) Within fifteen calendar days following the end of each reporting period, DCPS will prepare and submit a report to the Department that includes:

i. The number of hearing officer determinations, as of the start of the reporting period, that have not been fully implemented;

ii. The number of hearing officer determinations which, during the course of the reporting period, are identified as not having been fully implemented;

iii. The number of hearing officer determinations which, during the course of the reporting period, have been fully implemented;

iv. The number of hearing officer determinations which, as of the conclusion of the reporting period, have not been fully implemented.

(d) Table E sets out, on a periodic basis, DCPS" commitment for incremental reduction to zero of the number of hearing officer determinations that have not been fully implemented consistent with the hearing decision. DCPS is committed to reducing this number to zero by December 31, 1998. DCPS is obligated not only to meeting this final commitment, but also to meeting all of the periodic commitments for reducing the numbers set out in Table E.

TABLE E.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (HEARING DETERMINATION IMPLEMENTATION)

Date of reporting	Number of hearing officer determinations not fully implemented	Date report period submitted to department
1/5 to 6/30/98	266	7/15/98
7/1 to 9/30/98	199	10/15/98
10/1 to 12/31/98	0	1/15/99
1/1 to 3/31/99	0	4/15/99
4/1 to 6/30/99	0	7/15/99

TABLE E.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (HEARING DETERMINATION IMPLEMENTATION)—Continued

Date of reporting	Number of hearing officer determinations not fully implemented	Date report period submitted to department
7/1 to 9/30/99	0	10/15/99
10/1 to 12/31/99	0	1/15/00
1/1 to 3/31/00	0	4/15/00
4/1 to 6/30/00	0	7/15/00
7/1 to 9/30/00	0	10/15/00
10/1 to 12/31/00	0	1/15/01
1/1 to 3/31/01	0	4/15/01

Objectives for Goal 4.0: Hearing Order Determination Implementation

4.1 Reduce the need for hearings (and thus the need for implementing hearing determinations) by developing new programs and initiatives and by implementing a mediation process.

4.2 Improve implementation of assessment-related hearing order determinations (HODs) by prioritizing evaluations, reorganizing staff and supervision, and establishing a central assessment scheduling/tracking method.

4.3 Increase accountability for implementing order determinations by computerizing tracking and by summarizing status in a monthly report.

Topic 5.0: Child Find

Current Status: DCPS is not complying with its obligation to identify and locate all children with disabilities residing in the District of Columbia, including children with disabilities attending private schools, regardless of severity of their disabilities, who are in need of special education and related services.

Goal 5.0

To establish a Child-Find system which successfully identifies and locates all children with disabilities, including those transitioning from Part H programs, who are in need of special education and related services as required by section 612(a)(3) of Part B of IDEA.

Overall Measurable Outcomes and Verification for Goal 5.0: Child Find

(a) Within fifteen calendar days following the end of each reporting period as set out in Table A above, DCPS will provide to the Department a report that includes:

i. A listing of the inquires received through DCPS' Child Find hotline, and a summary of the other contacts made by Child Find staff, including the Child Find Liaison, and the screening aides; and

ii. Data on the number of preschool students identified and served.

(b) DCPS shall submit a report to OSEP every six months, from the effective date of this Compliance Agreement, on the activities it has carried out during the reporting period to implement the objectives of Goal 5.0. The report must include:

(i) For the city wide screening event, identified in section III.C of the Strategic Plan, the number and location of screening sites, the kinds of screening tools that were used, and the number and ages of children screened; and

(ii) For the training provided under section VII.G of the Strategic Plan, the dates and locations of the training sessions, the number of participants, and curriculum for the training.

Please see Attachment Q for the District of Columbia's Policy and Procedure for transition form Part H to Part B programs, and form for recording child-find inquires.

Objective for Goal 5.0: Child Find

5.1 Build DCPS' network and capability for identifying children who may need special education services by:

a. Implementing the initiatives outlined in DCPS' State Plan for IDEA; and

b. Assigning a Child Find Liaison, Early Childhood Coordinator, Transition Facilitator and screening aides.

5.2 Increase school staff understanding of responsibilities and understanding of available resources for child find/outreach, screening and assessment procedures by developing and disseminating a concise flowchart and description.

5.3 Increase sensitivity and familiarity of instructional support staff regarding students with disabilities and their instructional needs through training.

5.4 Continue to expand early childhood program to serve additional preschool children.

5.5 Increase awareness of parents of all children over the age of 2.0 years who are enrolled in DHS Early Intervention Programs about their options and rights to receive services from DCPS under IDEA Part B.

5.6 Develop policies and procedures to ensure a smooth transition for those individuals participating in the early intervention program under Part H of the IDEA who will participate in preschool programs, including a method for ensuring that when a child turns three, an IEP or IFSP has been developed and implemented by the child's third birthday as required by section 612(a)(9) of Part B of IDEA.

Topic 6.0: Restrictiveness of Placements

Current Status: Currently, DCPS is not complying with its obligation to provide children with disabilities with the least restrictive placement appropriate to their individual needs. Specifically, Board of Education rules have been interpreted to require that the restrictiveness of a students' placement is determined by the number of hours of special education services required by the student. For example, a student who needs 32 hours of service each week is typically served only in a separate school.

Goal 6.0

To ensure that children with disabilities are placed in the least restrictive environment appropriate to their individual needs as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR 300.550–300.556 and that the restrictiveness of a student's placement (such as a self-contained class or a separate school placement) is not determined solely by the number of hours of service each week which is called for in the student's individualized education program.

Overall Measurable Outcomes and Verification for Goal 6.0: Restrictiveness of Placements

(a) DCPS will provide the Department with a draft copy of its revised Board of Education Rules by no later than April 1, 1998 and its final rule by no later than June 30, 1998.

(b) DCPS will, on October 1 of each year of this agreement, identify for the Department schools which have been identified as inclusion initiative schools, and those which serve as local school "satellites" for program and services which had previously been offered in more restrictive, "city-wide" settings.

(c) DCPS will, on June 1 of each year of this agreement, provide the Department with a list of placements that are available and that represent each type of placement on the continuum as required by 34 CFR 300.551. DCPS must identify sufficient existing accessible locations to provide a continuum of appropriate placements for all children with disabilities. If DCPS is unable to identify sufficient existing accessible locations to provide a continuum, it must develop and submit a plan, on June 1, of each year of the agreement, to ensure accessible locations by September 1 for each type of placement on the continuum.

(d) DCPS will submit data on the number of students in each type of placement on the continuum on November 20, 1998, November 20, 1999, and November 20, 2000.

(e) DCPS will submit a report to OSEP every six months, from the effective date of this Compliance Agreement, on the activities it has carried out during the reporting period to implement Goal 6.0.

Objectives for 6.0: Restrictiveness of Placements

6.1 Review and revise, if necessary, DCPS' continuum of services in accordance with applicable regulations

6.2 Increase schools' abilities to serve students in less restrictive setting by:

a. Implementing DCPS' inclusion initiative;

b. Developing and expanding "regional schools" abilities to serve high school age students with learning disabilities and elementary age students with emotional disturbance; and

c. Developing and expanding other programs to serve under-served students.

6.3 Increase school system personnel sensitivity to children with disabilities by providing broad training/exposure for all school system staff.

6.4 At IEP meetings, DCPS will review the appropriateness of each student's placement and staff will be trained on the proper methods for determination of the least restrictive environment consistent with OSEP memorandum 95–9.

Topic 7.0: State Complaint Procedures

Current Status: DCPS is not implementing its written procedures for receiving and resolving any complaint that DCPS or a public agency is violating Part B or its regulations within 60 days.

Goal 7.0

To implement state complaint procedures for receiving and resolving any complaint that DCPS or a public agency is violating Part B or its regulations as required by 34 CFR 300.660–300.662.

Overall Measurable Outcomes and Verification for Goal 7.0: State Complaint Procedures

(a) DCPS must submit verification of implementation of its state complaint procedures by March 31, 1998.

(b) DCPS must develop a plan to ensure that all parents and other interested individuals are informed regarding complaint management procedures. The plan must include how frequently parents and other individuals will be informed and the materials to be used. DCPS must submit the material to be used to inform parents and other interested individuals about its complaint management procedures by March 31, 1998.

(c) DCPS must submit quarterly reports to OSEP that include a copy of its complaint log verifying that complaints are resolved within 60 days except where there has been an extension due to an exceptional circumstance related to that complaint. For each complaint for which DCPS has determined that an exceptional circumstance exists, DCPS must submit to OSEP an explanation of the exceptional circumstance. Where DCPS finds that the allegations contained in a complaint are true, and that noncompliance with regard to an IDEA requirement exists, it must ensure that appropriate corrective action is taken in a timely manner. These quarterly reports are due on June 30, 1998, September 30, 1998, December 31, 1998 and March 31, 1999.

(d) On a quarterly basis, DCPS must submit to OSEP a sample of complaint files for review. OSEP will select the files to be reviewed based on the log of complaints submitted above. These files must be submitted on July 15, 1998, October 15, 1998, January 15, 1999 and April 15, 1999. DCPS is responsible for ensuring that each file contains a written decision to the complainant that addresses each allegation in the complaint. DCPS must also maintain and make available for OSEP review documentation demonstrating that required corrective actions have been implemented in a timely manner.

Topic 8.0: Transition

Current Status: DCPS is not complying with its obligation to ensure that no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's IEP and if the purpose of the IEP meeting is consideration of transition services that all required participants have been invited and participate and that a notice containing all required content is issued.

Goal: 8.0

Beginning no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's IEP as required by 34 CFR 300.346(b) and if the purpose of the IEP meeting is consideration of transition services, that all required participants have been invited and participate as required by 34 CFR 300.344(c) and that a notice containing all required content is issued as required by 34 CFR 300.345(b)(2).[3]

Overall Measurable Outcomes and Verification for Goal 8.0: Transition

(a) DCPS must develop effective procedures to ensure that (1) beginning at age 14, and younger if appropriate, a statement of transition service needs or beginning at age 16 (or younger, if determined appropriate by the IEP team) a statement of needed transition services is included in each student's IEP as required by section 614(d)(1)(A)(vii) of Part B of IDEA; (2) the student will be invited to the IEP meeting, and if the student does not attend, the student's preferences and interests will be considered; (3) an individual determination will be made as to participating agency(ies) likely to be responsible for providing or paying for transition services and a representative of each participating agency(ies) will be invited to the IEP meeting. If the agency representative does not attend, other steps will be taken to ensure the participation of the agency in the planning of any transition services; and (4) the notice utilized by public agencies

[3] Implementation of the procedure to include a statement of transition service needs beginning at age 14 is required for IEPs beginning July 1, 1998.

to inform parents and other individuals (e.g., students and participating agencies) contains all required content.

(b) DCPS must submit quarterly reports to OSEP describing the progress it has made in ensuring compliance with the Part B transition requirements. These quarterly reports must be submitted on June 30, 1998, September 30, 1998, December 31, 1998, and March 31, 1999.

(c) On a quarterly basis, DCPS must submit a sample of IEPs and accompanying notices for students age 16 and older. OSEP will select the IEPs to be reviewed. These IEPs must be submitted on July 15, 1998, October 15,1998, January 15, 1999, and April 15, 1999.

Topic 9.0: State Advisory Panel

Current Status: DCPS has not established a State advisory panel which meets the requirements of section 612(a)(21) of Part B of IDEA.

Goal 9.0

Establish a State advisory panel which meets the requirements of section 612(a)(21) of Part B of IDEA.

Overall Measurable Outcomes and Verification for Goal 9.0: State Advisory Panel

(a) DCPS must establish a State Advisory Panel which meets the requirements of section 612(a)(21) of Part B of IDEA. DCPS must submit by May 1, 1998 documentation that a properly constituted Advisory Panel has been established and is meeting to carry out the duties described in 612(a)(21)(D). Please see Attachment T for a description of the membership and appointing authority for the State Advisory Panel.

Topic 10.0: Surrogate Parent Procedures

Current Status: DCPS is not implementing its procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State.

Goal 10.0

To implement procedures that meet the requirements of section 615(b)(2) of Part B of IDEA to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State.

Overall Measurable Outcomes and Verification for Goal 10.0: Surrogate Parent Procedures

(a) DCPS must implement its procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of a individual (who is not an employee of the State education agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents. DCPS must submit verification of implementation of its surrogate parent procedures by May 1, 1998.

DCPS has engaged a contractor to recruit, train, and support surrogate parents. Please see Attachment U for DCPS' work plan for recruiting and training surrogate parents. As required, DCPS will have final procedures for assignment of surrogate parents, and will submit verification of their implementation by May 1, 1998.

Topic 11.0: Provision of Special Education to Limited English Proficient Students

Current Status: DCPS does not have sufficient numbers of personnel available to meet the needs of students with disabilities who are limited English proficient.

Goal 11.0

DCPS must ensure that sufficient numbers of personnel are available to meet the needs of limited English proficient students.

Overall Measurable Outcomes and Verification for Goal 11.0: Provision of Special Education to Limited English Proficient Students

(a) DCPS must ensure that sufficient numbers of personnel are available to meet the needs of students with disabilities who are limited English proficient (LEP). Such personnel must include special education teachers, psychologists, related service providers, and other staff needed to provide special education and related services and to conduct evaluations and reevaluations for these students. By April 30, 1998, DCPS must submit a status report of its efforts to ensure sufficient numbers of staff to meet the needs of LEP students. To the extent that the report shows that DCPS does not have sufficient numbers of personnel, a plan to meet this goal must accompany the report. In the event that such a plan is necessary, the plan must be fully implemented no later than September 30, 1998.

Other Conditions

In addition to all of the terms and conditions set forth above, DCPS agrees that its continued eligibility to receive Part B funds is predicated upon compliance with statutory and regulatory requirements of that program, that have not been addressed by this Agreement, including the IDEA Amendments of 1997. If DCPS fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. § 1234f(d).

For the District of Columbia Public Schools:

Dated: March 16, 1998.

General Julius W. Becton, Jr.,

Chief Executive Officer.

For the United States Department of Education:

Dated: March 10, 1998.

Honorable Richard W. Riley,

Secretary of Education.

Date this Compliance Agreement becomes effective (Date of Secretary Riley's Written Decision and Findings): March 10, 1998.

Expiration Date of this Agreement: March 10, 2001.

[FR Doc. 98–20655 Filed 7–31–98; 8:45 am]

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federal register

Monday
August 3, 1998

Part V

Department of Housing and Urban Development

Notice of Application Kit Clarification Concerning HOPE VI Revitalization

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–N–03]

Notice of Application Kit Clarification Concerning HOPE VI Revitalization

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On March 31, 1998, HUD published a Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs (63 FR 15489). This SuperNOFA contained a component for Revitalization of Severely Distressed Public Housing (HOPE VI Revitalization NOFA) at 63 FR 15577. In order to help public housing agencies (PHAs) in preparing their applications for HOPE VI Revitalization funds, HUD also made available an Application Kit. The purpose of this Notice is to advise applicants of a discrepancy between the HOPE VI Revitalization NOFA and the Application Kit and to allow them to clarify their applications with respect to this discrepancy.

CLARIFICATION DUE DATE: Clarifications to the HOPE VI application must be received at HUD Headquarters on or before 12:00 Noon Eastern time on August 17, 1998.

ADDRESSES AND CLARIFICATION SUBMISSION PROCEDURES: *Addresses:* Clarifications must be submitted to: Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4138, Washington, D.C. 20410.

Submission Procedures: Applicants are advised that all clarifications must be received by HUD by the date and time specified in this Notice. No information provided after that date and time will be considered in review of the application. Applicants may send clarifying information by facsimile (fax) to (202) 401–2370. Applicants should contact the Office of Urban Revitalization at the telephone number given below to verify the receipt of any information sent by fax. Because of the importance of timely submission of clarifying information, applicants are advised to submit such information at the earliest time possible to avoid the risks brought about by unanticipated delays or delivery-related problems.

FOR FURTHER INFORMATION CONTACT: For further information you may call Mr. Milan Ozdinec, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4142, Washington D.C. 20410; telephone (202) 401–8812 (this is not a toll free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: This Notice informs the public about a discrepancy between the HOPE VI Revitalization NOFA and the Application Kit with respect to the requirement that an application that proposes new construction of replacement public housing must comply with the requirements of section 6(h) of the U.S. Housing Act of 1937.

Section 6(h) provides that the Secretary may enter into a contract involving new construction only if the PHA demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood. Section III.A.(4) of the HOPE VI Revitalization NOFA provided that an applicant could satisfy the section 6(h) requirement by "submitting the information described in paragraphs (a) or (b) of this section:

"(a) A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or acquisition and rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement), or

"(b) A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation."

In an effort to help applicants address this section 6(h) requirement, the Application Kit provided instructions that may have confused applicants with respect to satisfaction of the NOFA requirement. Section D.8 of the Application Kit instructed the applicants to "include a narrative that contains information described in paragraphs a or b below. If the application involves new construction, provide evidence of compliance with section 6(h) of the 1937 Act in one of the following two ways:

"a. Compare the cost of construction in the neighborhood where the applicant proposes to construct housing and the cost of acquisition and rehabilitation in the same neighborhood.

"b. State that there is insufficient existing housing in the neighborhood to develop public housing through acquisition and/or acquisition and rehabilitation where such cost would be lest (sic) than new construction. Describe how you came to that conclusion."

In the event of discrepancies between the NOFA and the Application Kit, or between the NOFA and any other supplemental information issued by HUD, the language of the NOFA supersedes and prevails over any inconsistency in the Application Kit. However, HUD believes that the differences between the text in the HOPE VI Revitalization NOFA and the text in the Application Kit with respect to the 6(h) requirement caused confusion in a couple of different ways. First, with respect to the cost comparison method in (a), the Application Kit does not describe with the precision of the NOFA the cost comparison that HUD was seeking. Some of the detail in the NOFA description is not contained in the Application Kit. For instance, the NOFA cites the costs of lead-based paint testing and abatement in connection with acquisition and rehabilitation and the Application Kit fails to do so. In addition, the Application Kit in paragraph (b) discusses the cost of rehabilitation and new construction, thus confusing the differences between method (a) and method (b). This discrepancy between the NOFA and Application Kit language created ambiguities in a number of applications which need to be clarified.

With respect to method (b), the NOFA required a PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation. The Application Kit fails to use the words "accompanied by supporting documentation". The Application Kit merely requests that applicants state that there is insufficient existing housing and describe how the applicant came to that conclusion. We think that this discrepancy between the NOFA and the Application Kit caused confusion among applicants as to what the applicant had to submit in order to support the applicant's contention that there is insufficient existing housing in the neighborhood.

In addition, the Application Kit introduced into method (b) a cost factor that is totally lacking in the NOFA. This further confused applicants as to the kind of information that was needed to support the applicant's contention that there is insufficient existing housing in the neighborhood for acquisition or acquisition and rehabilitation. And, as

indicated above, by introducing a cost element into method (b) the Application Kit confused the distinction between the two methods. Under method (b) in the NOFA, the application only had to provide supporting documentation that there was an insufficient supply of existing housing in the neighborhood to acquire for replacement public housing. The cost of acquiring or acquiring and rehabilitating the insufficient supply of existing housing is irrelevant to the determination to be made under method (b).

For these reasons, the Department has determined that the discrepancy between the HOPE VI Revitalization NOFA and the Application Kit has caused a need for some applications to be clarified. Therefore, HUD has determined, in order to provide fundamental fairness to all applicants, that a number of HOPE VI applicants should be requested to clarify their applications with respect to the section 6(h) requirement. In addition to the publication of this Notice, HUD will be contacting these applicants by telephone to advise them that their applications need clarification with respect to the satisfaction of the section 6(h) requirement. In accordance with section III of the HOPE VI Revitalization NOFA and this Notice, HUD will advise the applicants that the applicant must submit either a comparison of costs in accordance with section III.(A)(4)(a) of the HOPE VI Revitalization NOFA, or supporting documentation with respect to the certification that there is insufficient existing housing in the neighborhood in accordance with section III.(A)(4)(b) of the HOPE VI Revitalization NOFA.

Dated: July 30, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–20786 Filed 7–30–98; 3:14 pm]

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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 AUGUST 1, 1998

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Grain inspection:
Official moisture meters; tolerances; published 6-25-98

PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits; published 7-15-98

POSTAL SERVICE
Domestic Mail Manual:
Forwarding first-class mail destined for address with temporary change-of-address on file; ancillary service endorsements; published 7-22-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AERMACCHI S.p.A.; published 6-25-98
Alexander Schleicher Segelflugzeugbau; published 6-16-98
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TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
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Glaser-Dirks Flugzeugbau GmbH; published 6-19-98¶

RULES GOING INTO EFFECT AUGUST 3, 1998

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
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Risk/benefit information; reporting requirements; published 8-3-98

FARM CREDIT ADMINISTRATION
Administrative provisions:
Administrative expenses; assessment and apportionment; technical amendments; published 8-3-98

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HEALTH AND HUMAN SERVICES DEPARTMENT
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Quarterly wage and unemployment compensations claims reporting to National Directory of New Hires; published 7-2-98

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Melengestrol acetate and oxytetracycline; published 8-3-98
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Milbemycin oxime/lufenuron tablets; published 8-3-98
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Rhodia Ltd.; published 8-3-98

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Raytheon Aircraft Co.; published 6-25-98

COMMENTS DUE NEXT WEEK

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Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Fruits and vegetables; importation; comments due by 8-4-98; published 6-5-98

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Clear title; farm product purchasers protection:
Effective financing statements; statewide central filing systems; establishment and management; comments due by 8-7-98; published 6-8-98

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Commodity Exchange Act:
Recordkeeping requirements; electronic storage media and other recordkeeping-related issues; comments due by 8-4-98; published 6-5-98

CONSUMER PRODUCT SAFETY COMMISSION
Flammable Fabrics Act:
Children's sleepwear (sizes 0-6X and 7-14) flammability standards
Policy statement clarification; comments due by 8-4-98; published 5-21-98

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Freedom of Information Act; implementation; comments due by 8-7-98; published 6-8-98

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District of Columbia; comments due by 8-6-98; published 7-7-98
District of Columbia et al.; comments due by 8-7-98; published 7-8-98
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Universal service support mechanisms; comments due by 8-5-98; published 7-23-98
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Oklahoma; comments due by 8-3-98; published 6-25-98
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1273/P.L. 105–207
National Science Foundation Authorization Act of 1998 (July 29, 1998; 112 Stat. 869)

H.R. 1439/P.L. 105–208
To facilitate the sale of certain land in Tahoe National Forest in the State of California to Placer County, California. (July 29, 1998; 112 Stat. 879)

H.R. 1460/P.L. 105–209
To allow for election of the Delegate from Guam by other than separate ballot, and for other purposes. (July 29, 1998; 112 Stat. 880)

H.R. 1779/P.L. 105–210
To make a minor adjustment in the exterior boundary of the Devils Backbone Wilderness in the Mark Twain National Forest, Missouri, to exclude a small parcel of land containing improvements. (July 29, 1998; 112 Stat. 881)

H.R. 2165/P.L. 105–211
To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for

other purposes. (July 29, 1998; 112 Stat. 882)

H.R. 2217/P.L. 105–212

To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes. (July 29, 1998; 112 Stat. 883)

H.R. 2841/P.L. 105–213

To extend the time required for the construction of a hydroelectric project. (July 29, 1998; 112 Stat. 884)

H.R. 2870/P.L. 105–214

To amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests. (July 29, 1998; 112 Stat. 885)

H.R. 3156/P.L. 105–215

To present a congressional gold medal to Nelson Rolihlahla Mandela. (July 29, 1998; 112 Stat. 895)

S. 318/P.L. 105–216

Homeowners Protection Act of 1998 (July 29, 1998; 112 Stat. 897)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
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400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
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CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998

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[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1998

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August 17	September 1	September 16	October 1	October 16	November 16
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August 21	September 8	September 21	October 5	October 20	November 19
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CFR CHECKLIST

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3 (1997 Compilation and Parts 100 and 101)	(869-034-00002-9)	19.00	[1] Jan. 1, 1998
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7 Parts:			
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CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998

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August 7	August 24	September 8	September 21	October 6	November 5
August 10	August 25	September 9	September 24	October 9	November 9
August 11	August 26	September 10	September 25	October 13	November 9
August 12	August 27	September 11	September 28	October 13	November 10
August 13	August 28	September 14	September 28	October 13	November 12
August 14	August 31	September 14	September 28	October 13	November 12
August 17	September 1	September 16	October 1	October 16	November 16
August 18	September 2	September 17	October 2	October 19	November 16
August 19	September 3	September 18	October 5	October 19	November 17
August 20	September 4	September 21	October 5	October 19	November 18
August 21	September 8	September 21	October 5	October 20	November 19
August 24	September 8	September 23	October 8	October 23	November 23
August 25	September 9	September 24	October 9	October 26	November 23
August 26	September 10	September 25	October 13	October 26	November 24
August 27	September 11	September 28	October 13	October 26	November 25
August 28	September 14	September 28	October 13	October 27	November 27

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105th Congress, 2nd Session, 1998

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